

**DEPARTMENT OF JUSTICE PROPOSAL  
RESPONDING TO THE EXECUTIVE MEMORANDUM ON FAIRNESS IN LAW ENFORCEMENT**

**I. Purpose**

To respond to the Executive Memorandum on Fairness in Law Enforcement.

**II. Background**

On June 9, 1999, President Clinton issued an executive memorandum to the Secretary of the Interior, the Attorney General, and the Secretary of the Treasury directing them "to design and implement a system to collect and report statistics relating to race, ethnicity, and gender for law enforcement activities in each department." Each Department was required to submit their data collection proposal by October 9, 1999.

The executive memorandum requires each of the agencies within the respective Departments to improve data collection at all levels of law enforcement to address the problem of racial profiling. Department of Justice representatives have worked with Interior, Treasury, and Office of Management and Budget officials to ensure the use of standard race and ethnicity definitions and collection methods.

The executive memorandum explicitly requires the collection and reporting of data describing persons who are stopped or searched by Federal law enforcement. Data describing persons arrested by Federal law enforcement and prosecuted by U.S. attorneys will also be collected and analyzed.

Pursuant to the executive memorandum, four tasks are required of the Departments:

- (1) within 120 days of the memorandum, a proposal for a system of a data collection and implementation plan will be developed;
- (2) to the extent practicable, data sufficiently detailed to permit further analysis, will be collected on the activities of each Department's law enforcement agencies; and
- (3) prepare a report summarizing the information collected during the first year including (a) an evaluation of the field test, (b) an implementation plan for expanded data collection, and (c) recommendations for improving the fair administration of Federal law enforcement activities.
- (4) within 120 days of the memorandum, prepare a report describing training programs, policies, and practices regarding the use of race, ethnicity, and gender in law enforcement practices and recommendations for improvement.

Within 60 days of the submission of this proposal the agencies are required to begin the field test of the data collection systems. Following the first year of the field test, the Attorney General will prepare a report for the President summarizing the information collected during the first year including (a) an evaluation of the field test, (b) an implementation plan for expanded data collection, and (c) recommendations for improving the fair administration of Federal law enforcement activities. This report will be prepared by May 31, 2001.

This document describes the proposed data collection plans for the participating Department of Justice law enforcement agencies. Within the Department of Justice, the Drug Enforcement Administration and the Immigration and Naturalization Service were determined to be the agencies that routinely engage in nonsuspect specific public encounters on a regular basis. The Federal Bureau of Investigations, U.S. Marshals Service, and the Bureau of Prisons do not engage in nonsuspect specific public encounters.

While only the Drug Enforcement Administration and the Immigration and Naturalization Service were selected for the field test of a data collection system for nonsuspect specific public encounters, all agencies will provide data collected on arrests made, or in the case of the U.S. Attorneys, suspects prosecuted. The analysis of these data will assist in the identifying racial or ethnic disparities in Federal law enforcement agencies' activities related to arrests, prosecutorial decisions, and issues relating to the sentencing of Federal offenders under the provenance of the U.S. Attorneys, e.g., motions for downward departures for substantial assistance to the government.

### III. Issues relating to the collection of race and ethnicity

On October 30, 1997, the Office of Management and Budget (OMB) revised the *Standards for the Classification of Federal Data on Race and Ethnicity*.<sup>1</sup> As part of the revised OMB standards, Federal agencies are required to collect a minimum of five categories for data on race:

- American Indian or Alaska Native,
- Asian,
- Black or African American,
- Native Hawaiian or Other Pacific Islander, and
- White.

Additionally, two categories are required for data collected on ethnicity:

- Hispanic or Latino, and
- Not Hispanic or Latino.

OMB encourages agencies to collect data concerning race and ethnicity by self-report using the two-question format and allowing multiple responses to the race question. For purposes of implementing the Executive Memorandum on Fairness in Law Enforcement, Federal agencies will be permitted to record a single race category by observation. A "combined format" may be used for observer-collected data on race and ethnicity. The combined format has six categories — the five categories of race plus "Hispanic or Latino." OMB standards encourage the collection of greater detail as long as additional categories can be aggregated into the minimum categories for race and ethnicity.

Federal programs collecting data for use in household surveys, administrative forms and records, and other data collections must be consistent with the OMB standards as soon as possible but not later than January 1, 2003.

To ensure consistency and comparability of data across its agencies, the Department of Justice will require that agencies collect race and ethnicity data using the categories prescribed by OMB. Currently, only the Bureau of Prisons and the Drug Enforcement Administration collect race and ethnicity data using the two-question format.

#### A. Determining race and ethnicity: self-report vs. observation

At the Attorney General's June 1999 conference on *Strengthening Police-Community Relationships*, participants generally agreed that race and ethnicity data collected during a public encounter by law enforcement should be based on the observation of law enforcement officers rather than self-

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<sup>1</sup> 62 Fed. Reg. 58782 (1997).

reports by the person contacted. Conference attendees generally agreed it would be improper for law enforcement officers to ask questions about a person's race and ethnicity during a public encounter. Such questioning may, in fact, aggravate extant perceptions of racial discrimination by law enforcement officers.

OMB standards permit the collection of data on race and ethnicity through observation in instances where it is deemed impractical to collect such data through self-reports, e.g., by a medical examiner when completing a death certificate. Following the recommendation of conference participants, the Bureau of Justice Statistics (BJS) in the Department of Justice has informed OMB that the collection of data on race and ethnicity will be through observation when making nonsuspect-specific public encounters.

#### **B. Issues relating to ethnicity**

Currently, the minimum designation for ethnicity as part of the OMB *Standards for the Classification of Federal Data on Race and Ethnicity* is "Hispanic or Latino." With regard to implementing the Executive Memorandum on Fairness in Law Enforcement, additional ethnic groups should be recognized so as to permit the monitoring of encounters involving other ethnic groups that are of particular interest or concern to specific Federal law enforcement agencies. Where appropriate, additional categories will include Arabic/Middle Eastern or Southeast Asian.

#### **IV. Agency data collection proposals**

For a complete picture of Federal law enforcement activities and processing of defendants, data describing Federal law enforcement activities will be collected and analyzed describing (1) nonsuspect public encounters, (2) suspects arrested by Federal law enforcement agencies, (3) defendants prosecuted in Federal courts, and (4) defendants sentenced in Federal courts. Several Federal agencies -- including the US Marshals Service, the Executive Office for the US Attorneys, the Federal Judiciary, the US Sentencing Commission, and the Bureau of Prisons -- currently provide data on the processing of Federal defendants to the Bureau of Justice Statistics as part of its Federal Justice Statistics Program.

##### **A. Nonsuspect specific public encounters**

The executive memorandum requires that a field test of the proposed data collection system begin within 60 days of finalizing the proposal, or December 7, 1999. While many of the activities can begin on or around that date, it is unlikely that a completely automated data entry system could be designed and implemented by that date. As a result of competing Y2K issues, the DOJ agencies (and in the case of the Immigration and Naturalization Service, the U.S. Customs Service) are not expected to have automated systems in place until March 31, 2000. Until automated systems are in place, data collection will be conducted manually.<sup>2</sup>

##### **1. Drug Enforcement Administration**

Despite intervening Y2K priorities, the Drug Enforcement Administration has proposed to implement interim procedures to collect information on nonsuspect-specific public encounters. As with its current procedures relating to arrest data, data will be collected by special agents in hard copy. Data collection forms will be forwarded by each participating field office to DEA Headquarters in Arlington, VA on a regular basis and keypunched by DEA data entry staff. Following the design and implementation of modifications to its Divisional Enforcement Activity Log system, data entry will be completed in each

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<sup>2</sup> The U.S. Customs Service maintains the Interagency Border Inspection System used by INS. According to INS, any changes to this system will need to be accomplished by the U.S. Customs Service.

participating field office. Hard copies of the data collection forms will continue to be forwarded to Arlington for archiving and quality control.

