

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 9, 1999

INCREASING TRUST BETWEEN COMMUNITIES AND LAW ENFORCEMENT:
COMBATING RACIAL PROFILING

June 9, 1999

Today, at a Department of Justice conference, President Clinton will chair a roundtable discussion with leaders from civil rights and law enforcement organizations on ways to build trust between police and the communities they serve. To address the issue of racial profiling, the President will direct federal law enforcement agencies to begin collecting and reporting data on the race, ethnicity, and gender of the individuals they stop and search. The President will also call on Congress to pass legislation to promote data collection and reporting by state and local law enforcement agencies.

Getting the Facts on Racial Profiling

Leading by example. No person should be targeted by law enforcement because of the color of his or her skin. Stopping or searching individuals on the basis of race is not consistent with our commitment to equal justice under law and is not effective law enforcement policy. Racial profiling is simply wrong. As a necessary step to combat this problem, we need to learn the hard facts about when and where it occurs. That is why the President will direct the Departments of Justice, Treasury, and the Interior to:

- (1) begin collecting data on the race, ethnicity, and gender of individuals subject to traffic and pedestrian stops, inspections at entries into the U.S., and certain other searches by federal law enforcement agencies, including the Immigration and Naturalization Service, Drug Enforcement Agency, Customs Service, and National Park Service; and
- (2) after one year, report on the findings of the new data collection system and make additional recommendations based on those findings on how to ensure greater fairness in federal law enforcement's procedures.

Helping states and localities. The President also will support legislation introduced by Representative John Conyers (D-MI) to establish a new federal grant program to assist state and local law enforcement agencies to implement similar data collection systems. This legislation also will authorize the Attorney General to develop a nationwide sample and issue a report on the number and nature of traffic stops conducted by state and local enforcement throughout the country.

Surveying the American public. As recently announced by the Attorney General, the Justice Department this year will amend its National Crime Victimization Survey and begin asking Americans about their experiences with traffic stops, police use of force, and police misconduct. This new information will help measure our success in building trust and improving relations between law enforcement and the community.

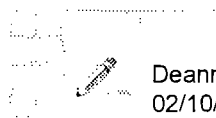
More Progressive Policing for the 21st Century

Continuing the community policing revolution. To make our communities safer and stronger, we must enhance our commitment to community policing. The 21st Century Policing Initiative contained in the President's crime bill extends his successful community policing initiative and contains several measures to help strengthen the integrity and ethics of police forces across the country. Specifically, his crime bill includes: (1) \$20 million to expand police integrity and ethics training; (2) \$20 million for police scholarships to promote the best educated police force possible; (3) \$2 million for improved minority recruitment to help make sure police departments reflect the diversity of the communities they represent; (4) \$10 million to help police departments purchase more video cameras to protect both the safety of officers and the rights of the individuals they stop; and (5) \$5 million to establish citizen police academies to engage community residents in the fight against crime.

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ROUNDTABLE PARTICIPANTS

Attorney General Janet Reno
Deputy Attorney General Eric H. Holder, Jr.
Associate Attorney General Raymond C. Fisher
Acting Assistant Attorney General Bill Lann Lee,
Civil Rights Division
Secretary Rodney Slater, Department of Transportation
Ronald Daniels, Center for Constitutional Rights
Paul Evans, Boston Police Department
Thomas Frazier, Baltimore Police Department
Gilbert Gallegos, Fraternal Order of Police
Richard Green, Crown Heights Youth Center
Penny Harrington, National Center for Women in Policing
Wade Henderson, Leadership Conference on Civil Rights
Antonia Hernandez, Mexican American Legal Defense &
Educational Fund
John Justice, National District Attorneys Association
Representative Sheila Jackson Lee, 18th District, Texas
Ken Lyons, International Brotherhood of Police Officers
Kweisi Mfume, NAACP
Karen Narasaki, Asian Pacific American Legal Consortium
Ron Neubauer, International Association of Chiefs of Police
Professor Charles Ogletree, Harvard Law School
Hugh Price, National Urban League
Robert Scully, National Association of Police Organization
Rev. Al Sharpton, National Action Network
Chuck Sha-King, Youth Force
Dan Smith, National Sheriff's Association
Robert Stewart, National Organization of Black Law
Enforcement Executives
Christopher Stone, Vera Institute of Justice
Beverly Watts-Davis, San Antonio Fighting Back
Mayor Anthony Williams, District of Columbia
Raul Yzaguirre, National Council of La Raza



Deanne E. Benos
02/10/2000 06:45:30 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP
cc: leanne a. shimabukuro/opd/eop@eop
bcc:
Subject: Re: Race Profiling - weekly submission

The orientation of this study is broader than ours -- Our is a directive to include data on federal agencies to collect that data and we'll look at it and make recommendations. This is similar because it is a study -- but it is also state and local. Bill doesn't mandate. The President endorsed the Conyers bill -- is this one new? Call Broderick -- did something pass on this last year. NAPO killed it.

Irene Bueno

Irene Bueno
02/10/2000 06:04:49 PM

Record Type: Record

To: Leanne A. Shimabukuro/OPD/EOP@EOP, Deanne E. Benos/OPD/EOP@EOP
cc:
Subject: Race Profiling - weekly submission

Are you okay with this?

Traffic Stops Statistic Study Act of 1999: On February 15, 2000, the House Judiciary Committee is scheduled to mark up H.R. 1443, *TheTraffic Stops Statistics Study Act of 1999*, introduced by Representatives Conyers (D-MI). H.R. 1443 is similar to the directive you issued last year requesting certain federal agencies to collect data on the race, ethnicity and gender of individuals stopped or inspected by federal law enforcement officers. H.R. 1443 directs the Attorney General to conduct a nationwide study of stops for traffic violations by federal, state and local law enforcement officers.

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Bill 1 of 50

GPO's PDF version of this bill	References to this bill in the Congressional Record	Link to the Bill Summary & Status file.	Full Display - 4,992 bytes. [Help]
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Traffic Stops Statistics Study Act of 1999 (Introduced in the House)

HR 1443 IH

106th CONGRESS

1st Session

H. R. 1443

To provide for the collection of data on traffic stops.

IN THE HOUSE OF REPRESENTATIVES

April 15, 1999

Mr. CONYERS (for himself, Mr. MENENDEZ, Ms. WATERS, Mr. SCOTT, Ms. JACKSON-LEE of Texas, Mr. NADLER, Mr. BERMAN, Mr. WEINER, Mr. CUMMINGS, Mr. MEEKS of New York, Mr. HILLIARD, Mr. FARR of California, Mr. LEWIS of Georgia, Mr. DIXON, Mr. HASTINGS of Florida, Mr. BRADY of Pennsylvania, Mr. HINCHEY, Mr. PAYNE, Mr. CLAY, Mr. BARRETT of Wisconsin, Mrs. CLAYTON, and Mrs. JONES of Ohio) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the collection of data on traffic stops.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Traffic Stops Statistics Study Act of 1999'.

SEC. 2. ATTORNEY GENERAL TO CONDUCT STUDY.

(a) STUDY-

(1) IN GENERAL- The Attorney General shall conduct a nationwide study of stops for traffic violations by law enforcement officers.

(2) INITIAL ANALYSIS- The Attorney General shall perform an initial analysis of existing data, including complaints alleging and other information concerning traffic stops motivated by race and other bias.

(3) DATA COLLECTION- After completion of the initial analysis under paragraph (2), the Attorney General shall then gather the following data on traffic stops from a nationwide sample of jurisdictions, including jurisdictions identified in the initial analysis:

(A) The traffic infraction alleged to have been committed that led to the stop.

(B) Identifying characteristics of the driver stopped, including the race, gender, ethnicity, and approximate age of the driver.

(C) Whether immigration status was questioned, immigration documents were requested, or an inquiry was made to the Immigration and Naturalization Service with regard to any person in the vehicle.

(D) The number of individuals in the stopped vehicle.

(E) Whether a search was instituted as a result of the stop and whether consent was requested for the search.

(F) Any alleged criminal behavior by the driver that justified the search.

(G) Any items seized, including contraband or money.

(H) Whether any warning or citation was issued as a result of the stop.

(I) Whether an arrest was made as a result of either the stop or the search and the justification for the arrest.

(J) The duration of the stop.

(b) REPORTING- Not later than 120 days after the date of enactment of this Act, the Attorney General shall report the results of its initial analysis to Congress, and make such report available to the public, and identify the jurisdictions for which the study is to be conducted. Not later than 2 years after the date of the enactment of this Act, the Attorney General shall report the results of the data collected under this Act to Congress, a copy of which shall also be published in the Federal Register.

SEC. 3. GRANT PROGRAM.

In order to complete the study described in section 2, the Attorney General may provide grants to law enforcement agencies to collect and submit the data described in section 2 to the appropriate agency as designated by the Attorney General.

SEC. 4. LIMITATION ON USE OF DATA.

Information released pursuant to section 2 shall not reveal the identity of any individual who is stopped or any law enforcement officer involved in a traffic stop.

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) LAW ENFORCEMENT AGENCY- The term 'law enforcement agency' means an

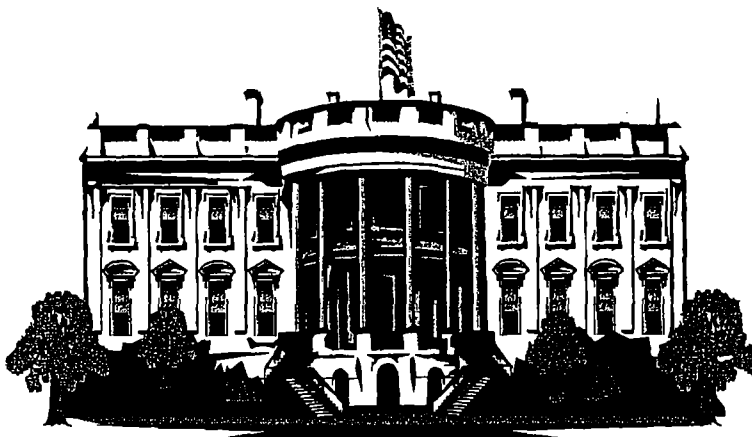
agency of a State or political subdivision of a State, authorized by law or by a Federal, State, or local government agency to engage in or supervise the prevention, detection, or investigation of violations of criminal laws, or a federally recognized Indian tribe.

(2) INDIAN TRIBE- The term 'Indian tribe' means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

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FAX COVER SHEET

ERIC LIU
DEPUTY ASSISTANT FOR DOMESTIC POLICY
THE WHITE HOUSE
WASHINGTON, DC 20502
PHONE: 202/456-5565 • FAX: 202/456-2878

DATE: 12/03/99 NUMBER OF PAGES (INCL. COVER): 8

FROM: Anna Richter

TO: Leanne & Deanne

FAX: 07028

COMMENTS: Here are a couple of very basic, undetailed
articles about the Donny Gammage law that I thought
might interest you.

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LEVEL 1 - 12 OF 12 STORIES

Copyright 1998 SOFTLINE INFORMATION, INC.
The Ethnic NewsWatch
New Pittsburgh Courier

July 8, 1998

SECTION: Vol. 89; No. 54 ; Pg. A1

LENGTH: 599 words

HEADLINE: Syracuse NAACP proposes federal Jonny Gammage law

BYLINE: Karamcheti, Deepak

BODY:

Syracuse NAACP proposes federal Jonny Gammage law

by Deepak Karamcheti

Courier Staff Writer

The death of Jonny Gammage has become a catalyst for social change on the local landscape.

People from different races rallied and marched for justice and united for positive change in race relations as a result of his death Oct. 12, 1995.

Now a new effort is underway for passage of a federal Jonny Gammage law supporters believe would bolster prosecution of abusive officers and help reduce incidents of police brutality.

"There's too many games being played," said Syracuse/Onondaga County NAACP Co-chair Donna Reese. "There's too many things being done (acts of police brutality) and we need something to protect us."

To become law, the proposal must first be sponsored in the state or federal legislature. Reese believes the electorate must show its support for the measure before the proposal receives any sponsorship.

"We really need to show a united front," said Reese. "This is going on all across the nation. It's a national epidemic and that's how it has to be seen."

The Syracuse/Onondaga County NAACP branch hopes to present a united front during a rally in Syracuse on the third anniversary of Gammage's death.

Reese hopes supporters from across the nation will convene in upstate New York for the event and, by July 21, she hopes to establish a national Jonny Gammage Law Initiative Committee.

"I think we can do anything if we set our minds to it," she said. "Our history shows us things can be changed."

The Ethnic NewsWatch, July 8, 1998

The legislative proposal, authored by Syracuse/Onondaga NAACP Co-chair Rev. Larry Ellis, would strengthen prosecution of abusive officers by removing court proceedings from the local judiciary and granting jurisdiction to federal courts. The federal judiciary would control prosecution of the case and all facets of proceedings from the grand jury to the trial.

"I think it's highly improbable to expect comrades to investigate and prosecute one another," said Ellis. "The long arm of camaraderie extends throughout the local judiciary."

Officers who directly engage in abusive behavior as well as those present during an incident who do not attempt to stop the mistreatment would be subject to prosecution. Once an officer is charged, they would be suspended pending trial.

A charge would include allegations filed with the local human rights division or citizen's review board. Federal investigation would take place at the request of local agencies including the Urban League or NAACP or at least 100 registered voters.

The proposal also provides protection for those officers who wish to testify against other officers. The testifying officer's treatment on the job by superiors and peers would be closely monitored.

"The blue wall of silence would be interrupted by the Jonny Gammage Law," said Ellis, who officiated at Gammage's funeral.

"There is a comfort zone that's being afforded by the present law enforcement system and until something is done to disrupt it, that comfort zone will continue to exist."

Ellis hopes the New York state legislature along with the federal government will adopt the measure. He expects increased local and national support will help "light a fire under our legislators" and spur action.

"We're going to keep marching and we're going to keep demonstrating," Ellis said, "but it's all for naught if we don't put this on the books."

For more information, call 315-422-6933 or write: Syracuse/Onondaga County NAACP, 169 W. Brighton Ave., Syracuse, N.Y. 13205.

ETHNIC-GROUP: African American/Caribbean/African

LANGUAGE: English

LOAD-DATE: March 19, 1999

LEVEL 1 - 9 OF 12 STORIES

Copyright 1998 SOFTLINE INFORMATION, INC.
The Ethnic NewsWatch
New Pittsburgh Courier

October 14, 1998

SECTION: Vol. 89; No. 82 ; Pg. A1

LENGTH: 468 words

HEADLINE: Local groups lobby for Gammage law

BYLINE: Toler, Sonya M.

BODY:

Local groups lobby for Gammage law

Three years ago, on Oct. 12, Black motorist Jonny Gammage lost his life at the hands of five white police officers during a traffic stop.

Although the court proceedings are over, local community groups continue to fight for justice, not only for Gammage, but for everyone.

In observance of the third anniversary of Gammage's death, the groups announced joining forces with the Syracuse (N.Y.) NAACP to urge passage of the Jonny Gammage law.

According to Syracuse NAACP spokesperson Donna Reese, the law was proposed as a means to address "the national epidemic of police brutality and justice when they (police) blatantly break their sworn oath to protect and serve."

The law would affect any local or state law enforcement officer charged with violating a person's civil rights by directly or indirectly causing death, bodily injury or mental torture.

If approved, all judicial proceedings and investigations into the matter will be removed from local jurisdiction. The case would be overseen by the federal judiciary and its federal appointments.

The proposal stipulates that in the case of conviction, he/she can never again be employed as a police officer.

The law also includes protection for officers who testify against other officers.

According to Dorothy Urquhart, founder of the Pittsburgh-based United Concerned Christians at Work, the bill's supporters are trying to influence U.S. Rep. John Conyers, D-Mich., to sponsor the legislation.

Conyers is the primary sponsor of a bill passed by the House in March that is popularly known as the "Driving While Black" bill. That legislation, awaiting passage in the Senate, calls for a two-year study of traffic stops according to

The Ethnic NewsWatch, October 14, 1998

race.

John May, a member of the Pittsburgh Branch NAACP, said 1,000 signatures have been collected on a petition that will be sent to Attorney General Janet Reno asking for a federal investigation into Gammage's death.

"I don't want this cancer to plague our city, our county or our country," May said.

Gammage, 31, died of compression of the chest during a roadside scuffle with five suburban police officers. Three of the five were charged with involuntary manslaughter. One was acquitted and the trials of the other two ended in mistrials.

Pittsburgh Branch NAACP President Tim Stevens said, "We continue the battle because the battle has not yet been won... We are fighting for people who do not have the privilege of being related to a Pittsburgh Steeler."

Gammage was the cousin of former Pittsburgh Steeler Ray Seals.

Celeste Taylor McCurdy said, "We are very proud of our fellow warriors in Pittsburgh who have demonstrated time and time again that they absolutely will not stop until justice is served."

ETHNIC-GROUP: African American/Caribbean/African

LANGUAGE: English

LOAD-DATE: March 22, 1999

LEVEL 1 - 4 OF 12 STORIES

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The Nation

April 26, 1999

SECTION: No. 15, Vol. 268; Pg. 3; ISSN: 0027-8378

IAC-ACC-NO: 54403137

LENGTH: 797 words

HEADLINE: Parents and Police; public protest of police brutality; Brief Article

BODY:

David Dinkins, Susan Sarandon and other celebrities got the headlines, submitting to arrest at New York's One Police Plaza to protest the death of unarmed Amadou Diallo at the hands of the NYPD's Street Crimes Unit. But it is families of police victims, in New York and elsewhere, who have brought police brutality to national attention. At an April 3 march in Washington organized by the Center for Constitutional Rights- one of a handful of organizations carving out new case law on police misconduct-those families were not just present on the podium but as the bearers of homemade, iconlike signs on which were written in Magic Marker detailed stories of murdered sons and husbands.

In New York, the police brutality protests-coming between the Diallo shooting and the opening of the trial of officers accused of brutalizing another immigrant, Abner Louima-are widely perceived as barometers of dissatisfaction with Mayor (and Senate hopeful) Rudolph Giuliani. But they are not just a New York phenomenon. Opposition to abusive policing has now become the key civil rights wedge issue from California, where the Bay Area Police Watch has established itself as an influential human rights monitor, to New Jersey, where Governor Christine Todd Whitman recently fired the chief of her state troopers after his remarks endorsing racial profiling of suspects.

While abusive cops have been an issue ever since Sir Robert Peel's nineteenth-century invention of a professional police force, the past fifteen years have brought unprecedented levels of brutality complaints. Beginning in the mid-eighties, Congress and state legislatures have introduced incentives that reward departments that elevate their arrest levels, encourage neighborhood sweeps and fund trigger-happy SWAT teams. And courts in the same period have granted police ever-wider authority to conduct searches, sweeps and racial profiles-the very circumstances most likely to precipitate violent encounters. (The Supreme Court took yet another set of gloves off in an April 5 decision expanding police power to search the belongings of all passengers in a car while seeking evidence against the driver.)

Local anti-police brutality campaigns have already achieved successes. Bay Area Police Watch established a hotline, a database and a legal advocacy center for misconduct complaints, moves that have led to the dismissal of officers and

The Nation April 26, 1999

effective reform. In Pittsburgh, the case of Jonny Gammage, asphyxiated after a traffic stop, convinced the Justice Department's civil rights division to file an unprecedented lawsuit charging systematic misconduct, which eventually led Pittsburgh police to sign a consent decree establishing new standards for the supervision of officers and establishing a computer system to flag officers with a pattern of complaints against them. Now many local advocates, working under the umbrella of CCR, have launched a campaign calling for a "Jonny Gammage Law," which would trigger a federal investigation whenever a suspect dies at the hands of a police officer, and for a Justice Department pledge to cut off funding for departments with a pattern of abuse.

In New York, Giuliani has prospered politically by making himself the most visible apostle of the law-enforcement creed variously known as "zero tolerance," "quality-of-life policing" or "public-order policing." But there is no shortage of alternatives that promise a more accountable and less violent form of securing community safety. From Oakland to New Haven, cities are cutting crime with community policing that, as reform pioneers Robert Trojanowicz and Bonnie Bucqueroux put it, allows "average citizens the opportunity to have input into the police process in return for their support and participation." San Juan, Puerto Rico, has adapted Japan's system of neighborhood police substations that serve as community centers and entry points to the social service system. Boston, after several high-profile brutality cases and sweeps, established a police partnership with churches and neighborhood organizations.

Anger at police brutality routinely inspires media predictions of violent community reaction. But what is remarkable about the current wave of revulsion against police violence and racism around the country is how bereaved and angry families-like Amadou Diallo's parents, Kadiadou and Saikou, now planning to tour several US cities, or the family of Pittsburgh police victim Gammage-have emerged as disciplined and effective campaigners for reform. They are the American versions of the Mothers of the Plaza de Mayo in Argentina: Their losses are a road to political engagement and their witness is the harbinger of a fight to end fifteen years of the violent, zero-tolerance gospel.

LANGUAGE: ENGLISH

IAC-CREATE-DATE: April 19, 1999

LOAD-DATE: April 20, 1999

LEVEL 1 - 1 OF 12 STORIES

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The Times Union (Albany, NY)

October 23, 1999, Saturday, ONE STAR EDITION

SECTION: CAPITAL REGION, Pg. B2

LENGTH: 227 words

HEADLINE: Police brutality protest shifts to changing law

SOURCE: --; Associated Press

BODY:

SYRACUSE -- Even as they rallied Friday against police brutality, Jonny Gammage's supporters say they are disappointed that a federal prosecutor is sticking to his decision not to pursue criminal charges against five police officers involved in Gammage's death.

However, instead of giving up their battle for justice in Gammage's case, supporters say they will focus their energies on changing the law to require all local police brutality cases to be handled by the federal courts.

"The intent of the Jonny Gammage law is that there would be oversight in cases like this to bring in outside prosecutors," said Laurel Saiz, executive director of the Central New York chapter of the American Civil Liberties Union. Saiz was one of dozens of people who rallied outside the federal courthouse in Syracuse as part of a National Day of Protest Against Police Brutality.

On Thursday, U.S. Rep. James Walsh's office informed Gammage's family and supporters that Bill Lann Lee, the U.S. Justice Department's acting director of civil rights, was holding to the decision he made in February that there was not enough evidence to support charges that the five white officers used unreasonable force on Gammage, a black motorist.

Gammage, 31, of Syracuse, suffocated in a struggle with police during a traffic stop in suburban Pittsburgh on Oct. 12, 1995.

LOAD-DATE: October 26, 1999

THE WHITE HOUSE

WASHINGTON

December 3, 1999

*Paul Weinstein
6-7028*

MEMORANDUM FOR:

FIRST LADY'S STAFF (MELANNE VERVEER)
SEAN MALONEY (LISEL LOY)
BETH NOLAN
THURGOOD MARSHALL, JR.
LARRY STEIN
✓ BRUCE REED
MARY BETH CAHILL
MINYON MOORE
MARK LINDSAY
STEPHANIE STREETT - FYI
SANDY BERGER

FROM:

Eileen McCaughey/Maureen Hudson
for DAN BURKHARDT

SUBJECT:

(Draft Proclamation)
National Pearl Harbor Remembrance
Day, 1999

Attached for your review is the above-mentioned proclamation designating December 7, 1999, as "National Pearl harbor Remembrance Day, 1999."

It was submitted by the Department of Defense through the Office of Management and Budget and edited/revised by the Presidential Letters and Messages Office.

IMMEDIATE ATTENTION REQUIRED. Written or oral response required by no later than 3:00 p.m., Monday, December 6, 1999. IF WE HAVE NOT HEARD FROM YOU BY 3:00 P.M., WE WILL ASSUME THAT THE DRAFT IS ACCEPTABLE TO YOU.