As part of its *Operation Jetway* drug interdiction program, DEA special agents routinely make pedestrian stops in airports, train and bus stations, and parcel facilities. The Drug Enforcement Administration has identified a set of factors it considers when approaching an individual suspected of transporting controlled substances. Searches – both consent and warrantless – of persons encountered may be conducted of those stopped.

The Drug Enforcement Administration is proposing six *Operation Jetway* sites for the field test: Newark International Airport, Chicago-O'Hare International Airport, George Bush Intercontinental Airport (Houston), Miami International Airport, Albuquerque, NM train station, Cleveland, OH train station, Charleston, SC bus station and Sacramento, CA bus station. The selection of six varied sites will provide for the monitoring of people using different modes of transportation under the observation of DEA special agents. BJS will analyze the data collected by DEA.

To determine whether race and ethnicity are used by DEA agents as criteria for initiating contact, an independent study of the demographic characteristics of persons using those transportation terminals will eventually be needed. Certain modes of transportation and transportation terminals in certain areas may be used more frequently by persons of particular racial or ethnic groups. Therefore, it is important to determine the demographic composition of the population observed by DEA special agents as part of *Operation Jetway*.

BJS is pursuing a variety of research and monitoring techniques available to help estimate the demographic composition of the total population under consideration. This is necessary to determine whether law enforcement disproportionately encounters a particular race or ethnic group in non-suspect stops.

## **2. Immigration and Naturalization Service**

The field test by the Immigration and Naturalization Service is complicated by three factors: (1) the data systems used by INS are developed and maintained by the U.S. Customs Service; (2) INS is statutorily required to process passengers arriving into the United States by plane within 50 minutes of arrival;<sup>3</sup> and (3) the volume of entrants processed by INS – more than 450 million primary inspections are conducted annually – would make any data collection involving the population of those entering impractical.

According to the Department of Treasury, it is unlikely that the Interagency Border Inspection System (IBIS) can be modified to incorporate changes required of this effort before the end of the calendar year. Customs Service resources are committed to resolving Y2K issues before any new applications can be developed or existing applications modified.

All persons entering the United States are interviewed by INS inspections officers at land border crossings, seaports, and airports. (At some land borders, INS and Customs inspectors share duties.) The Immigration and Naturalization Service has identified a set of factors its agents consider when making secondary referrals. Additionally, INS Border Patrol agents routinely patrol areas near land borders for persons illegally crossing into the United States and INS investigators routinely investigate employers to determine

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<sup>3</sup> get citation.

whether they employ illegal aliens. Investigations of employers will be excluded from the field test because these investigations are initiated following a review of employment and tax records rather than onsite inspections.

To determine the demographic characteristics of those entering the United States, the collection of race and ethnicity data on a statistical sample of those entering the United States would be most practical. Samples could be drawn from the INS's Advance Passenger Information System. Full data collection would be conducted on those persons referred for secondary inspection.

The Immigration and Naturalization Service is proposing ports of entry for the field test including John F. Kennedy International Airport, George Bush Intercontinental Airport (Houston), and Seattle/Tacoma Airport. In addition, Border Patrol agents conducting "roving patrols" stationed at the El Cajon Station (near San Diego, CA), Yuma Station (near Yuma, AZ), and El Paso Station (near El Paso, TX) will also participate in the field test. A fixed checkpoint station will be included in the field test (at a site to be determined). Inclusion of a land-based port of entry also under active consideration.

The U.S. Customs Service has proposed John F. Kennedy Airport as a site for its field test. Accordingly, the collection of data on the enforcement activities of the Drug Enforcement Administration, the Immigration and Naturalization Service, and the U.S. Customs Service at the same airports (e.g., JFK Airport: INS and Customs; Houston: DEA and INS) will permit comprehensive monitoring of the law enforcement activities relating to persons using a selected ports of entry.

The Immigration and Naturalization Service submitted a proposal to BJS describing the scope of its activities relating to the Executive Memorandum (See, Attachment 1)

### 3. Data elements to be collected

A core set of data elements is proposed for the participating law enforcement agencies to collect on each nonsuspect-specific public encounter or, in the case of the Immigration and Naturalization Service, on each referral for secondary inspection. Information describing demographic characteristics such as gender, race, ethnicity, national origin, and date of birth will be based on the agents' observation of the person encountered or official documents, e.g., drivers' license and passports, where available. The minimum data elements that will be collected are:

- **Date of the encounter:** Month, day, and year of the encounter.
- **Time of the contact (start):** Time of day the contact was initiated.
- **Gender:** The person's observed gender – Male or Female.
- **Race and Ethnicity:** Race and ethnicity will be collected in accordance with the OMB Standards for the Classification of Federal data on Race and Ethnicity (See, attachment 2).
- **National origin:** National origin will be collected for all encounters at land border crossings, sea ports, International airports, and roving patrols by INS Border Patrol Agents. National origin will be based on the agents' review of travel documents including passports and visas.
- **Location of contact:** General information describing the location of the encounter such as the name of the border crossing, seaport, airport, train or bus station, or street address. For encounters in airports, information identifying the terminal (domestic, international (arrivals or departures)) will also be collected.

- **Suspected criminal activity:** The illegal activity for which the person is suspected will be collected. NCIC codes describing criminal activity will be used (See, attachment 3).
- **Reason(s) for contact:** The reasons the agent initiated contact with the person will be recorded. For INS inspections, only the reasons the person was referred to secondary inspection will be recorded, since primary inspection is required of all persons attempting entry into the United States.
- **External sources of information on the person contacted:** Any external sources of information regarding potential illegal activity by the person will be recorded.
- **Law enforcement action taken:** Actions taken by agents in response to the initial encounter will be recorded. Possible actions by agents include: citation, consent searches, warrantless searches, temporary detention, arrest, and voluntary departure (INS only).
- **Time of contact (end):** Time of day the contact was concluded.

Additionally, the agencies may collect supplemental data elements for administrative purposes.

## B. Arrest and Prisoner data

Currently, each of the DOJ law enforcement agencies collects information describing persons arrested. As part of its tasks related to the executive Memorandum, the Bureau of Justice Statistics reviewed each agency's data collection system to determine the extent to which data describing the arrestee's race, ethnicity, and gender was collected and whether those data elements were collected in a manner consistent with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*.

The Bureau of Justice Statistics plans to incorporate Federal arrest data into its ongoing Federal Justice Statistics Program. Through its Federal Justice Statistics Program, the Bureau of Justice Statistics currently compiles Federal criminal case processing data from the U.S. Marshals Service, the Executive Office for U.S. Attorneys, the Administrative Office of the U.S. Courts, the U.S. Sentencing Commission, and the Bureau of Prisons. By incorporating arrest data into an existing program, BJS can ensure that these data are regularly and systematically analyzed and reported. Arrest data can be used to monitor the racial and ethnic composition of persons at each stage of the Federal criminal justice system.

### 1. U.S. Marshals Service.

The U.S. Marshals Service is a central repository for information on persons arrested and booked by Federal law enforcement agencies for Federal offenses. During fiscal year 1998, the U.S. Marshals Service processed 106,180 arrestees (See, attachment 4). Of these, the U.S. Marshals arrested 29,024, or 27% of all Federal arrestees.