For questions, discussion, or routine clearance, contact Eileen McCaughey, extension 65494, or Maureen Hudson, extension 65902, via phone or interoffice mail, in room 91. Thank you.

cc: Tim Saunders

NATIONAL PEARL HARBOR REMEMBRANCE DAY, 1999

- - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Early on Sunday morning, December 7, 1941, American sailors were reading the newspaper and eating breakfast on the 130 vessels of the U.S. Pacific Fleet at Pearl Harbor -- unaware that the worst naval disaster in American history was about to commence. As the first wave of Japanese planes dropped torpedo bombs on the fleet, all eight battleships along with three destroyers and three light cruisers were hit. Two hours after the first Japanese bomber hit its target, 21 ships of the U.S. Pacific Fleet lay sunk or badly damaged. U.S. aircraft losses included 188 planes destroyed and another 159 damaged. Before the bombing had finished, 3,500 sailors, soldiers, and civilians had lost their lives. The sinking of the battleship *USS ARIZONA* remains the most recognized symbol of that tragic day. Of the *ARIZONA*'s crew, 1,177 were killed, more than a third of all the deaths suffered at Pearl Harbor.

Time has not dimmed our memory of the ferocity of that attack 58 years ago or the pain of the losses we suffered. The assault brought shock and grief not only to the families and loved ones of those who were injured or lost their lives, but also to our entire country.

The attacks shook our Nation but strengthened our resolve. Two days later, in a Fireside Chat, President Roosevelt affirmed that resolve in explaining America's sudden thrust into World War II: "We don't like it -- we didn't want to get in it -- but we are in it and we're going to fight it with everything we've got. We are going to win the war and we are going to win the peace that follows." Just as the American forces at Pearl Harbor responded to the attack with great courage, the United States responded with determination that this assault would not keep us from victory over the Axis powers. Union leaders agreed not to strike for the duration of the war as

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President Roosevelt garnered the support of our working men and women to increase war production and build our "Arsenal of Democracy." Millions of American patriots joined the Armed Forces, willing to serve and sacrifice in the cause of freedom.

Rising from the ashes of death and destruction at Pearl Harbor, all but three of the ships sunk there were repaired and put back into service. Four years later, the Pacific Fleet sailed victoriously into Tokyo Bay. Today, the Battleship Missouri Memorial is docked on Pearl Harbor's Battleship Row, a fitting tribute to our triumph in World War II. It was at Pearl Harbor that the United States committed itself to victory, and it was aboard the "Mighty Mo" that the Japanese signed surrender documents in 1945 and peace in the Pacific was finally realized.

Pearl Harbor is both a reminder of what can happen when we are unprepared and a call for continuing vigilance in defense of our Nation. The world has changed greatly since that dark day more than half a century ago, but our need to remain engaged is more crucial than ever. We must never forget the lessons of Pearl Harbor or the courage, determination, and indomitable spirit of that generation of Americans who recovered from a devastating defeat to win the ultimate victory for freedom, democracy, and peace.

The Congress, by Public Law 103-308, has designated December 7, 1999, as "National Pearl Harbor Remembrance Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim December 7, 1999, as National Pearl Harbor Remembrance Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of the Americans who served at Pearl Harbor. I also ask all Federal departments and agencies, organizations,

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and individuals to fly the flag of the United States at half-staff on this day in honor of those Americans who died as a result of the attack on Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this
day of , in the year of our Lord
nineteen hundred and ninety-nine, and of the Independence of
the United States of America the two hundred and twenty-fourth.

Fairness in Law Enforcement
October 15, 1999

- I. DOJ report – current policies, training and recommendations
 - A. INS
 - B. DEA
 - C. FBI
 - D. BOP, U.S. Marshals Service *(need policy statements)*
- II. Addenda to report
- III. Next steps

703/305-9521

*Fairness in Law Enforcement: Collection of Data
DRAFT Report Addressing Programs, Policies & Practices*

[10/14/ draft]

I. INTRODUCTION

On June 9, 1999, the President issued a Memorandum entitled, "Fairness in Law Enforcement: Collection of Data," directing the Department of the Treasury, the Department of Justice and the Department of the Interior to: 1) collect data from all levels of Federal law enforcement tracking the race, ethnicity and gender of persons stopped or searched by law enforcement; and 2) provide a report on training programs, policies and practices regarding the use of race, ethnicity, and gender in Federal law enforcement activities, along with recommendations for improving those programs, policies, and practices.

The guarantee of equal protection under the law to all persons is one of the most fundamental principles of our democratic society. In order to protect this essential right and principle, Federal law enforcement agencies must adopt policies that reflect the importance of ensuring fairness in their law enforcement activities. Federal law enforcement officers are prohibited from discriminating on the basis of race, ethnicity, religion, gender and disability in performing their law enforcement duties.

As the President has stated, "racial profiling is the opposite of good police work, where actions are based on hard facts, not stereotypes." Similarly, the Attorney General has stated that "it is wrong to assume that members of one race or ethnicity are more prone to criminal behavior than any other. Reliance on racial stereotypes like these is as wrong in law enforcement as it is in other endeavors. This includes racial profiling, where law enforcement officers improperly use race to target individuals for a traffic stop, a pedestrian stop or a request for consent to search, in the absence of information about a specific suspect or other special characteristics."

Criminality transcends any racial or ethnic parameters. The fact that a person is African American, Hispanic, Asian, or of another racial or ethnic group is not a basis for focusing suspicion of wrongdoing on that person. Thus, there is universal recognition, in both policy and case law, that a law enforcement officer may not rely on race or ethnicity as the sole reason for law enforcement action such as a traffic stop, pedestrian stop or request for consent to search. At the same time, where a law enforcement officer has information linking specific criminal activity to an individual whose race, ethnicity or other identifying characteristics is known, that information is appropriately used to identify and locate those individuals.

The challenge for federal law enforcement, as it is for state and local law enforcement, is (1) to develop policies and training programs enabling law enforcement officers to determine when information relating to past and current criminal activity and the race or ethnicity of persons engaged in those activities may be used in law enforcement operations; (2) to identify and remedy those situations where race is inappropriately used to target individuals; and (3) to supervise and monitor law enforcement activities to ensure that policies and training are properly

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carried out.

Recognizing the damaging effects that the impermissible use of race, ethnicity or gender has on individuals and the community and recognizing the tremendous importance of instilling trust of law enforcement in all Americans, Federal law enforcement agencies have reviewed their programs, policies, and practices in an effort to identify their strengths and weaknesses, and to assess the ways in which such programs could be improved to ensure fair enforcement of our laws. Pursuant to the June 9, Memorandum, these agencies have also developed a plan for conducting a field test during which the requested data will be collected and compiled for further review.

The following report addresses the second part of the Executive Memorandum. This report describes the programs, policies and practices as they relate to the use of race, ethnicity and gender of the Drug Enforcement Administration, the Federal Bureau of Investigation, the Federal Bureau of Prisons, the Immigration and Naturalization Service, and the United States Marshals Service, and recommendations for improving those programs. In response to the first part of the June 9 Memorandum, the Bureau of Justice Statistics has submitted a separate report that describes the methods the various agencies will employ to collect the requested data. The Department of the Treasury and the Department of the Interior have each submitted separate reports detailing their data collection plans and respective programs, policies and practices pursuant to the June 9, 1999, Memorandum.

II DRUG ENFORCEMENT ADMINISTRATION

Mission

The DEA is the principle Federal agency for drug law enforcement. It is responsible for enforcing the provisions of the controlled substances and chemical diversion and trafficking laws and regulations of the United States. DEA creates, manages and supports law enforcement programs -- domestically and internationally -- aimed at reducing the availability of supply and the demand for controlled substances. It investigates and prepares cases for prosecution against significant trafficking organizations and their members involved in the cultivation, production, smuggling, distribution and diversion of controlled substances in or destined for illegal trafficking in the United States.

Among the DEA's responsibilities is the coordination of drug investigations and drug intelligence collection with foreign governments; training of Federal, state, local, and foreign officials in drug law enforcement; coordination and cooperation with Federal, state, and local drug law enforcement agencies in joint investigations, supply reduction programs, and other mutual efforts; and participation in the national supply and demand reduction strategy.

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Specific DEA Programs

Operation Jetway is a Special Enforcement Operation established in 1993, with DEA as the lead agency, to provide uniform, standardized training and statistical analysis to federal, state, and local drug interdiction units working at airports, bus stations, train stations, and parcel facilities nationwide. The primary goals of the *Jetway* program are (1) to ensure that interdiction units are afforded training in accepted interdiction techniques, within the confines of current legal decision; (2) to increase the effectiveness of interdiction efforts on both a national and international scale.

Operation Pipeline is a highway drug interdiction program that is led and implemented by the nation's state and local law enforcement agencies, with support from the DEA's El Paso Intelligence Center. The program is composed of three elements: training, real-time communications, and analytic support. Each year, state and local highway officers deliver dozens of three-day training schools across the country to other highway officers. The DEA coordinates the training schools and designs their curricula.

Policies and practices

In accordance with its mission statement, DEA targets individuals and organizations responsible for manufacturing and trafficking illicit drugs. DEA conducts investigations to determine which individuals or organizations are trafficking in illicit drugs. DEA Agents and analysts do not use race, ethnicity, religion, gender or age as a criteria in determining whether or not to initiate an investigation or in the course of their investigation and analysis.

As described below, DEA agents are instructed and trained that race and ethnicity are not characteristics that evidence criminal activity, and that agents are not to approach a passenger based on race, ethnicity, religion, gender or age. Rather, they are trained to identify and articulate specific factors that give reasonable suspicion that an individual is involved in smuggling contraband. While there is no "national drug courier profile," there are patterns of activities, methods and characteristics that may indicate criminal activity. For example, with respect to an airline passenger, these may involve details regarding the passenger's ticket and how it was purchased, characteristics of the passenger's luggage, excessive nervousness, items suggesting the passenger may be smuggling contraband internally. [see appendix for details]

In carrying out its activities, DEA investigations often reveal drug source and transit areas, trafficking routes, and trends and may also identify the race or ethnicity of individuals suspected of drug trafficking. Where an individual is specifically identified as a suspect in an investigation, racial and ethnic identifiers are appropriately used to assist law enforcement to locate and identify the suspect. Investigations may also identify particular organizations that are

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involved in drug trafficking. To the extent that investigative and intelligence activities collect information on the race or ethnicity of persons involved in such criminal activity, that information will be passed to the investigator.

In addition, DEA prepares intelligence reports based upon its investigations. If investigative activity indicates that a particular ethnic group is dominating the market for a particular drug at a particular time, that information is included in the intelligence report. Likewise, intelligence reports could contain information received identifying the race or ethnicity of a specific alleged drug trafficker.

Training

Attached as Appendix _ are the following training materials from *Operation Jetway* and *Operation Pipeline*:

- *Operation Jetway* school agenda/profiling characteristics: Each *Jetway* school is tailored specifically to the composition of each class. This lesson plan, from August 1999 in San Diego, is the core curriculum, and reflects 95 percent of the training topics. Also attached is a list of profiling characteristics (body language, ticketing patterns, luggage, etc.)
- Four *Operation Jetway* teletypes: They cover: (1) mission, training, and accountability, and advises that the State and Local Programs Section of DEA Headquarters is the program manager; (2) court ruling on bus interdiction; (3) court ruling on police uniform in interdiction encounters; (4) *Jetway/Pipeline* is coordinated from DEA Headquarters.
- *Operation Jetway* Intelligence Bulletin: A summary description of *Operation Jetway*, explaining its mission, training, and oversight. It states explicitly that "*Jetway* instructors stress that agents/officers are not to approach a passenger based on race, gender or age." (P.2)
- *Operation Jetway* lesson plans: Full lesson plans for interdiction conducted at airports and bus and train stations, as well as a lesson plan on fourth amendment issues.
- *Operation Pipeline/Convoy* agenda and lesson plan: Contains a sample course agenda and a full lesson plan.
- DEA Intelligence Bulletin: *Operation Pipeline*: A summary description of *Operation Pipeline*. See page 4 for language condemning racial profiling and ethnic targeting.

Recommendations

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The DEA is considering an extended training program for all new and supervisory agents and analysts on a wide range of issues of race and ethnicity in investigations and intelligence collection and analysis. In addition, DEA will examine the appropriate use of intelligence reports and use of racial and ethnic identifiers where information is based on past criminal activity, but not tied to specific suspects; and whether additional training or policy is necessary. The data collection field test will be used by DEA to determine if agents are properly carrying out the mission of DEA, and not initiating encounters based on race and ethnicity, in contravention of DEA policy.