The U.S. Marshals Service Prisoner Tracking System does not comply with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*. Currently, the only racial or ethnic categories collected by the Marshals Service are: *White, Black, Asian, Indian, and Other*. For the Marshals Service to meet the minimum requirements of the OMB standards, the race/ethnicity data element would need to be expanded to include *Hispanic and Native Hawaiian or Other Pacific Islander*.

## **2. Drug Enforcement Administration.**

The Drug Enforcement Administration (DEA) collects information on all persons arrested by DEA special agents regardless of whether the person is prosecuted in Federal, State, or foreign courts. The court of jurisdiction is identified. During fiscal year 1998, DEA special agents arrested more than 30,000 persons.

The Drug Enforcement Administration Defendant Statistical System and Division Enforcement Activity Log do not comply with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*. The DEA systems currently lacks a separate racial group for *Native Hawaiian or Other Pacific Islander*. These racial groups are collected as part of the *Asian* category. For DEA to comply with the OMB standards, the current category *Asian-Pacific Islander* will need to be disaggregated into *Asian* and *Native Hawaiian or Other Pacific Islander*.

## **3. Federal Bureau of Investigation.**

The Federal Bureau of Investigation (FBI) collects information on all persons arrested by FBI special agents regardless of whether the person is prosecuted in Federal, State, or foreign courts. During fiscal year 1998, FBI special agents arrested \_\_\_\_\_ persons.

☐[Discussion of FBI compliance with OMB standards forthcoming.]☐

## **4. Bureau of Prisons.**

The Bureau of Prisons collects information on all persons under its jurisdiction, *i.e.*, pretrial detainees in selected metropolitan areas, sentenced offenders, and certain other long-term detainees. Bureau of Prisons correctional officers make few arrests. As of December 31, 1998, 123,041 persons – about 90% of whom had been convicted – were under the jurisdiction of the Bureau of Prisons.

The Bureau of Prisons SENTRY data system does not comply with the OMB Standards for the Classification of Federal data on Race and Ethnicity. The BOP system currently lacks a separate racial group for *Native Hawaiian or Other Pacific Islander*. These racial groups are collected as part of the *Asian-Pacific Islander* category. For BOP to comply with the OMB standards, the current category *Asian-Pacific Islander* will need to be disaggregated into *Asian* and *Native Hawaiian or Other Pacific Islander*.

## **5. Immigration and Naturalization Service.**

☐[Discussion of INS data system forthcoming.]☐

## **C. Prosecutions in Federal court**

Currently the Executive Office for U.S. Attorneys does not collect demographic information on persons investigated or prosecuted by U.S. Attorneys. Demographic information on persons arraigned on Federal charges is available from the Federal judiciary.<sup>4</sup>

To facilitate a more comprehensive analysis of prosecutorial decisions – particularly U.S. Attorney declinations - the Executive Office for U.S. Attorneys will incorporate into their existing data

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<sup>4</sup> These data are routinely obtained by the Bureau of Justice Statistics as part of its Federal Justice Statistics Program.

collection system – LIONS – information on the race, ethnicity, and gender of persons investigated.

#### **D. Sentencing of convicted Federal defendants**

The Executive Office for U.S. Attorneys does not collect demographic information on persons convicted and sentenced in the Federal courts. Demographic information on persons sentenced in the Federal courts is available from the U.S. Sentencing Commission.<sup>4</sup>

### **V. Coordination with the Departments of Interior and Treasury**

#### **A. Department of Interior**

The Department of Interior has submitted a data collection proposal under separate cover. (See, Attachment 5)

The Department of Interior employs sworn law enforcement officers in five different agencies: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, and the U.S. Fish and Wildlife Service. Officers in many of these agencies do not have general law enforcement authority, seldom have regular contact with the public, and make few arrests. The National Park Service – both U.S. Park Police and Park Rangers – was the only agency identified by the Department of Interior as having regular contact with the public and making a substantial number of arrests.

The Department of Interior has agreed to collect data in the manner prescribed by the Department Justice. The data collection system will be field tested in 10 sites:

- Lake Mead National Recreation Area (Nevada and Arizona)
- Yosemite National Park (California)
- Grand Canyon National Park (Arizona)
- Glen Canyon National Recreation Area (Arizona and Utah)
- National Expansion Memorial (Missouri)
- Indiana Dunes National Lake Shore (Indiana)
- Natchez Trace Parkway (Mississippi and Tennessee)
- Blue Ridge Parkway (Virginia and North Carolina)
- Valley Forge National Historical Park (Pennsylvania)
- Delaware Water Gap National Recreation Area (Pennsylvania and New Jersey)
- Baltimore Washington Parkway (Washington DC and Maryland)

Data collected by the Department of Interior will be analyzed by the Bureau of Justice Statistics and included in the report to the President prepared by the Attorney General.

#### **B. Department of Treasury**

The Department of Treasury has submitted a data collection proposal under separate cover.

The Department of Treasury employs law enforcement officers within the Bureau of Alcohol, Tobacco and Firearms, Internal Revenue Service, U.S. Customs Service, and U.S. Secret Service. The uniformed division of the Secret Service and the U.S. Customs Service were the two agencies identified by the Department of Treasury as having regular contact with the public and making a substantial number of arrests resulting from that contact.



The Department of Treasury has agreed to follow the general data collection standards identified by the Department of Justice -- particularly as they relate to the collection of data on race and ethnicity. Treasury will field test their data collection system in Washington DC (for the uniformed division of Secret Service) and at Chicago O'Hare International, JFK International, Newark International, Miami International, and Los Angeles International airports (for the U.S. Customs Service).

The Department of Treasury will separately analyze and report on data collected as part of the field test. This analysis will be included in the report from the Attorney General to the President.

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**DEPARTMENT OF THE TREASURY  
REPORT ON FAIRNESS IN LAW ENFORCEMENT  
October 1999**

**INTRODUCTION**

On June 9, 1999, President Clinton issued a Directive, entitled *Fairness in Law Enforcement: Collection of Data*, directing the Secretary of the Treasury, the Attorney General, and the Secretary of the Interior to design and implement a system "to collect and report statistics relating to race, ethnicity, and gender for law enforcement activities." To gain a better understanding of actual practices, the Presidential Directive mandates that the Treasury, Justice and Interior Departments each develop a proposal "for a system of data collection and an implementation plan for a field test of that system." President Clinton also instructed the three Departments to "provide a report on the training programs, policies, and practices regarding the use of race, ethnicity, and gender in law enforcement activities, along with recommendations for improving these programs, policies, and practices." A report is to be submitted to the President within 120 days of the Presidential Directive. This report responds to that requirement.

**TREASURY'S IMPLEMENTATION OF THE PRESIDENT'S DIRECTIVE**

It is the policy of Treasury and its law enforcement bureaus to prohibit their employees from selecting persons for inspection, investigation or other law enforcement activity on any impermissible basis such as their race, national origin, or gender. This policy is communicated to employees by Treasury and bureau management and is part of the training Treasury bureau personnel receive. Personnel who violate this policy are subject to disciplinary action.

Although Treasury and its bureaus' policies against discriminatory practices are longstanding, no comprehensive study has been done on how these policies are followed in the field. In accordance with the President's directive, Treasury has designed a data collection field test to gain a better understanding of actual practices. The data collected is to "be sufficiently detailed to permit an analysis of actions relevant to the activities of the included law enforcement agencies by race, ethnicity, or gender." The data acquired is not to contain any information that may reveal the identity of any individual. The Presidential Directive also provides that each Department must implement field tests within 60 days of finalizing the data collection proposal. Treasury's field test is scheduled to begin on December 1, 1999, and will conclude on December 31, 2000.<sup>1</sup> At the conclusion of the one-year field test, Treasury and Interior will provide the Attorney General with a summary of the information collected which will include "civilian complaints received alleging bias based on the race, ethnicity, or gender of the

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<sup>1</sup> Although Treasury's field test period for purposes of the Presidential Directive begins on December 1, 1999, Customs has already begun collecting the relevant data.

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complainant in law enforcement activities; the process for investigating and resolving such complaints; and the outcome of any such investigations."

As discussed in more details below, Treasury's field test will provide a statistical snapshot of traffic stops, pedestrian stops, and the more extensive inspections or interviews of entrants to the United States being conducted by the Secret Service and the Customs Service. This data, in turn, will assist Treasury and all of its bureaus in refining its policies and training to prevent racial profiling and other prohibited discriminatory actions.

### Methodology

The Department of the Treasury's Office of Enforcement convened a working group to formulate Treasury's data collection project and field testing plan. The working group was comprised of one or more individuals from each of the Treasury law enforcement bureaus who have expertise in data collection, computer systems, and stop and search issues. The working group reviewed bureau policies and training curricula, and developed a proposal for a data collection field test.

### PART I: DATA COLLECTION PROPOSAL

Treasury's data collection proposal will allow for the review of the law enforcement activities of two components of law enforcement bureaus: the United States Secret Service Uniformed Division, Foreign Missions Branch, and the United States Customs Service, Passenger Operations, at five inbound air ports of entry.<sup>2</sup>

Treasury's proposal will enable the Secret Service and the Customs Service to collect data on the race,<sup>3</sup> gender, and ethnicity on such actions as traffic stops, pedestrian stops, and more extensive inspections or interviews than are customarily conducted with entrants to the United States.

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<sup>2</sup> The other Treasury law enforcement bureaus, the Bureau of Alcohol, Tobacco, and Firearms, the Federal Law Enforcement Training Center, and the Internal Revenue Service, Criminal Investigation Division, do not generally perform traffic or pedestrian stops. Therefore, they do not have a basis to gather the information requested in the President's Directive.

<sup>3</sup> The Department of the Treasury will use the six combined minimum racial categories as outlined in the Office of Management and Budget's (OMB) October 1997 issuance on revision to Statistical Policy Directive 15 on the classification of Federal data on race and ethnicity. The combined racial categories are American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander, and White.

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**UNITED STATES SECRET SERVICE**

The Secret Service field test will consist of data collection on traffic and pedestrian stops within the Uniformed Division, Foreign Missions Branch. Uniformed Division officers (hereafter "officers") will record the reason(s) for the stop and data on the race, gender, ethnicity based on their observation.

**Field Test Area:** The Uniformed Division is organized into three branches: Foreign Missions, Naval Observatory, and the White House Branch. The Foreign Missions Branch has approximately 100 officers who are responsible for the protection of foreign diplomatic missions and personnel in the metropolitan area of the District of Columbia. Foreign Missions officers conduct patrols that cover Northwest Washington, D.C., and a small portion of Montgomery County, Maryland. The patrol boundaries extend from Constitution Avenue to East/West Highway in Montgomery County. Officers assigned to the Foreign Missions Branch provide protection through vehicle patrols, foot patrols and fixed posts. It is in providing protective coverage for diplomatic locations in the District of Columbia and the surrounding metropolitan area that the officers come in contact with the public.

**Authority:** Title 18, United States Code, Section 3056, is the primary enabling statute that allows the Secret Service to perform its protective mission and conduct investigations. The statute authorizes the officers and agents of the Secret Service to execute warrants issued under the laws of the United States, carry firearms, and make arrests without a warrant for any offense against the United States committed in their presence.

Title 3, United States Code, Section 202, provides the officers with law enforcement authority similar<sup>4</sup> to the District of Columbia's Metropolitan Police Department. This statute charges the Uniformed Division with protecting the Executive Mansion and grounds in the District of Columbia, any building in which Presidential offices are located, the Treasury Building and grounds, the President and his or her immediate family, foreign diplomatic missions located in the metropolitan area of the District of Columbia, the temporary official residence of the Vice President and grounds in the District of Columbia, the Vice President and members of his or her immediate family, foreign diplomatic missions located in metropolitan areas (other than in the District of Columbia), and foreign diplomatic missions located in such areas in the United States, its territories and possessions, as the President, on a case-by-case basis, may direct. The statute also enables the officers to make traffic stops and arrests.

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<sup>4</sup> Secret Service's powers nearly correspond to those of the Metropolitan Police Department of the District of Columbia, but relate to the Secret Service's mandated protective responsibilities.

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**Project Description:** Secret Service Uniformed Division officers are authorized to make a traffic or pedestrian stop when, in their view an individual is suspected of committing, has committed, or is about to commit any felony or misdemeanor prosecutable by the U.S. Attorney. It is the policy of the Uniformed Division that its officers shall, in situations justifying such action and within constitutional limits, exercise the authority to stop and frisk. This authority, if properly used, has been identified as an effective police procedure. Officers are not allowed to abuse this procedure, to harass persons or to cause them undue discomfort, embarrassment, or inconvenience. Furthermore, officers may not make these stops on an impermissible basis such as race or gender.

Once officers make the stop, they must establish radio contact with the Foreign Missions Branch Control Center. The officer must communicate the following information: identification of unit(s) conducting the stop, license number and description of subject vehicle, reason for conducting the stop, location where stop is initiated, location where vehicle stops (if different from where initiated), number and description of occupants, and general or specialized support needed (criminal records check).

If these stops result in an arrest, this information is gathered and tracked through the Uniformed Division's case tracking system. For purposes of this project, the officers will also gather data on these contacts with the public that do not result in an arrest.

**Data Collection:** Where a stop has been made, but no arrest occurs, officers will be required to complete a contact card<sup>1</sup> after each traffic or pedestrian stop. They will record the person's name, race, gender, ethnicity, and reason for the stop. The individuals stopped will not be required to provide any information; rather, the officers will record the race, ethnicity, and gender based upon their own observations. This process was deemed appropriate to prevent the traffic or pedestrian stop from escalating into a confrontational situation.

The officers will also indicate the reason for the stop, the location of the stop, and the reporting officer's name, unit, and section. For the purpose of this proposal, "Stop and/or Search" will mean any individual who is detained, asked to produce proof of identity, and subjected to a name search and/or records check through the appropriate law enforcement databases. The "Stop and/or Search" will not include those individuals who are subjected to a cursory stop and/or interview, such as an individual who is stopped for the purpose of permitting a motorcade to proceed, nor will it include contacts initiated by the citizen. Under those circumstances the contact card will not be completed.

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<sup>1</sup> The Secret Service uses the same contact card used by the District of Columbia's Metropolitan Police Department. It allows the law enforcement officer to indicate the type of stop (pedestrian, vehicle or bicycle), the location of the stop, the race and gender of the subject, and a justification for the stop or contact.

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At the end of each shift, officers will be required to turn in the contact cards to their shift supervisor. The shift supervisor will forward the contact cards to the Deputy Chief's staff office and the administrative lieutenant<sup>6</sup> will be responsible for entering the information into a Microsoft Access or similar database. Each contact card will be cross-referenced with the communication base radio log, when necessary. This process allows the shift supervisor to address any inconsistencies between the contact card and the communication radio log. For example, if an officer reports four traffic stops and turns in only three contact cards, the shift supervisor will request the additional contact card from the officer.

**Data Compilation:** All information on stop and arrests resulting from traffic or pedestrian stops will be retained in Microsoft Access or a similar database program for statistical purposes only. As indicated above, the administrative lieutenant's staff will be responsible for entering the data into the system. These statistics will only be disseminated to the appropriate requesting agencies. The database will not include personal identification;<sup>7</sup> however, the card file will be cross-referenced with a number in the database to verify accuracy and facilitate the investigation of any citizen complaint.