III FEDERAL BUREAU OF INVESTIGATION

Mission

The mission of the Federal Bureau of Investigation ("FBI") is to uphold the law through the investigation of violations of federal criminal law; to protect the United States from foreign intelligence and terrorist activities; to provide leadership and law enforcement assistance to federal state, local, and international agencies; and to perform these responsibilities in a manner that is responsive to the needs of the public and is faithful to the Constitution of the United States.

Policies and practices

The FBI does not use profiling based on race, ethnicity, or gender to investigate criminal activity or prevent crime. Rather, in conducting reactive criminal investigations, the FBI typically gathers facts at crime scenes to determine the likely perpetrators. To identify those responsible for criminal activity, the FBI elicits and documents descriptive information, which may include the race, ethnicity, gender, age, size, and distinguishing characteristics of the criminal offender. Depending on the nature of the crime, the characteristics may include tattoos or other physical markings, DNA, voice tone, inflection, and manner of speech, and the type of clothing, car, and jewelry possessed by the perpetrator. In short, the FBI collects and analyzes all relevant information that will assist in identifying correctly those who have committed criminal acts.

In situations in which the FBI lacks suspect-specific descriptive information, such as missing child and serial killer investigations, the FBI uses violent crime analysis as an essential investigative tool. This analysis based on behavioral, psychological and forensic data may include a description of the likely gender, race, ethnicity, or age of potential suspects. The FBI uses that descriptive information to pursue investigative leads and identify those responsible for the activity under investigation. Violent crimes analysis is used to develop a behavioral

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composite of an unknown offender after analyzing the facts and circumstances surrounding the commission of a specific criminal act, usually a violent crime such as homicide. Although the behavioral composite may include the likely gender, race, ethnicity or age of the offender, it is based on the evaluation of the specific crime that has occurred. It is not used as a predictor of future criminal activity of any individual or group.

The FBI does not investigate suspects without proper predication. Predication is defined as facts and circumstances that would provide a reasonable basis to suspect that an individual has engaged in or is engaged in conduct which is a violation of federal criminal laws. Predication is not based on any immutable characteristics. In the context of ongoing investigations, levels of predication vary depending on the intrusiveness and sensitivity of the investigative technique being contemplated. Before initiating a new investigative technique, such as wiretapping or surveillance, the FBI evaluates all of the facts and circumstances to determine whether use of the technique is appropriate.

Training

The FBI strives to ensure that its investigators do not make investigative decisions improperly on the basis of race, ethnicity, or gender, by providing a host of training and awareness courses to its employees. Examples of these training programs and courses are described below.

The FBI has instituted a training program for incoming Special Agents at the FBI Training Academy in Quantico. Developed by the Law Enforcement Ethics Unit (LEEU), within the FBI's Office of Professional Responsibility (OPR), this program entails sixteen hours of instruction as part of the overall training of new agents. The program is based on a concept known as the "Golden Thread," which emphasizes basic human rights and constitutional principles, such as equal rights for all individuals.

As part of this specific training program, and throughout the entire training period, New Agent Trainees examine poor police practices and police corruption. The trainees are given examples that enable them to explore the pressures they may face in controlling crime in a manner consistent with due process. The trainees are taught repeatedly that basing investigative decisions on factors such as race, ethnicity, and gender constitute impermissible police practices. The training program emphasizes that law enforcement officers who use their power for improper purposes and base their actions on the race, ethnicity, or gender of individuals are unacceptable representatives of the FBI, whose actions will be subject to discipline, including dismissal.

It is not only new agents who receive training on the impropriety of discriminating on the

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basis of race, ethnicity, or gender. As part of an eleven-week training program offered at Quantico, the FBI instructs veteran law enforcement officers on the impropriety of taking official action, including traffic stops or courier profiling, on the basis of race, ethnicity and gender. LEEU provides similar instruction (through seminars and conferences) to FBI senior managers and law enforcement officers throughout the United States and overseas. See Attachments.

Since 1982, the FBI has required that its managers undergo equal employment opportunity (EEO) and cultural awareness training to combat issues such as sexual harassment and discrimination in the workplace. Since 1986, this training has been incorporated as part of the overall training for new agents. In 1991, the FBI hired a full-time EEO Training Officer, who reports directly to Director Freeh. Her responsibilities include developing and overseeing EEO and cultural diversity training throughout the FBI circulating to all FBI employees newsletter that addresses matters of discrimination.

All FBI employees whose salaries are at the level of GS-13 and above, whether in special agent or support positions, are evaluated annually on the basis of their performance in eradicating workplace discrimination. The FBI requires that the performance appraisals of these employees include an evaluation of the extent to which they have acted to increase the recruitment of minorities, decrease discrimination on the basis of race, ethnicity, and gender, and improve the workplace environment for all FBI employees.

The training programs and other institutional measures described above illustrate the steps that the FBI has taken to ensure that FBI Special Agents and employees act in a manner that is consistent with the commitment to fairness and integrity.

Recommendations

The FBI will issue a policy statement prohibiting the discriminatory use of race, ethnicity and gender in law enforcement.

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IV FEDERAL BUREAU OF PRISONS

Mission

The mission of the Federal Bureau of Prisons ("BOP") is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

Policies and practices

The BOP monitors gang activity within its facilities for security reasons. This entails identifying, profiling, and tracking various gangs and gang members. Identification is based on objective criteria such as tattoos and use of symbols, rather than race or ethnicity. Generally, while some gangs draw from particular ethnic groups, gang membership and affiliation may cross racial and ethnic groupings. However, some gangs self-identify based on distinctions such as race, ethnicity, and national origin. Thus for example, the Aryan Brotherhood and the Black Guerrilla Family will almost by definition be limited to those racial groups. Other gangs including various Jamaican Posses, the Netas (Puerto Rican), and Born to Kill (Vietnamese) tend to be limited to persons of the same national origin. However, when the BOP monitors activity by such gangs, it is based solely upon disruptive behavior. Furthermore, the BOP only monitors gang members, suspected gang members, and associates. As monitoring gang activity in this manner is not necessarily based on race or ethnicity, we do not believe that it would qualify as racial profiling.

The BOP uses two types of classification to monitor the activities of inmate groups: Disruptive Groups (DG) and Security Threat Groups (STG). The DGs must be certified by the Assistant Director of the Correctional Programs Division. These are generally prison gangs, or emerging street gangs which require additional monitoring based on their sophistication, sphere of influence, use of violence or other serious disciplinary infractions, and ability to defeat routine security initiatives. These groups generally require additional monitoring, including mandatory monthly urinalysis testing, and are usually designated to the most secure facilities. Currently, the BOP has certified six DGs: the Aryan Brotherhood, the Mexican Mafia, the Black Guerrilla Family, the Texas Syndicate, the Latin Kings, and Mexikananemi.

In contrast, STGs are designated by the BOP's Chief of Intelligence. These are generally groups, gangs, or inmate organizations which have been observed acting in concert to promote violence, escape, drug activity, or terrorist activity. STG status is considered advisory in nature and ordinarily does not require specific actions beyond an increased level of security awareness. Furthermore, STG information is not used for classification or as the sole basis for designation.

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Examples of STGs include Osama Bin Laden associates or suspects, the Columbo crime family, the El Rukns, and the Juan Garcia-Abrego drug organization. The BOP maintains a list of security threat profiles which is attached for your review. These profiles or characteristics are not based solely upon any racial or ethnic identification, but rather they are based upon the inmate's criminal history and knowledge or skills in a particular area.

Additionally, with respect to gender, the BOP maintains some distinctions between male and female offenders, specifically with regard to classification. This is consistent with the growing national recognition that there are legitimate differences between male and female offenders. These differences include the general security risks posed by female offenders and the types of programs and services they need and desire.

Based on research conducted by the BOP regarding federal inmates, female inmates differ from male inmates in the following ways: the quantity and quality of their prison violence; their demographic, offense, and criminal history composition; the prison environments in which they are confined; and in those background characteristics that predict prison violence. For these reasons the BOP maintains gender-specific classification systems. The most significant difference between male and female inmates is that women are classified into three security levels: minimum, low, or high. In addition to these three security levels, men can also be classified as medium security. The reasoning behind the dual classification for males and females is that most of the females previously classified as medium or high security were classified at that level because of their current offenses or incarcerating offenses in which they often played a secondary or peripheral role to a co-offender who was male. Since the separation of male and female classification systems in June 1994, the overwhelming majority of female inmates have been classified as low or minimum security. Only a small number, most often 40 or fewer, have been classified as high security.

Training regarding race, national origin, and gender

Given that the BOP does not use racial profiling in any policies or procedures, the BOP does not conduct training specifically directed toward the prevention of racial profiling. However, as the BOP manages an extremely diverse inmate population, racial sensitivity and diversity management are significant concerns for the agency. Accordingly, the BOP conducts extensive training on diversity management, which includes race, ethnicity, and gender issues.

Staff receive diversity management training during the Introduction to Correctional Techniques at the Federal Law Enforcement Training Center (FLETC) which is required for all new permanent employees. These principles are again emphasized during Annual Refresher Training which serves to remind staff of key policies, procedures, and agency philosophy. A large number of national BOP training seminars also have a session on diversity management.

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During these training sessions, the BOP also places a strong emphasis on its recently revised and enhanced policy on sexual abuse prevention. Lastly, all BOP institutions, Regional Offices, and Central Office have Affirmative Action Committees which sponsor programs to help educate staff about the contributions and achievements of all Americans. These programs are designed to enhance communication and understanding amongst staff and with the inmate population.

Grievance systems available to inmates

The BOP's Administrative Remedy Program is a process through which inmates may seek formal review of an issue which relates to virtually any aspect of their confinement, if informal procedures have not resolved the matter. See 28 C.F.R. Part 542 -*Administrative Remedy*; and Program Statement No. 1330.13, *Administrative Remedy Program*. This program applies to all inmates confined in institutions operated by the Bureau of Prisons, inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and former inmates for issues that arose during their confinement.

Inmates are obligated to attempt informal resolution of grievances prior to filing a formal request for administrative remedy. The initial request is filed at the institution level. If the inmate is not satisfied with the Warden's response, he or she may appeal to the Regional Office. If the inmate is not satisfied with the Regional Director's response, he or she may file a Central Office Administrative Remedy Appeal. After receiving the response from the Administrator, National Inmate Appeals, the inmate has exhausted the BOP's Administrative Remedy Program. The program provides for expedited investigations and responses in emergency situations, as well as providing extensions of time for both filing grievances and receiving responses. There is also a mechanism for reviewing sensitive issues, such as where the inmate may fear for his or her safety or well-being if the request became known at the institution.

Recommendations

V IMMIGRATION AND NATURALIZATION SERVICE

Mission

The mission of the INS is to provide for the lawful entry of persons and to assist applicants who are eligible for permanent residence or naturalization. At the same time, INS deters illegal immigration by controlling the nation's borders and apprehending and removing those who violate the immigration laws.

It is the responsibility of the INS to ensure appropriate documentation of aliens at entry, to deny entry to those who are not legally admissible, whether they attempt to enter through ports-of-entry or surreptitiously across the border, and to determine the status of those in the country. The INS is also responsible for deterring illegal entry and stay, including enforcement of criminal provisions against individuals who act or conspire to promote such entry and stay. Further, it is the responsibility of the INS to detect, apprehend, and remove those non-citizens whose entry was illegal, whether undocumented or fraudulent, and those found to have violated the conditions of their stay. The development and implementation of immigration-related policies and procedures are accomplished by incorporating input from a broad range of internal and external contacts.

Policies and Practices

Every mission decision by Immigration Officers involves a determination of nationality¹. The legislative authority for activities of the INS is the Immigration and Nationality Act of 1952 (INA), as amended. A number of court decisions also guide INS practice. The INA requires Immigration Officers at the border or port of entry to inspect all aliens seeking admission to or

¹ There are several definitions provided in the INA (sect. 101(a) [8 U.S.C. 1101] that are critical background to any assessment of how INS should or should not utilize the constructs of race or ethnicity in fulfilling its mission. Gender is not used as a factor in a non-subject specific encounter, but often is used in determining appropriate detention or deportation options.

"Alien" means any person not a citizen or national of the United States.