**Complaint Activity:** Any complaints that arise during this field test will be handled through the normal complaint processing channels. The current process allows for a citizen to file a complaint with the Director of the Secret Service through the Public Affairs Office. The Public Affairs Office determines the appropriate office to address the complaint, e.g., Inspection Division or Chief or Deputy Chief of the Uniformed Division. If complainants are not satisfied with the response, they may contact the Department of the Treasury. The Department of the Treasury contacts the Secret Service for additional information, provides the complainant with a response and takes appropriate action, if such action is deemed necessary.

The Deputy Chief, Foreign Missions Branch will be responsible for tracking and maintaining all complaints related to this data collection project. In addition, based on the data collected, the Deputy Chief, Foreign Missions Branch will identify any significant trends and identify any potential concerns.

## **UNITED STATES CUSTOMS SERVICE**

The Customs Service's field test will consist of data collection on the inbound personal search process at five air ports of entry: Chicago O'Hare International Airport, New York JFK International Airport, Los Angeles International Airport, Newark International Airport, and Miami International Airport. Customs inspectors (hereafter "inspectors")

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<sup>6</sup> The administrative lieutenant is located in the Deputy Chief's Office.

<sup>7</sup> If the officer makes an arrest, the person's name will be included in the database.

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will record data on the race, gender, and citizenship on passengers subjected to a personal search.

**Field Test Area:** The Passenger Operations Branch, which will serve as the test area for the Customs Service, is responsible for the passenger enforcement process. The Passenger Operations Branch's principal mission is to increase seizures of contraband while facilitating passenger traffic flow. With the ever-increasing number of passengers entering the United States, and increased pressure to meet its interdiction responsibilities, while still minimizing disruptions to passengers and commercial traffic, Customs uses a passenger enforcement selectivity process as an important and necessary aspect of its drug interdiction mission. The passenger enforcement process enables inspectors to determine which passengers should receive closer attention. It identifies the potential risk of incoming flights and their passengers in order to determine the level of examination needed.

**Authority:** Title 19, United States Code, Section 1581 et seq., gives inspectors the authority to search, inspect, and/or examine all persons, luggage, and merchandise discharged or unladen from a carrier arriving in the United States from a foreign destination. It also enables inspectors to conduct searches of persons at the border to detect the presence of contraband. Inspectors use training, experience, subject-matter expertise, information and intelligence related to smuggling trends, and analysis of recent seizures to determine who, among over 450 million people arriving at the borders each year, should be searched.

**Project Description:** The Customs Service, who voluntarily initiated such a procedure prior to the Presidential Directive, will collect the required data on persons stopped and searched in the inbound personal processing units at five selected ports of entry. The personal search data on international travelers is collected and analyzed by the Passenger Data Analysis Team. The team monitors personal searches, analyzes local and national trends, uncovers any potential problems, and reports critical areas of concerns to Customs management. The Passenger Data Analysis Team identifies potential areas of risk using a four-step process. The team will also use these steps when working with port offices to develop local passenger compliance and enforcement strategies. The four steps are: (1) identify potential risks in passenger compliance; (2) analyze and assess risks to fully comprehend issues; (3) prescribe action to mitigate the risks; and (4) track and follow-up progress action plan.

**Data Collection:** Inspectors use the Personal Search Worksheet to record information on any personal search<sup>8</sup> for later transcription into Treasury Enforcement Communications

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<sup>8</sup> It is important to note that personal searches are conducted in private rooms or areas away from the view of the general public. Those personal searches that require moving a person to a medical facility for a medical examination require the approval of the port director or person designated to act in his/her

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System (TECS). Inspectors are responsible for entering the data into TECS prior to the end of their shift. When the search results in a seizure and/or arrest, the Worksheet becomes part of the seizure documentation. When no enforcement action results, the Worksheet will be retained locally for two years and three months from the date of the search.

The TECS report includes data elements such as race, gender, and citizenship, as well as detailed narratives regarding the circumstances surrounding the search and/or detention. Inspectors are required to ensure that times are recorded accurately, including specific start-stop times for completing various steps or types of searches (e.g., "patdown", partial body, and drive time to and from the medical facility.)

The TECS report contains the objective and articulable facts that support the particular search or detention. Inspectors complete as much information as possible concerning the description of the person and circumstances surrounding the search, including factors that not only led to a "patdown," but also those factors that led from a "patdown" to a more intrusive search.

Inspectors obtain supervisory approval of all records of personal searches entered into the TECS database. Supervisors certify that the TECS report contains all required information and that sufficient detail exists regarding the circumstances surrounding the search. Where details are missing or unclear, the supervisors coordinate with the inspectors to correct the report.

Port directors ensure that TECS reports pertaining to personal searches are reviewed periodically to determine personal search effectiveness at the port, including whether there may be any improprieties in the conduct of these searches. Where reports indicate that effectiveness has decreased or that improprieties exist in the conduct of searches, the port directors assess whether corrective action is needed. In addition, supervisors are required to take remedial action for deficiencies. As indicated above, the field test data collection project will only report on the race, gender, and citizenship of personal searches.

**Data Compilation:** The Customs Service has implemented significant changes to its computer system that will improve the data integrity for all personal searches. For

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absence, provided they are grade GS-13 or above and have consulted with Customs Counsel.



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example, race, gender, and citizenship, which were existing data fields, have now become mandatory fields. In addition, Customs has added new mandatory data fields, such as port of departure, port of embarkation, port director and chief counsel notification, reasons for the search, and the referring officer for the search. These changes to the computer system will allow the Customs Service to better identify who they search by race, gender, and citizenship, and provides the ability to do statistical and trend analyses by ports of entry and Customs-wide. The computer enhancements will also allow the Customs Service to conduct trend analysis on all personal searches by source country and transit country for targeting purposes. More importantly, the Customs Service will be able to perform trend analysis to identify potential concerns.

**Complaint Activity:** During the data collection field test, all complaints on personal searches will be handled through the newly established Customer Satisfaction Unit (CSU). The CSU ensures that complaints are correctly addressed and that passengers receive appropriate feedback. The CSU also has responsibility for providing current information to senior management and analyzing trends within the complaint system. If complainants are not satisfied with the response, they may contact the Department of the Treasury. The Department of the Treasury contacts the Customs Service for additional information, provides the complainant with a response and takes appropriate action, if such action is deemed necessary.

## **PART II: POLICIES, PROCEDURES AND TRAINING**

The Presidential Directive also requests a report on "training programs, policies, and practices regarding the use of race, ethnicity, and gender" in "law enforcement activities, along with recommendations for improving those programs, policies, and practices." Accordingly, Part II of this report describes the relevant Treasury and bureau policies relating to fairness in law enforcement, as well as an overview of how such policies are implemented. It also discusses the training programs Treasury and its bureaus have in place to train law enforcement personnel on the relevant policies. While only particular offices within the Customs Service and the Secret Service were discussed in Part I, all Treasury law enforcement bureaus are discussed in Part II.

### **Policies**

As discussed in more detail below, Treasury and its bureaus have issued a number of policies related to fairness in law enforcement issues. In addition to these specific policies, policies in other areas may be relevant. In particular, Treasury and its bureaus, like all executive branch employees, are required to follow the *Standards of Ethical Conduct for Employees of the Executive Branch*, issued by the United States Office of Government Ethics, and the *Office of Personnel Management Employee Responsibilities and Conduct Regulations*. Additionally, Treasury has issued its own *Department of the Treasury's Employee Rules of Conduct*, which includes an explicit ban on discrimination

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or harassment of persons on the basis of that person's race, color, national origin, sex, sexual orientation, age, or disability. Similarly, ATF, the Customs Service, the Internal Revenue Service, Criminal Investigation Division (IRS-CID), and the Secret Service each has its own policies prohibiting discrimination and sexual harassment. Finally, the Treasury has issued a *"Policy on Off-Duty Conduct, Bias-Motivated Conduct, and Membership or Participation in Hate Groups by Law Enforcement"* to ensure that all law enforcement personnel are aware Treasury's expectations regarding off-duty and on-duty conduct. That policy specifically addresses issues regarding integrity, professionalism, and public trust.

### **Specific Policies Related to Fairness in Law Enforcement**

**Secret Service:** On August 26, 1997, the Secret Service issued a memorandum to all employees entitled *"Professional Behavior in the Secret Service."* This memorandum reaffirms the Secret Service's policy of maintaining a professional work environment that is reflective of high caliber employees. This memorandum reminds Secret Service employees that they should be professional and courteous when dealing with fellow employees and the public.

Further, the memorandum establishes Secret Service's "zero tolerance" discrimination policy and it holds managers and supervisors accountable to react to and properly address reports of inappropriate actions that come to their attention. It further advises all employees that they will be held accountable for any inappropriate behavior that occurs within their areas of responsibility.

**Customs Service:** Inspectors performing searches and seizures of persons and property at the border, the functional equivalent of the border, or extended border must adhere to the policies set forth in the Personal Search Handbook CIS HB #3300-04A.

The goal of the Handbook is to assist inspectors in performing their enforcement duties in a manner that will ensure personal integrity and will also permit officers to perform a professional service for the public. Customs policies, procedures and training all reinforce that the Constitution guarantees the protection of an individual's right against unreasonable searches and seizures. Customs Service employees are trained to be diligent in their efforts to protect those rights while still accomplishing their enforcement mission. Treasury and the Customs Service prohibit the abuse of constitutional or statutory authority by Customs personnel. Customs Service personnel are aware of the limits of their authority and are required to use that authority judiciously, conscientiously, and courteously.

To ensure that this occurs, Commissioner Raymond W. Kelly is committed to improving the passenger enforcement process. While serving as the Under Secretary of Enforcement, Mr. Kelly tasked the Office of Enforcement's Office of Professional

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Responsibility (OPR) with assessing passenger enforcement targeting and reviewing inspector training to ensure that targeting does not discriminate on the basis of race, color, national origin, ethnicity, religion, gender or sexual orientation. During the course of OPR's review, Mr. Kelly was nominated and confirmed as the Commissioner of Customs. Prior to the issuance of the OPR report, Commissioner Kelly implemented a number of the recommended changes, including: mandating more intensive training for all new inspection personnel to include improved communication and intercultural skills, providing comment cards for passengers to provide feedback on Customs' services, and establishing a Customer Satisfaction Unit to process passenger complaints. In addition, Commissioner Kelly has established two committees, one internal and one external,<sup>9</sup> to review the procedures used in personal searches. Commissioner Kelly has tasked the committees to review the criteria used to identify passengers for more intrusive inspections, as well as analyze the search data to determine if the Customs Service is correctly selecting the high-risk passenger.

The *Personal Search Handbook* outlines the procedures for conducting personal searches. Under a new policy recently introduced by Commissioner Kelly, there may be as many as ten steps involved in a personal search, which can range from a "patdown"<sup>10</sup> to more intrusive searches.<sup>11</sup> As the personal search becomes more intrusive, the inspector must receive increasingly higher levels of supervisory approval. Additionally, at any point during the personal search process, the inspector and supervisor can consult with the Office of Chief Counsel. Thus, while a supervisor may approve a "patdown", a port director must approve a medical examination. An inspector, however, may terminate the secondary inspection at any time without supervisory approval.<sup>12</sup>

ATF: On July 7, 1998, ATF issued a policy statement on employee professionalism. The ATF policy statement on professionalism states "ATF employees are expected to conduct themselves in a professional manner." In addition, the policy states that all employees are responsible for maintaining the highest professional standards in the way they act and present themselves to their clients and their colleagues. This policy governs the behavior of employees within and outside of the workplace.

<sup>9</sup> Constance Newman, Under Secretary for the Smithsonian Institution, chairs the external committee (the Customs Personal Search Review Commission).

<sup>10</sup> A "patdown" is defined as "a search for contraband or other merchandise hidden on a person's body." In accordance with Customs' policy, all "patdown" personal searches require at least one "articulable fact" before the supervisor will authorize the search.

<sup>11</sup> If, after the patdown, the inspector continues to have reasonable suspicion that the person has contraband or other merchandise concealed on the body, a more intrusive (non-routine) personal search will be permitted with supervisory approval. More intrusive personal searches include a partial body search, the x-ray search, body cavity search, and detention for a monitored bowel movement (MBM).

<sup>12</sup> At any stage in the secondary inspection process, any person involved in a personal search, who is detained two hours after a personal search has begun, will be afforded the opportunity to have someone notified by the Customs Service personnel of their delay in Customs.

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**IRS:** The IRS issued the *Reform and Restructuring Act of 1998 (RRA98) Section 1203 Procedural Handbook*, which provides guidance on the fair treatment of employees, taxpayers, and taxpayer representatives. The Handbook states that "IRS is committed to treating employees, taxpayers, and taxpayer representatives fairly and equitably without regard to their sex, age, race, color, national origin, religion, or disability." The Handbook also mandates termination of any employee who engages in discrimination or other types of unfair law enforcement practices. It is the responsibility of the supervisor to discuss the contents of the RRA98 with all employees.

### Procedures

Treasury bureaus ensure employees understand and follow Treasury and bureau policies, including those outlined above, through communication, inspection, and discipline.

**Communication:** The bureaus ensure that employees are aware of and understand all applicable policies by having employees certify their awareness of certain policies, such as Customs' requirement that its inspectors certify that they have received a copy of the *Personal Search Handbook*. They also accomplish this goal by issuing management memoranda and statements to employees reinforcing and clarifying bureau policy, such as the Secret Service's requirement that each supervisor must remind employees of the written conduct standards during employee mid-year performance appraisals.

**Inspection:** All bureaus place responsibility for ensuring compliance with bureau policies on managers and supervisors. Managers are held accountable through management inspections. ATF and Customs employ self-inspection processes to help monitor compliance. For example, Customs has established its Self-Inspection Program (SIP) to verify that the Customs mission is "performed in the most effective and efficient way." The SIP allows supervisors to evaluate their success in managing, assessing and reporting on the conditions of their individual operations. The major focus of the SIP for managers and the Management Inspections Division (MID) are areas susceptible to vulnerability and corruption, mission performance, resource utilization, and internal and external relations.

As part of the SIP, at least semi-annually, supervisors execute Self-Inspection Worksheets (SIWs) for all areas over which they have delegated authority. SIWs have been tailored to assess particular areas of Customs' operations, including, where appropriate, passenger processing and other issues relating to fairness in law enforcement. The SIWs for Airport and Seaport Passenger Operations, for example, ask if the responding office has certified its personal search procedures for the reporting period.

Each core area examined is found to be either "Acceptable" or "Need Improvement." Reporting supervisors and next level supervisors certify their findings, and they are

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responsible for taking corrective action where necessary. The results of the inspections are channeled through the appropriate chain of command and ultimately to the Assistant Commissioners and the Commissioner.