"National" means a person owing permanent allegiance to a state.

"National of the United States" means (a) a citizen of the United States or (b) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"Permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

"Reasonable suspicion" means specific, articulable facts together with rational inferences that reasonably warrant the suspicion that a law has been violated which the officer has authority to enforce, e.g., that a vehicle contains illegal aliens. (United States v. Brignoni-Ponce, 422 U.S. 873 (1975))

transit through the United States.² In addition the statute provides broad authority to Immigration Officers to interrogate, without a warrant, any alien or person believed to be an alien as to his or her right to be or remain in the U.S.³

Within a reasonable distance of the border, Immigration Officers are authorized to board and search – without a warrant – any vehicle, vessel, railway car, or aircraft for the purpose of preventing aliens from illegally entering the U.S.⁴ For the same purpose, the statute authorizes Immigration Officers to enter without a warrant private lands within 25 miles of the border. This authority does not extend to similarly located private dwellings.

Checkpoint stops are not specifically authorized by statute but by a series of court decisions, of which the most important is United States vs. Martinez-Fuerte, 428 U.S. 543 (1976). In that decision, the Supreme Court found that checkpoint stops – being routine, minimally disruptive, and less discretionary than roving patrol stops – do not require individualized suspicion that the particular vehicle contains illegal aliens. Although checkpoint stops restrict a motorist's right of unimpeded passage and might conceivably infringe on his or her right to personal security, they involve nothing more intrusive than a brief detention where "[a]ll that is required of the vehicle's occupant is a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States."⁵ Moreover, the subjective nature of this minimal intrusion – that is, "the generating of concern or even fright on the part of lawful travelers" – is less severe than in the case of a less predictable and considerably more threatening roving patrol stop.⁶

In Martinez-Fuerte, the Court held further that motorists stopped at checkpoints may be selectively referred to secondary inspection areas for further limited inquiry "on the basis of criteria that would not sustain a roving patrol stop".⁷ In this respect, the Court found no constitutional violation in the Border Patrol's discretionary selection of motorists for questioning at the San Clemente checkpoint, "even if it is assumed that such referrals are made largely on the

² INA section 235(a)(3), 8 U.S.C. 1225(a)(3).

³ INA, sect. 287(a)(1), 8 U.S.C. 1357(a)(1).

⁴ INA, sect. 287(a)(3), 8 U.S.C. 1357(a)(3). "Reasonable distance" means within 100 air miles from any external boundary of the United States. See 8 U.S.C., sect. 287.1(a)(2).

⁵ 428 U.S. at 558 quoting U.S. v. Brignoni-Ponce, 422 U.S. 873, 880 (1975).

⁶ 428 U.S. at 558.

⁷ Id. at 563.

basis of apparent Mexican ancestry."⁸

Unlike the less intrusive checkpoints, roving patrol stops must be justified by reasonable suspicion under the Fourth Amendment. In United States v. Brignoni-Ponce, the Supreme Court held that "officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country".⁹ The Court considered "Mexican appearance" to be a "relevant factor" in ascertaining "reasonable suspicion". However, it did not find Mexican ancestry to be a sufficient factor to justify a vehicle stop on its own.¹⁰

At worksites, the Supreme Court ruled in INS v. Delgado, 466 U.S. 210 (1984), that the interviewing of employees who remained free to move about and continue working constituted a consensual encounter and not a "seizure". Since no "seizure" of the workforce had occurred in the initial worksite encounters with Immigration Officers, the plaintiffs could not claim that their Fourth Amendment rights had been violated.

Brignoni-Ponce has recognized that apparent ethnicity is an appropriate factor to consider in making a reasonable suspicion determination. As a policy, INS follows this decision because apparent ethnicity is relevant to foreign nationality. However, it is inappropriate both under federal court decisions and INS policy to rely on foreign appearance, based on ethnic characteristics or language, as the sole basis for detaining or questioning an individual.¹¹

In addition to ethnic appearance, the following factors have been accepted by the courts as "articulable facts" that, taken in combination, may justify a reasonable suspicion of illegal alienage:

⁸ Ibid. Footnote 16 discusses evidence that "appears to refute any suggestion that the Border Patrol relies extensively on apparent Mexican ancestry standing alone in referring motorists to the secondary area."

⁹ 422 U.S. at 884.

¹⁰ "Large numbers of native-born and naturalized citizens have the physical characteristics identified with Mexican ancestry. And even in the border area a relatively small proportion of them are aliens. The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens.", id. at 886-887.

¹¹ Commissioner Memorandum on the Apprehension of Aliens in Worksite Operations, dated 12 Dec., 1996, pp.5-6 (Attachment 1), quoting Field Manual for Employer Sanctions, IV-1 & 2 (Attachment 4). Essentially the same point is made in the following additional documents: Border Patrol Handbook, 17-12, 17-13 & 17-25 (Attachment 3); INS Investigator's/Special Agent's Handbook, 4-9.4 & 5-1.1 (Attachment 5); Border Patrol Academy, Basic Training, Statutory Authority, Lesson Plan, p. 9 (Attachment 9); Immigration Officer Academy, Basic Training, Statutory Authority, A.6-7 (Attachment 7); and Border Patrol Academy, Advanced Training, Legal Updates, Overheads & p. 55 of Booklet (Attachment 10).

1) place and time of the encounter; 2) demeanor of individuals stopped and their reactions to the presence of INS Officers; 3) appearance/dress/grooming showing signs of either an immediate border crossing or of the individual not being lawfully in the U.S.; 4) speech; 5) information from outside sources such as intelligence reports or tips; 6) rational inferences from officers' previous experience and training; 7) in case of vehicular stops, characteristics of the vehicle (e.g., appearance, occupancy, speed of travel, etc.).¹²

What is crucial in making an officer's suspicion well-founded is not the presence of any specific factor, or the number of factors involved, but the "totality of the circumstances" that justify the officer's intervention: "The whole picture must yield a reasonable suspicion that the particular individual stopped is engaged in criminal activity"¹³ By law, an encounter is consensual as long as the person being interviewed remains free to leave or otherwise terminate the encounter. For this type of encounter, the law enforcement officer is not required to have any particular suspicion.¹⁴ In addition, the INS documents and training curricula do not specifically address the proper use of ethnicity in non-Fourth Amendment encounters. While an Immigration Officer may not be called upon to articulate the factors that contributed to his or her engaging in such an encounter, the officer must nevertheless only consider ethnicity as one of many, and not the sole, factor in making that decision.

Training

The INS does not teach any class which is solely devoted to profiling, much less racial or ethnic profiling. Instead, INS trains its officers on how to identify and articulate rational factors for stops and searches consistent with the Fourth Amendment's protections against unreasonable police action. The training includes a description of the INS policy on the use of race and ethnicity as one factor among many in Fourth Amendment encounters.

Immigration Officer Academy

The Immigration Officer Academy is responsible for the basic training of all Deportation Officers, Immigration Agents, Immigration Inspectors, and Immigration Special Agents. All trainees receive eight hours of instruction in INS Statutory Authority focusing on sect. 235 and, in greater detail, section 287 of the INA.

¹² *U.S. v. Brignoni-Ponce*, 422 U.S. at 884-885; *U.S. v. Cortez*, 449 U.S. 411, 417 (1981); Field Manual for Employer Sanctions, IV-2 (Attachment 4); INS Investigator's/Special Agent's Handbook, 4-9.3, 4-9.4 (Attachment 5); The Law of Arrest, Search and Seizure for Immigration Officers, M-69, II, A-3 (Attachment 2); Immigration Officer Academy, Basic Training, Statutory Authority, A.6-7 (Attachment 7); Immigration Officer Academy, Basic Training, Statutory Authority, A.6-7 (Attachment 7); Border Patrol Academy, Advanced Training, Legal Updates, Handout on Roving Patrol Stops (Attachment 10).

¹³ The Law of Arrest, Search and Seizure for Immigration Officers, M-69, III, B-7 (Attachment 2)

¹⁴ *INS v. Delgado*, 466 U.S. 210.

¹⁵ Under sect. 235, trainees are taught that all applicants for admission shall be inspected by Immigration Officers at the port of entry for the purpose of establishing admissibility to the U.S. Also explained and discussed is INS' Officers authority to stop, board and search a conveyance (i.e., a vehicle) at the port of entry.

Topics of instruction under INA section 287 include: authority to interrogate without a warrant [287(a)(1)]; authority to arrest without a warrant for both administrative [287(a)(2)] and criminal [287(a)(4)] violations; authority to search a conveyance without a warrant within a reasonable distance of the border; authority to enter private lands, but not dwellings, within 25 miles of the border for the purpose of preventing the illegal entry of aliens [287(a)(3)]; and prohibition to enter a farm without a warrant, or the consent of the owner, to interrogate a probable alien as to his or her right to be in the U.S., unless evidence exists that the persons has just crossed the border [287(e)]. Under sect. 287(a)(1), emphasis is placed on the need to use the authority to interrogate judiciously based on some articulable facts.

Additional areas of instruction on INA section 287 include: a review of court precedent that clarifies proper use of ethnicity in traffic stops and the reasonable suspicion requirement for detentive stops.¹⁶ At the conclusion of the course on Statutory Authority, trainees are shown a portion of the video entitled "Fourth Amendment Issues at the Worksite" which provides instruction by the INS Office of General Counsel on lawfully executed searches and seizures.

Officers are also trained on the three levels of encounter with the public (consensual, investigative stop, and arrest) and the corresponding degrees of suspicion which are required to take action. Emphasis is placed on the statutory obligation to conduct investigative stops only on reasonable suspicion of a criminal or administrative offense that falls within the officer's jurisdiction.

In addition to the core instruction on Statutory Authority, Special Agents, Immigration Agents, and Deportation Officers must also take a 2-hour course on Alien Encounters & False Claims to United States Citizenship.¹⁷ This class equips trainees with effective techniques to employ when encountering and questioning aliens during the course of an investigation.

All trainees, irrespective of specialization, undergo intensive Spanish language and cultural awareness training. Beyond the functional language competency, the INS considers it especially important to make its officers aware that verbal expressions, as well as non-verbal clues, can be interpreted very differently depending on the origins of the immigrants, even when they ostensibly share Spanish as one formal language of communication. To this end, all trainees receive a Supplemental Material Booklet that lists regional and slang expressions that differ in various parts of the Spanish-speaking world.

¹⁵ See Attachment 7

¹⁶ U.S. v. Brignoni-Ponce; Terry v. Ohio.

¹⁷ See Attachment 8

The Behavioral Science Division (BSD) of the Federal Law Enforcement Training Center (FLETC) offers additional courses and laboratories related to cultural diversity to all INS personnel taught at FLETC with the exception of Adjudication Officers. The understanding of and respect for cultural differences is essential to an officer's ability to interpret, predict, and ultimately control, the behavior of those aliens with whom he comes into contact. The BSD courses teach several ways to recognize and overcome the principal barriers to intercultural communications. All officers are trained to demonstrate professionalism when identifying themselves, to develop rapport based on mutual respect, to understand verbal and non-verbal communications, and to utilize proper methods and techniques when dealing with victims and witnesses.

Border Patrol Academy

The Border Patrol Academy is responsible for both entry-level training for new Border Patrol Agents and for the advanced training of incumbent Border Patrol Agents at the GS-9 and GS-11 levels. New agents receive 26 hours of instruction on Statutory Authority.¹⁸ This course of instruction explains to the trainee Border Patrol Agent the bases for making traffic and pedestrian stops, including vehicle characteristics, proximity to the border, abnormal behavior, demeanor, speech, attire, ethnic appearance and many others. The curriculum stresses that pedestrian and "roving patrol" traffic stops based on race or ethnicity alone are illegal. The required degree of suspicion must be based on a combination of articulable facts, one of which may be ethnic appearance. Similarly, trainees are taught that the referral of vehicles to secondary inspection at a traffic checkpoint must be supported by "mere"¹⁹ suspicion that illegal aliens are being transported in the vehicle. Constitutional law and relevant court decisions are discussed with emphasis not only on the Fourth, but also on the Fifth and Sixth Amendments.²⁰ In addition, the curriculum of the Federal Law Enforcement Training Center (FLETC) devotes 3 hours to officer liability and criminal sanctions relating to violations of an individual's constitutional rights.

The first duty station for all Border Patrol Agents is on the Southwest Border. Therefore, Border Academy trainees receive extensive training in Spanish and cultural sensitivity and diversity issues. Discussions are held on prejudice, ethnocentrism, language barriers and ignorance of cultural norms. Several other courses that address discrimination and intercultural issues are taught at the Academy. Among these are Ethics and Conduct, Sexual Harassment, Communications for Border Patrol, Victim and Witness Awareness, Authority (i.e., the appropriate use of authority), EEO, and Officer Liability. In relation to civil and constitutional rights, trainees are taught that, except for very limited exceptions, foreign nationals who have entered the U.S. are afforded the same rights and protections guaranteed to U.S. citizens.

¹⁸ See Attachment 9

¹⁹ "Mere" suspicion is defined as "the lowest level of suspicion; it requires few articulable facts, and associated actions are very limited." See Attachment 10, page 7.

²⁰ Cases include U.S. v. Brignoni-Ponce and U.S. v. Martinez Fucerte.

The Border Patrol Academy also offers separate programs of advanced training for GS-9 and GS-11 agents. Every year, a total of 750-800 journeyman agents receive advanced training at the Academy. Each program lasts 8 days and contains a 4-hour block entitled Legal Updates.

²¹ This segment, taught by INS attorneys, includes a review of recent legal developments, the identification and discussion of civil lawsuits alleging illegal stops, and instruction on the relative importance to attach to a variety of non-ethnic factors when making roving patrol stops.

Recommendations

INS documents (M-69, and officers' handbooks) and training curricula focus on the articulable facts necessary to substantiate the reasons for a detentive or investigative stop, including ethnicity or ethnic appearance as one of the factors. The point that ethnicity cannot be the sole factor for determining whether to conduct a detentive or investigative stop needs to be re-emphasized.

The INS will determine where revisions may need to be made in its documents and training curricula in order to clarify this policy, and institute the necessary modifications.

Based on an analysis of data collected after six months of the field test, INS will determine if ethnicity is a critical factor in accurately predicting nationality. At that point, further modifications to INS policy or training may be warranted.

²¹ See Attachment 10

VI UNITED STATES MARSHALS SERVICE

Mission

The Marshals Service's mission is to find and apprehend fugitives. It is also responsible for protecting federal judicial officers and others who are subject to threats, and transporting

¹³ See Attachment 10

*Fairness in Law Enforcement: Collection of Data
DRAFT Report Addressing Programs, Policies & Practices*

detainees for the federal courts and aliens for the INS.

Policies and practices

The Marshals Service engages in few non-suspect specific encounters. When presented with warrants issued by federal courts, the race, ethnicity and gender of the subject is predetermined.

The Marshals Service does not operate its own detention facilities. It assumes custody of arrestees detained by the Federal courts and if a conviction results, delivers such persons to the Bureau of Prisons. In addition to relying on the BOP, the Marshals Service relies on private and local jails near each Federal courthouse to house the detainees. Consequently, the Marshals Service does not have policies for classifying detainees according to ethnic gangs or by using other ethnic classifications. If the Marshals Service knows or is informed that a person is endangered by a gang, it will notify the jail involved that the detainee needs to be protected from the harm. The jail will follow its procedures in the specific situation. This procedure is the same one the Marshals Service would follow to protect one incarcerated co-defendant who was going to testify for the government and was threatened by another incarcerated co-defendant of the same racial and ethnic background as himself or herself.

The Marshals Service has developed several policies that distinguish between housing and transporting male and female detainees. Male and female detainees are kept in separate holding cells at courthouses and are confined in separate jail facilities. On air flights, female and male detainees may be transported together, but female detainees must be under visual surveillance of a matron or female Deputy U.S. Marshal at all times. In ground transportation, female and male detainees are normally transported separately. If they must be transported together, every effort is made to separate them in the vehicle and to have a female matron or female Deputy U.S. Marshal accompany a female detainee. If no Marshals Service matron or female Deputy U.S. Marshal is available, female personnel are requested from local law enforcement agencies. If female detainees must be transported by only male Deputy U.S. Marshals, a Marshals Service log book must have an entry before the trip of the time of departure, the odometer reading on the vehicle, the persons in the vehicle, and the estimated time of arrival at the destination. As a general rule, a detainee taken to a medical facility must be restrained as any other detainee who is being transported. One exception to this rule is a female in labor. There is a policy relating to pregnant detainees.

Training

[insert]

Recommendations

*Fairness in Law Enforcement: Collection of Data
DRAFT Report Addressing Programs, Policies & Practices*

[insert]

I. PURPOSE

On June 9, 1999, the President issued a Memorandum entitled, "Fairness in Law Enforcement: Collection of Data," directing the Department of the Treasury, the Department of Justice and the Department of the Interior to: 1) collect data from all levels of law enforcement tracking the race, ethnicity and gender of persons stopped or searched by law enforcement; and 2) provide a report on training programs, policies and practices regarding the use of race, ethnicity, and gender in Federal law enforcement activities, along with recommendations for improving those programs, policies, and practices.

The guarantee of equal protection under the law to all persons is one of the most fundamental principles of our democratic society. In order to protect this essential right and principle, Federal law enforcement agencies have adopted policies that reflect the importance of ensuring fairness in their law enforcement activities. Recognizing the damaging effects that the impermissible use of race, ethnicity or gender has on individuals and the community and recognizing the tremendous importance of instilling trust of law enforcement in all Americans, Federal law enforcement agencies [and list others?] have engaged in an intensive review of their programs, policies, and practices in an effort to identify their strengths and weaknesses, and to assess the ways in which such programs could be improved. Pursuant to the June 9, Memorandum, these agencies have also developed a plan for conducting a field test during which the requested data will be collected and compiled for further review.

The following report addresses the second part of the Executive Memorandum. This report describes the programs, policies and practices as they relate to the use of race, ethnicity and gender of the Drug Enforcement Administration, the Federal Bureau of Investigation, the Federal Bureau of Prisons, the Immigration and Naturalization Service, and the United States Marshals Service, and recommendations for improving those programs. In response to the first part of the June 9 Memorandum, the Bureau of Justice Statistics has submitted a separate report that describes the methods the various agencies will employ to collect the requested data. The Department of the Treasury and the Department of the Interior have each submitted separate reports detailing their data collection plans and respective programs, policies and practices pursuant to the June 9, 1999, Memorandum.

II DRUG ENFORCEMENT ADMINISTRATION

Mission

The DEA is the principle Federal agency for drug law enforcement. It is responsible for enforcing the provisions of the controlled substances and chemical diversion and trafficking laws and regulations of the United States. DEA creates, manages and supports law enforcement programs -- domestically and internationally -- aimed at reducing the availability of supply and the demand for controlled substances. It investigates and prepares cases for prosecution against

significant trafficking organizations and their members involved in the cultivation, production, smuggling, distribution and diversion of controlled substances in or destined for illegal trafficking in the United States.

Among the DEA's responsibilities is the coordination of drug investigations and drug intelligence collection with foreign governments; training of Federal, state, local, and foreign officials in drug law enforcement; coordination and cooperation with Federal, state, and local drug law enforcement agencies in joint investigations, supply reduction programs, and other mutual efforts; and participation in the national supply and demand reduction strategy.

Specific DEA Programs

Operation Jetway is a Special Enforcement Operation established in 1993, with DEA as the lead agency, to provide uniform, standardized training and statistical analysis to federal, state, and local drug interdiction units working at airports, bus stations, train stations, and parcel facilities nationwide. The primary goals of the Jetway program are (1) to ensure that interdiction units are afforded training in accepted interdiction techniques, within the confines of current legal decision; (2) to increase the effectiveness of interdiction efforts on both a national and international scale.

Operation Pipeline is a highway drug interdiction program that is led and implemented by the nation's state and local law enforcement agencies, with support from the DEA's El Paso Intelligence Center. The program is composed of three elements: training, real-time communications, and analytic support. Each year, state and local highway officers deliver dozens of three-day training schools across the country to other highway officers. The DEA coordinates the training schools and designs their curricula.

Policies and practices

In accordance with its mission statement, DEA targets individuals and organizations responsible for manufacturing and trafficking illicit drugs. DEA conducts investigations to determine which individuals or organizations are trafficking in illicit drugs. DEA Agents and analysts do not use race, ethnicity, religion, gender or age as a criteria in determining whether or not to initiate an investigation or in the course of their investigation and analysis.

As described below, DEA agents are instructed and trained that race and ethnicity are not characteristics that evidence criminal activity, and that agents are not to approach a passenger based on race, ethnicity, religion, gender or age. Rather, they are trained to identify and articulate specific factors that give reasonable suspicion that an individual is involved in smuggling contraband. While there is no "national drug courier profile," there are patterns of activities, methods and characteristics that may indicate criminal activity. For example, with respect to an

airline passenger, these may involve details regarding the passengers ticket and how it was purchased, characteristics of the passenger's luggage, excessive nervousness, items suggesting the passenger may be smuggling contraband internally. [see appendix for details]

In carrying out its activities, DEA investigations often reveal drug source and transit areas, trafficking routes, and trends and may also identify specific ethnic groups or the race or ethnicity of specific individuals suspected of drug trafficking. Where an individual is specifically identified as a suspect in an investigation, racial and ethnic identifiers are appropriately used to assist law enforcement to locate and identify the suspect. Investigations may also identify particular organizations that are involved in drug trafficking. To the extent that investigative activities and intelligence collect information on the race or ethnicity of persons involved in such criminal activity, that information will be passed to the investigator.

In addition, DEA prepares intelligence reports based upon its investigations. If investigative activity indicates that a particular ethnic group is dominating the market for a particular drug at a particular time, that information is included in the intelligence report. Likewise, intelligence reports could contain information received identifying the race or ethnicity of a specific alleged drug trafficker.

[examine the appropriate use of intelligence reports and use of racial and ethnic identifiers where information is based on past criminal activity, but not tied to specific suspects; and whether additional training or policy is necessary. Will also use data collection to determine if agents are properly carrying out the mission of DEA with respect to race and ethnicity, and not initiating encounters based on race and ethnicity, in contravention of DEA policy.]

Training

[describe]

Recommendations

[DEA is considering an extended training program for all new and supervisory agents and analysts on a wide range of issues of race and ethnicity in investigations and intelligence collection and analysis to ensure that its investigations are based solely upon criminal behavior].

[Additional training on the use of intelligence reports containing race and ethnic information?]

III FEDERAL BUREAU OF INVESTIGATION

Mission

The mission of the Federal Bureau of Investigation ("FBI") is to uphold the law through the investigation of violations of federal criminal law; to protect the United States from foreign intelligence and terrorist activities; to provide leadership and law enforcement assistance to federal state, local, and international agencies; and to perform these responsibilities in a manner that is responsive to the needs of the public and is faithful to the Constitution of the United States.

Policies and practices

The FBI does not use profiling based on race, ethnicity, or gender to investigate criminal activity or prevent crime. Rather, in conducting reactive criminal investigations, the FBI typically gathers facts at crime scenes to determine the likely perpetrators. To identify those responsible for criminal activity, the FBI elicits and documents descriptive information, which may include the race, ethnicity, gender, age, size, and distinguishing characteristics of the criminal offender. Depending on the nature of the crime, the characteristics may include tattoos or other physical markings, DNA, voice tone, inflection, and manner of speech, and the type of clothing, car, and jewelry possessed by the perpetrator. In short, the FBI collects and analyzes all relevant information that will assist in identifying correctly those who have committed criminal acts.

In situations in which the FBI lacks suspect-specific descriptive information, such as missing child and serial killer investigations, the FBI uses violent crime analysis as an essential investigative tool. This analysis based on behavioral, psychological and forensic data may include a description of the likely gender, race, ethnicity, or age of potential suspects. The FBI uses that descriptive information to pursue investigative leads and identify those responsible for the activity under investigation. Violent crimes analysis is used to develop a behavioral composite of an unknown offender after analyzing the facts and circumstances surrounding the commission of a specific criminal act, usually a violent crime such as homicide. Although the behavioral composite may include the likely gender, race, ethnicity or age of the offender, it is based on the evaluation of the specific crime that has occurred. It is not used as a predictor of future criminal activity of any individual or group.