Program level supervisors and managers are tasked with analyzing the results of self-inspections as a quality control measure and making program modifications in response to substantive findings. In addition, program managers must intervene in areas where critical deficiencies have been identified. Finally, the Customs Service has also appointed program coordinators for each major office within the Customs Service. They manage and oversee the SIP and coordinate with MID.

**Discipline:** All Treasury law enforcement bureaus discipline employees who violate bureau policies. Such discipline may range from verbal counseling to dismissal, depending upon the particular circumstances of the violation.

### **Training**

Treasury and its law enforcement bureaus also have training programs to ensure that all employees are aware of Treasury and bureau policies. In January 1999, in conjunction with a review of the Customs Service's Office of Internal Affairs by the OPR, all of the Treasury law enforcement bureaus were asked to provide an accounting of the ethics and related training broadly categorized as "professionalism" provided to law enforcement officers (LEOs). LEOs were identified as individuals who are authorized to make arrests and carry firearms and badges in the performance of their duties. The bureaus were asked to include basic and in-service level training courses.

The courses listed under the broad professionalism category exemplify the integration of ethics and integrity throughout the law enforcement officer's training process. Professionalism, as defined in this report, includes ethical conduct and integrity, as well as the related principles of honesty, respect, quality, impartiality, and selflessness. In addition, other principles related to professionalism such as sexual harassment prevention, interpersonal awareness, corruption prevention, use of force, cultural diversity, and civil rights - are also introduced and continuously reinforced throughout all phases of training.

**FLETC:** The Federal Law Enforcement Training Center (FLETC) is responsible for providing law enforcement training for over 70 federal agencies. In addition to providing training to the Treasury law enforcement bureaus, other participating organizations include the United States Park Police, the Immigration and Naturalization Service, and the Border Patrol. FLETC, with facilities located in Georgia and New Mexico, primarily trains federal law enforcement officers, but also provides state, local, and international law enforcement officers with training tailored to their special needs.

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All Treasury law enforcement bureaus receive basic training at FLETC. Additionally, most of the federal organizations conduct some or all of their advanced and in-service law enforcement training operations at FLETC, and over twenty have established on-site offices to oversee their training programs. Three of Treasury's law enforcement bureaus - IRS, ATF, and the Customs Service - conduct their bureau-specific training at FLETC; while the Secret Service performs its bureau-specific training at its facility in Beltsville, Maryland.

For the purpose of this report, FLETC provides two courses of interest to all federal LEOs - the *Criminal Investigator Training Program* (CITP) and the *Mixed Basic Police Training Program* (MBPTP). The CITP course, an in-depth study of basic law enforcement concepts and techniques, has an overall instructional period of 367 hours, 6% of which is devoted to the area of professionalism. Among the subjects taught within the professionalism area are human behavior, modern investigative technology, cultural sensitivity, civil rights, anti-corruption, sexual harassment prevention, and use of force. The seventy-two participating organizations are eligible to participate in this course.

MBPTP is a study of basic law enforcement concepts of importance to the LEO and has an overall instructional period of 342 hours, of which 8.4% is dedicated to discussions of professionalism. During the MBPTP, new officers also receive training offered by the Behavioral Science Division, stressing the importance of individual awareness and responsibility for ethical conduct within the law enforcement occupation. In addition, several topics similar to those taught in the CITP course, such as civil rights and the Federal Torts Claims Act, are also discussed.

Among the agencies participating in the MBPTP are the Capitol Police, U. S. Supreme Court Police, and the Secret Service, Uniformed Division.

**Secret Service:** The Secret Service offers two orientation-level training courses outlining agency requirements. These two courses also include discussions on ethics, interpersonal awareness, and the minimum standards of conduct required by all LEOs.

Secret Service provides advanced training for new officers in the Uniformed Division, as well as special agents. The new Uniformed Division Officers complete the *Uniformed Division Officer Training Course*, which discusses professionalism as it relates to the mission and activities that Secret Service Uniformed Division Officers perform. This course has a total of 500 instructional hours, of which 12% is dedicated to the professionalism subjects of ethics and integrity. New Secret Service special agents complete the *Special Agent Training Course*, with an instructional period of 550 hours of which 20% of which is dedicated to aspects of professionalism. As part of their overall instruction, special agents and inspectors are informed that Secret Service does not target persons or groups for investigation based on their color, national origin, gender, or political or religious affiliation, but rather for known or suspected criminal activity.

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On-the-job training and advanced in-service training programs supplement classroom study.

The Secret Service offers in-service training to all LEOs during the term of their careers. One example of the courses offered is the *Leadership and Organizational Behavior* course. This course focuses on such subjects as ethics, integrity, moral dilemmas, and employee responsibility. Over 20% of the course is dedicated to subjects that would be considered professionalism. Secret Service also offers to all employees a course entitled *Conference on Employee Diversity Issues*. This 40-hour course discusses key issues facing management and non-management employees in the area of mixing cultures on the job.

**Customs Service:** The Customs Service does not have a new employee orientation course. However, new inspectors and investigators must successfully complete basic training before they are sworn in and allowed to assume inspectional or investigative functions.

The *U.S. Customs Service Integrated Training Program* (USCSI) is specialized training that FLETC and the Customs Academy provide jointly for the Customs Service. Included in this 11-week program is an examination of cross-cultural communications. Professionalism is discussed with respect to victim/witness assistance, carrying and use of firearms, and employee conduct and responsibilities. Prior to the appointment of Raymond W. Kelly as Commissioner of Customs these and similar subjects related to professionalism were allotted 5.2% of the entire program time. Upon his appointment as Commissioner, Mr. Kelly mandated that all inspectors and special agents receive extensive training on interpersonal communication, cultural interaction, confrontation management, personal search policy, and passenger enforcement selectivity. These training courses, totaling 40 hours of instruction, have now become part of the USCSI. Refresher training in these topics is currently being conducted at the 38 airports handling the largest passenger volume. The USCSI now has over 20% of its instructional hours dedicated to professionalism.

The Customs Service's Internal Affairs training staff presents an eight-hour program of ethics reinforcement and anti-corruption training to all students attending USCSI. In addition to familiarizing new inspectors with the code of conduct, this curriculum focuses on two additional areas: (1) focusing student's attention upon the ethical issues and challenges attending their professional responsibilities; and (2) providing them the analytical tools necessary to preserving their integrity.

The goal of the USCSI course is to prepare inspectors to perform their duties in a manner that will ensure personal integrity and will also permit inspectors to perform a professional service for the public. During this course, inspectors who perform searches

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and seizures are taught that they must adhere to the policies set forth in the Personal Search Handbook.<sup>13</sup>

The *Customs Basic Enforcement School* (CBES) which includes the Criminal Investigator's Training Program consists of a total of 720 hours of criminal investigator training. Of these 720 training hours, 31 hours are specifically dedicated to the review of the professional and ethical requirements of federal service. In addition, ethical and professional standards are included in most of the numerous blocks of instruction throughout the entire 17-week program.

Customs provides several courses at the in-service level for its employees. Of particular interest are: *Customs Supervisory School*, *Special Field Agent Seminar* (SAFS), *Sector Enforcement Specialists*, *Senior Inspector*, and the *Technical Enforcement Officers*. With the exception of SAFS, the training courses are taught in part by the Customs Internal Affairs Training Staff at the Customs Academy and consist of a combined total of 400 hours, 6% of which is dedicated to professionalism training. The training that is provided at this level to career employees, as well as those entering or already in supervisory positions, serves to reinforce the corruption prevention material taught at the basic level of training. SAFS is a 40-hour course taught by the Southern Police Institute. Included in this course is four hours of discussion of the code of values that guides agents' choices and actions.