The FBI does not investigate suspects without proper predication. Predication is defined as facts and circumstances that would provide a reasonable basis to suspect that an individual has engaged in or is engaged in conduct which is a violation of federal criminal laws. Predication is not based on any immutable characteristics. In the context of ongoing investigations, levels of predication vary depending on the intrusiveness and sensitivity of the investigative technique being contemplated. Before initiating a new investigative technique, such as wiretapping or surveillance, the FBI evaluates all of the facts and circumstances to determine whether use of the technique is appropriate.

Training

The FBI strives to ensure that its investigators do not make investigative decisions improperly on the basis of race, ethnicity, or gender, by providing a host of training and awareness courses to its employees. Examples of these training programs and courses are described below.

The FBI has instituted a training program for incoming Special Agents at the FBI Training Academy in Quantico. Developed by the Law Enforcement Ethics Unit (LEEU), within the FBI's Office of Professional Responsibility (OPR), this program entails sixteen hours of instruction as part of the overall training of new agents. The program is based on a concept known as the "Golden Thread," which emphasizes basic human rights and constitutional principles, such as equal rights for all individuals.

As part of this specific training program, and throughout the entire training period, New Agent Trainees examine poor police practices and police corruption. The trainees are given examples that enable them to explore the pressures they may face in controlling crime in a manner consistent with due process. The trainees are taught repeatedly that basing investigative decisions on factors such as race, ethnicity, and gender constitute impermissible police practices. The training program emphasizes that law enforcement officers who use their power for improper purposes and base their actions on the race, ethnicity, or gender of individuals are unacceptable representatives of the FBI, whose actions will be subject to discipline, including dismissal.

It is not only new agents who receive training on the impropriety of discriminating on the basis of race, ethnicity, or gender. As part of an eleven-week training program offered at Quantico, the FBI instructs veteran law enforcement officers on the impropriety of taking official action, including traffic stops or courier profiling, on the basis of race, ethnicity and gender. LEEU provides similar instruction (through seminars and conferences) to FBI senior managers and law enforcement officers throughout the United States and overseas. See Attachments.

Since 1982, the FBI has required that its managers undergo equal employment opportunity (EEO) and cultural awareness training to combat issues such as sexual harassment and discrimination in the workplace. Since 1986, this training has been incorporated as part of the overall training for new agents. In 1991, the FBI hired a full-time EEO Training Officer, who reports directly to Director Freeh. Her responsibilities include developing and overseeing EEO and cultural diversity training throughout the FBI circulating to all FBI employees newsletter that addresses matters of discrimination.

All FBI employees whose salaries are at the level of GS-13 and above are evaluated annually on the basis of their performance in eradicating workplace discrimination. The FBI requires that the performance appraisals of these employees include an evaluation of the extent to which they have acted to increase the recruitment of minorities, decrease discrimination on the basis of race, ethnicity, and gender, and improve the workplace environment for all FBI employees.

The training programs and other institutional measures described above illustrate the steps that the FBI has taken to ensure that FBI Special Agents and employees act in a manner that is consistent with the commitment to fairness and integrity.

Recommendations

The FBI will issue a policy statement prohibiting the use of race, ethnicity and gender in non-suspect specific encounters. Furthermore, the FBI will ensure that all agents are instructed on proper application of this policy.

IV FEDERAL BUREAU OF PRISONS

Mission

The mission of the Federal Bureau of Prisons ("BOP") is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

Policies and practices

The BOP monitors gang activity within its facilities for security reasons. This entails identifying, profiling, and tracking various gangs and gang members. Identification is based on objective criteria such as tattoos and use of symbols, rather than race or ethnicity. Generally, while some gangs draw from particular ethnic groups, gang membership and affiliation may cross racial and ethnic groupings. However, some gangs self-identify based on distinctions such as race, ethnicity, and national origin. Thus for example, the Aryan Brotherhood and the Black Guerrilla Family will almost by definition be limited to those racial groups. Other gangs including various Jamaican Posses, the Netas (Puerto Rican), and Born to Kill (Vietnamese) tend to be limited to persons of the same national origin. However, when the BOP monitors activity by such gangs, it is based solely upon disruptive behavior. Furthermore, the BOP only monitors gang members, suspected gang members, and associates. As monitoring gang activity in this manner is not necessarily based on race or ethnicity, we do not believe that it would qualify as racial profiling.

The BOP uses two types of classification to monitor the activities of inmate groups: Disruptive Groups (DG) and Security Threat Groups (STG). The DGs must be certified by the Assistant Director of the Correctional Programs Division. These are generally prison gangs, or emerging street gangs which require additional monitoring based on their sophistication, sphere of influence, use of violence or other serious disciplinary infractions, and ability to defeat routine security initiatives. These groups generally require additional monitoring, including mandatory

diversity management are significant concerns for the agency. Accordingly, the BOP conducts extensive training on diversity management, which includes race, ethnicity, and gender issues.

Staff receive diversity management training during the Introduction to Correctional Techniques at the Federal Law Enforcement Training Center (FLETC) which is required for all new permanent employees. These principles are again emphasized during Annual Refresher Training which serves to remind staff of key policies, procedures, and agency philosophy. A large number of national BOP training seminars also have a session on diversity management. During these training sessions, the BOP also places a strong emphasis on its recently revised and enhanced policy on sexual abuse prevention. Lastly, all BOP institutions, Regional Offices, and Central Office have Affirmative Action Committees which sponsor programs to help educate staff about the contributions and achievements of all Americans. These programs are designed to enhance communication and understanding amongst staff and with the inmate population.

Grievance systems available to inmates

The BOP's Administrative Remedy Program is a process through which inmates may seek formal review of an issue which relates to virtually any aspect of their confinement, if informal procedures have not resolved the matter. See 28 C.F.R. Part 542 -*Administrative Remedy*; and Program Statement No. 1330.13, *Administrative Remedy Program*. This program applies to all inmates confined in institutions operated by the Bureau of Prisons, inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and former inmates for issues that arose during their confinement.

Inmates are obligated to attempt informal resolution of grievances prior to filing a formal request for administrative remedy. The initial request is filed at the institution level. If the inmate is not satisfied with the Warden's response, he or she may appeal to the Regional Office. If the inmate is not satisfied with the Regional Director's response, he or she may file a Central Office Administrative Remedy Appeal. After receiving the response from the Administrator, National Inmate Appeals, the inmate has exhausted the BOP's Administrative Remedy Program. The program provides for expedited investigations and responses in emergency situations, as well as providing extensions of time for both filing grievances and receiving responses. There is also a mechanism for reviewing sensitive issues, such as where the inmate may fear for his or her safety or well-being if the request became known at the institution.

Recommendations

[insert]

V IMMIGRATION AND NATURALIZATION SERVICE

monthly urinalysis testing, and are usually designated to the most secure facilities. Currently, the BOP has certified six DGs: the Aryan Brotherhood, the Mexican Mafia, the Black Guerrilla Family, the Texas Syndicate, the Latin Kings, and Mexikananemi.

In contrast, STGs are designated by the BOP's Chief of Intelligence. These are generally groups, gangs, or inmate organizations which have been observed acting in concert to promote violence, escape, drug activity, or terrorist activity. STG status is considered advisory in nature and ordinarily does not require specific actions beyond an increased level of security awareness. Furthermore, STG information is not used for classification or as the sole basis for designation. Examples of STGs include Osama Bin Laden associates or suspects, the Columbo crime family, the El Rukns, and the Juan Garcia-Abrego drug organization. The BOP maintains a list of security threat profiles which is attached for your review. These profiles or characteristics are not based solely upon any racial or ethnic identification, but rather they are based upon the inmate's criminal history and knowledge or skills in a particular area.

Additionally, with respect to gender, the BOP maintains some distinctions between male and female offenders, specifically with regard to classification. This is consistent with the growing national recognition that there are legitimate differences between male and female offenders. These differences include the general security risks posed by female offenders and the types of programs and services they need and desire.

Based on research conducted by the BOP regarding federal inmates, female inmates differ from male inmates in the following ways: the quantity and quality of their prison violence; their demographic, offense, and criminal history composition; the prison environments in which they are confined; and in those background characteristics that predict prison violence. For these reasons the BOP maintains gender-specific classification systems. The most significant difference between male and female inmates is that women are classified into three security levels: minimum, low, or high. In addition to these three security levels, men can also be classified as medium security. The reasoning behind the dual classification for males and females is that most of the females previously classified as medium or high security were classified at that level because of their current offenses or incarcerating offenses in which they often played a secondary or peripheral role to a co-offender who was male. Since the separation of male and female classification systems in June 1994, the overwhelming majority of female inmates have been classified as low or minimum security. Only a small number, most often 40 or fewer, have been classified as high security.

Training regarding race, national origin, and gender

Given that the BOP does not use racial profiling in any policies or procedures, the BOP does not conduct training specifically directed toward the prevention of racial profiling. However, as the BOP manages an extremely diverse inmate population, racial sensitivity and

Mission

The mission of the Immigration and Naturalization Service ("INS") is to control the Nation's borders and to regulate permanent and temporary immigration to the United States. The INS is required to ensure appropriate documentation of aliens at entry, to deny entry to those who are not legally admissible whether they attempt to enter through ports-of-entry or surreptitiously across the border, and to determine the status of those in the country. The INS is also responsible for deterring illegal entry and stay, including enforcement of criminal provisions against individuals who act or conspire to promote such entry and stay. Further, it is the responsibility of the INS to detect, apprehend, and remove those non-citizens whose entry was illegal, whether undocumented or fraudulent, and those found to have violated the conditions of their stay. The development and implementation of immigration-related policies and procedures are accomplished by incorporating input from a broad range of internal and external contacts.

Policies and practices

Every mission decision by Immigration Officers involves a determination of nationality.¹ The legislative authority for activities of the INS is the Immigration and Nationality Act of 1952, as amended. Also, court decisions guide INS practice. The INA requires Immigration Officers at the border or port of entry to inspect all aliens seeking admission to or transit through the United

¹ There are several definitions provided in the INA section 101(a), 8 U.S.C. 1101, that are critical background to any assessment of how INS should or should not utilize the constructs of race or ethnicity in fulfilling its mission. Gender is not used as a factor in a non-subject specific encounter, but often is used in determining appropriate detention or deportation options.

"Alien" means any person not a citizen or national of the United States.

"National" means a person owing permanent allegiance to a state.

"National of the United States" means (a) a citizen of the United States or (b) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"Permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

"Reasonable suspicion" means specific, articulable facts together with rational inferences that reasonably warrant the suspicion that a law has been violated which the officer has authority to enforce, e.g., that a vehicle contains illegal aliens. United States v. Brignoni-Ponce, 422 U.S. 873 (1975).

States.² In addition, the statute provides broad authority to Immigration Officers to interrogate, without a warrant, any alien or person believed to be an alien as to his or her right to be or remain in the U.S.³

Within a reasonable distance of the border, Immigration Officers are authorized to board and search – without a warrant – any vehicle, vessel, railway car, or aircraft for the purpose of preventing aliens from illegally entering the U.S.⁴ For the same purpose, the statute authorizes Immigration Officers to enter without a warrant private lands within 25 miles of the border. This authority does not extend to similarly located private dwellings.

Checkpoints are not specifically authorized by statute but by a series of court decisions, of which the most important is United States vs. Martinez-Fuerte, 428 U.S. 543 (1976). In that decision, the Supreme Court found that checkpoint stops, being routine in nature and minimally intrusive, do not require individualized suspicion. The court also held that motorists stopped at checkpoints may be selectively referred to secondary inspection areas for further limited inquiry. U.S. v. Martinez-Fuerte validated the Border Patrol's checkpoint practice of relying on ethnic – in this case, Mexican – appearance as a partial justification to stop a vehicle and question its occupants as to their citizenship and immigration status.

Unlike checkpoints, vehicle stops by "roving patrols" always constitute a "seizure". Thus, under the Fourth Amendment, they must be justified by reasonable suspicion. In United States v. Brignoni-Ponce, 422 U.S. 873 (1975), the Supreme Court held that INS Officers on roving patrol may not stop a vehicle unless they have formed a "reasonable suspicion", based on "articulable facts" and rational inferences derived from those facts, that the vehicle is transporting aliens who may be illegally in the U.S. In Brignoni-Ponce, the Court considered apparent Mexican ancestry to be a "relevant factor" in ascertaining "reasonable suspicion". However, it did not find Mexican ancestry to be a sufficient factor to justify a vehicle stop on its own.

At worksites, the Supreme Court ruled in INS v. Delgado, 466 U.S. 210 (1984), that the interviewing of employees who remained free to move about and continue working constituted a consensual encounter and not a "seizure". Since no "seizure" of the workforce had occurred in the initial worksite encounters with Immigration Officers, the plaintiffs could not claim that their Fourth Amendment rights had been violated.

An individual's apparent ethnicity is highly relevant in identifying whether someone may

² INA section 235(a)(3), 8 U.S.C. 1225(a)(3).

³ INA section 287(a)(1), 8 U.S.C. 1357(a)(1).

⁴ INA section 287(a)(3), 8 U.S.C. 1357(a)(3). "Reasonable distance" means within 100 air miles from any external boundary of the United States [8 U.S.C., sect. 287.1(a)(2)].

be a foreign national. Numerous court decisions have recognized that apparent ethnicity is an appropriate factor to consider in making a reasonable suspicion determination. See U.S. v. Martinez-Fuerte. It is inappropriate both under federal decisions and INS policy [cite and attach], to rely on racial appearance or ethnicity as a sole basis for detaining or questioning an individual. Instead, racial appearance or ethnicity may only be one of a series of factors to be considered in establishing a reasonable suspicion. [cite].

In addition to ethnic appearance, various factors have been accepted by the courts as "articulable facts" that may justify a reasonable suspicion of illegal alienage, including: 1) place and time of the encounter; 2) demeanor of individuals stopped and their reactions to the presence of INS Officers; 3) appearance/dress/grooming showing signs of either an immediate border crossing or of the individual not belonging in the U.S.; 4) speech; 5) information from outside sources such as intelligence reports or tips; 6) rational inferences from officers' previous experience and training; and 7) in case of vehicular stops, characteristics of the vehicle (e.g., appearance, occupancy, speed of travel, etc.).⁵

By law, consensual encounters differ sharply from detentive stops in not requiring any particular suspicion by the law enforcement officer as long as the person being interviewed remains free to leave or otherwise terminate the encounter.⁶ Nevertheless, INS training regarding the use of ethnicity is the same for consensual encounters and other contacts not restricted or governed by the Fourth Amendment, such as border and checkpoint inspections. Ethnicity is only one factor among many that may be considered before engaging in any such encounters, and should not be the dominant factor.

INS policy on the legitimacy of using race or ethnicity as one factor among many is reflected in various manuals and Commissioner memorandum, including: 1) The Law of Arrest Search and Seizure for Immigration Officers (M-69); 2) Border Patrol Handbook; 3) INS Investigator's/Special Agent's Handbook; 4) Immigration Officer's Field Manual for Employer Sanctions; 5) Inspector's Field Manual; and 6) Commissioner Memo on the Apprehension of Aliens in Worksite Enforcement Operations, dated 12/31/96. See Appendix A.

Training

The INS trains its officers on how to identify and articulate rational factors for stops and searches consistent with the Fourth Amendment's protections against unreasonable police action. The INS does not offer training regarding proper use of ethnicity in non-Fourth Amendment

⁵ [cite].

⁶ INS v. Delgado, 466 U.S. 210 (1984).

stops.

Immigration Officer Academy

The Immigration Officer Academy is responsible for the basic training of all Deportation Officers, Immigration Agents, Immigration Inspectors, and Immigration Special Agents. All trainees receive eight hours of instruction in INS Statutory Authority focusing on section 235 and, in greater detail, section 287 of the INA.⁷ Under INA section 235, trainees are taught that all applicants for admission shall be inspected by Immigration Officers at the port of entry for the purpose of establishing admissibility to the U.S. Also explained and discussed is the authority to stop, board and search a conveyance (i.e., a vehicle) at the port of entry.

Additional topics regarding INA section 287 include: authority to interrogate without a warrant; authority to arrest without a warrant for both administrative and criminal violations; authority to search a conveyance without a warrant within a reasonable distance of the border; authority to enter private lands, but not dwellings, within 25 miles of the border for the purpose of preventing the illegal entry of aliens; and prohibition to enter a farm without a warrant, or the consent of the owner, to interrogate a probable alien as to his or her right to be in the U.S., unless evidence exists that the persons has just crossed the border.

Other areas of instruction on INA section 287, include: a review of court precedent that clarifies proper use of ethnicity in traffic stops and the reasonable suspicion requirement for detentive stops.⁸ At the conclusion of the course on Statutory Authority, trainees are shown a portion of the video entitled "Fourth Amendment Issues at the Worksite" which provides instruction by the INS Office of General Counsel on lawfully executed searches and seizures.

Officers are also trained on the three levels of encounters with the public (consensual, investigative stop, and arrest) and the corresponding degrees of suspicion which are required to take action. Emphasis is placed on the statutory obligation to conduct investigative stops only on reasonable suspicion of a criminal or administrative offense that falls within the officer's jurisdiction.

In addition to the core instruction on Statutory Authority, Special Agents, Immigration Agents, and Deportation Officers must complete a 2-hour course on Alien Encounters & False Claims to United States Citizenship.⁹ This training sets forth effective techniques to employ when

⁷ See Attachment 7

⁸ U.S. v. Brignoni-Ponce; Terry v. Ohio.

⁹ See Attachment 8

encountering and questioning aliens during the course of an investigation.

All trainees, irrespective of specialization, undergo intensive Spanish language and cultural awareness training. Beyond the functional language competency, the INS considers it especially important to make its officers aware that verbal expressions, as well as non-verbal clues, can be interpreted very differently depending on the origins of the immigrants, even when they ostensibly share Spanish as one formal language of communication. To this end, all trainees receive a Supplemental Material Booklet that identifies differences in regional dialect and slang expressions.

The Behavioral Science Division (BSD) of the Federal Law Enforcement Training Center (FLETC) offers to all trainees, with the exception of Adjudication Officers, additional courses and laboratories related to cultural diversity. Understanding and respecting cultural differences is essential to an officer's ability to fulfill his or her duties. The BSD teaches several ways to recognize and overcome the principal barriers to intercultural communications. All officers are trained to demonstrate professionalism when identifying themselves, to develop rapport based on mutual respect, to understand verbal and non-verbal communications, and to utilize proper methods and techniques when dealing with victims and witnesses.

Border Patrol Academy

The Border Patrol Academy is responsible for both entry-level training for new Border Patrol Agents and for the advanced training of incumbent Border Patrol Agents at the GS-9 and GS-11 levels. New agents receive 26 hours of instruction on Statutory Authority.¹⁰ Trainees are provided with appropriate factors upon which to rely when making traffic and pedestrian stops, including vehicle characteristics, proximity to the border, abnormal behavior, demeanor, speech, attire, ethnic appearance and many others. The curriculum stresses that pedestrian and "roving patrol" traffic stops based on race or ethnicity alone are illegal. The required degree of suspicion must be based on a combination of articulable facts, one of which may be ethnic appearance. Similarly, trainees are taught that the referral of vehicles to secondary inspection at a traffic checkpoint must be supported by "mere"¹¹ suspicion that illegal aliens are being transported in the vehicle. Constitutional law and relevant court decisions are discussed with emphasis not only on the Fourth, but also on the Fifth and Sixth Amendments.¹² In addition, the FLETC devotes 3 hours to officer liability and criminal sanctions relating to violations of an individual's constitutional rights.

The first duty station for all Border Patrol Agents is on the Southwest Border. Therefore,

¹⁰ See Attachment 9

¹¹ "Mere" suspicion is defined as the lowest level of suspicion. It requires few articulable facts, but associated actions are very limited. See Attachment 10, page 8.

¹² Cases include U.S. v. Brignoni-Ponce and U.S. v. Martinez Fuerte.

Border Academy trainees receive training on Spanish language and cultural sensitivity and diversity issues. Discussions are held on prejudice, ethnocentrism, language barriers and ignorance of cultural norms. Several other courses that address discrimination and intercultural issues are taught at the Academy. Among these are Ethics and Conduct, Sexual Harassment, Communications for Border Patrol, Victim and Witness Awareness, Authority (i.e., the appropriate use of authority), EEO issues, and Officer Liability. In relation to civil and constitutional rights, trainees are taught that, except for very limited exceptions, foreign nationals who have entered the U.S. are afforded the same rights and protections guaranteed to U.S. citizens.

The Border Patrol Academy also offers separate programs of advanced training for GS-9 and GS-11 agents. Every year, a total of 750-800 journeyman agents receive advanced training at the Academy. Each program lasts 8 days and contains a 4-hour block entitled Legal Updates.¹³ This segment, taught by INS attorneys, includes a review of recent legal developments, the identification and discussion of civil lawsuits alleging that agents were stopping Hispanics illegally, and instruction on the importance of relying on factors other than ethnicity when making "roving patrol" stops.

Recommendations

INS documents (M-69, and officers' handbooks) and training curricula focus on the articulable facts necessary to substantiate the reasons for a detentive or investigative stop, including ethnicity or ethnic appearance. The fact that ethnicity cannot be the sole factor for determining whether to conduct a detentive or investigative stop needs to be re-emphasized.

In addition, the INS documents and training curricula are deficient in emphasizing the point that the INS' policy on use of ethnicity applies equally to non-Fourth Amendment encounters. While an Immigration Officer may not be called upon to articulate the factors that contributed to his or her engaging in such an encounter, the officer must nevertheless only consider ethnicity as one of many, and not the sole, factor in making that decision. The INS will determine where revisions may need to be made in its documents and training curricula in order to clarify this policy, and institute the necessary modifications.

Based on an analysis of data collected after six months of the field test, INS would be better able to determine if ethnicity is a critical factor in accurately predicting nationality. At that point, further modifications to INS policy or training may be warranted.

VI UNITED STATES MARSHALS SERVICE

¹³ See Attachment 10

Mission

The Marshals Service's mission is to find and apprehend fugitives. It is also responsible for protecting federal judicial officers and others who are subject to threats, and transporting detainees for the federal courts and aliens for the INS.

Policies and practices

The Marshals Service engages in few non-suspect specific encounters. When presented with warrants issued by federal courts, the race, ethnicity and gender of the subject is predetermined.

The Marshals Service does not operate its own detention facilities. It assumes custody of arrestees detained by the Federal courts and if a conviction results, delivers such persons to the Bureau of Prisons. In addition to relying on the BOP, the Marshals Service relies on private and local jails near each Federal courthouse to house the detainees. Consequently, the Marshals Service does not have policies for classifying detainees according to ethnic gangs or by using other ethnic classifications. If the Marshals Service knows or is informed that a person is endangered by a gang, it will notify the jail involved that the detainee needs to be protected from the harm. The jail will follow its procedures in the specific situation. This procedure is the same one the Marshals Service would follow to protect one incarcerated co-defendant who was going to testify for the government and was threatened by another incarcerated co-defendant of the same racial and ethnic background as himself or herself.

The Marshals Service has developed several policies that distinguish between housing and transporting male and female detainees. Male and female detainees are kept in separate holding cells at courthouses and are confined in separate jail facilities. On air flights, female and male detainees may be transported together, but female detainees must be under visual surveillance of a matron or female Deputy U.S. Marshal at all times. In ground transportation, female and male detainees are normally transported separately. If they must be transported together, every effort is made to separate them in the vehicle and to have a female matron or female Deputy U.S. Marshal accompany a female detainee. If no Marshals Service matron or female Deputy U.S. Marshal is available, female personnel are requested from local law enforcement agencies. If female detainees must be transported by only male Deputy U.S. Marshals, a Marshals Service log book must have an entry before the trip of the time of departure, the odometer reading on the vehicle, the persons in the vehicle, and the estimated time of arrival at the destination. As a general rule, a detainee taken to a medical facility must be restrained as any other detainee who is being transported. One exception to this rule is a female in labor. There is a policy relating to pregnant detainees.

Training

[insert]

Recommendations

[insert]