ATF: There are three basic training programs related to the overall subject of fairness in law enforcement and professionalism. Although ATF does not offer any training programs entitled "Fairness In Law Enforcement" or "Professionalism", both subjects are addressed during *CORE Training*, *New Professional Training*, and *Supervising in ATF*.

*CORE* training is a 3-day orientation program provided to all professional series employees and currently includes 4 hours of training dedicated to ethics, integrity, sexual harassment and equal employment. This program places special emphasis on the issue of discrimination and specifically informs employees that they may not discriminate or harass other employees, applicants for employment, or other persons dealing with the bureau, on the basis of race, color, religion, national origin, sex, sexual orientation, age or disability. One of the fundamental purposes of *CORE* training is to instill in the new employee the concept of professionalism, and the need to treat all people in a fair and impartial manner.

*New Professional Training* (NPT) is a 13-week basic training course for new special agents and a 9-week basic training course for new inspectors. During the NPT course, special agents and inspectors learn the laws and regulations enforced by ATF,

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<sup>13</sup> See section on Fairness In Law Enforcement Policies for further discussion of the *Personal Search Handbook*.



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investigative techniques and policies and procedures. Professionalism and integrity are central themes that are continually reinforced throughout the training programs. As part of their overall instruction, special agents and inspectors are informed that ATF does not target persons or groups for investigation based on their color, national origin, gender, or political or religious affiliation, but rather for known or suspected criminal activity.

*Supervising in ATF* is a 2-week training program design to teach new ATF supervisors how to apply the principles of professionalism and integrity as first line supervisors. The program currently includes 8 hours of integrity, ethics and related training.

**IRS:** IRS-CID new employee orientation course focuses on the core values of professionalism - ethics, respect, honesty, quality, and selflessness- using group activities and scenarios which utilize role-playing.

The IRS-CID advanced level course, *Special Agent Investigative Techniques*, provides training in tax law and investigative techniques and serves as a re-introduction to the core values model introduced at the basic level. The core values model provides IRS agents with a sense of the attributes necessary for becoming successful federal LEOs. While ethics and integrity are the crux of the model, other values such as honesty, respect, and selflessness are emphasized as well throughout the course.

IRS-CID offers numerous in-service training courses and requires that its agents receive continuing professional education each year. One course is of particular interest. The *New Group Manager Orientation Program* which discusses ethics and integrity in managing employees, employee performance and discipline issues in a fair and ethical manner, responsibility and accountability as a manager, ethical choices as a manager, and prevention of sexual harassment. Over 50% of a combined total of 24 hours is dedicated to professionalism training.

## **RECOMMENDATIONS**

The Presidential Directive also requests recommendations for improving the training programs, policies, and practices of Treasury and its bureaus. Accordingly, this section of the report addresses these issues. The recommendations are as follows:

- (1) That at the conclusion of the field test, Treasury and its law enforcement bureaus review and analyze the data collected from the projects being conducted by the Secret Service and the Customs Service and, based on this review and analysis, make any necessary changes to Treasury or bureau policies or procedures.
- (2) That the bureaus ensure that specific professionalism training, as defined by this report, is provided prior to the LEOs entering FLETC for basic training. All Treasury law enforcement bureaus should have new employee orientation courses in order to instill the core values of professionalism within each LEO at the start of their career. This

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orientation will also allow the LEO to identify with his or her bureau, its mission, vision, values, and expectations. Specifically, the bureaus should look to the IRS course, which utilizes role-play, group scenarios, and other group-oriented activities, as an adequate model when reevaluating their orientation-level training courses.

(3) That FLETC conducts a formal curriculum review conference every two to three years for the Criminal Investigators Training Program and Mixed Basic Police Training Program. FLETC should continue its practice of periodically reviewing courses offered to the new LEOs to ensure those specific training subjects within the area of professionalism, diversity, sensitivity, interpersonal awareness, EEO issues, sexual harassment, ethics, and cultural diversity are conducted in a uniform, comprehensive, and timely manner. Individual subjects may be reviewed any time at the request of FLETC or a participating organization.

(4) That the bureaus continue to ensure that specific training on diversity, sensitivity, interpersonal awareness, EEO issues, sexual harassment, ethics and integrity are provided. Professionalism training must continue throughout an individual's career and should focus on the specific areas evidencing a need for improvement or reassessment. The training officers should conduct an annual review of current policy and procedures on professionalism and ensure that all lesson plans are current. The review should also ensure that all LEOs are receiving sufficient hours dedicated to professionalism subjects. All training should be provided in a timely manner and with the highest possible level of quality necessary to meet the challenges of today's LEO.

## CONCLUSION

As discussed in this report, Treasury and its law enforcement bureaus have longstanding policies aimed at ensuring that their employees do not target persons for inspection, investigation or other law enforcement activity on any impermissible basis such as their race, national origin, or gender. Treasury and its bureaus also have put in place processes to ensure that such policies are complied with and that if violations do occur appropriate disciplinary steps are taken.

As the President's Directive recognizes, however, the federal government must continue to search for ways to ensure that its law enforcement officials do not engage in unlawful profiling based on race, gender or ethnicity, or any other prohibited forms of discriminatory conduct. Through Treasury's field test, it will develop a better understanding of how its policies are applied by Secret Service and Customs personnel in making traffic stops and pedestrian stops, and in conducting more extensive inspections and interviews than customary with entrants to the United States. This understanding should not only enable Treasury to provide the data needed to respond to the President's Directive, but also to enhance its policies, procedures, and training aimed at preventing discriminatory activities by its personnel. As recommended in this report, Treasury and

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all its relevant bureaus will review and analyze the data collected during the field test and then, if necessary, revise their policies, procedures and training to reflect what was learned through the data collection.

As the President has made clear, there is simply no room in federal law enforcement for discriminatory conduct based on race, ethnicity, and gender. Indeed, the President's commitment that all members of the public be treated fairly by federal law enforcement personnel is clear, longstanding, and consistent. The Treasury Department shares this commitment, and dedicates itself to a course of action designed to achieving the President's goals. The information presented in this report is but one aspect of the Department's effort to ensure, in both word and practice, that its commitment to fairness in law enforcement is reflected not only in formal policies and procedures, but in all of its day-to-day operations.

**Racial Profiling Directive  
Meeting Agenda  
October 7, 1999**

I. Field test implementation plans

- A. Department of Justice
  - INS outstanding issues
- B. Department of Treasury
- C. Department of Interior

II. Policies, practices and training

- A. Department of Justice
  - DEA
  - INS
  - FBI
- B. Department of Treasury
- C. Department of Interior
- D. Recommendations

Interior

## **Fairness in Law Enforcement: Collection of Data**

The Department of the Interior (DOI) differs from the Department of Justice and Treasury agencies in that DOI is not a law enforcement agency. The DOI is a land management agency composed of 8 bureaus, five of which have a law enforcement component in order to meet our legislated mandate to protect public lands, Indian lands, cultural, historical and natural resources, and parks and to protect fish and wildlife and their habitats as well as our employees, residents, contractors, and visitors. As use and visitation have increased in those areas administered by the DOI, our law enforcement programs have become more visible and more pro-active.

The Office of Managing Risk and Public Safety (MRPS) is an integrated risk management office which resides within the Office of the Secretary and reports to the Assistant Secretary - Policy, Management and Budget. The Law Enforcement and Security Team (LEST) is one of the three teams which comprise MRPS.

The MRPS/LEST is responsible for the design, implementation and coordination of this program. The mission of the LEST is to ensure the successful stewardship of the Secretary of the Interior's responsibilities for effective Departmental law enforcement and security policies. The LEST has primary responsibility for policy direction, evaluation, inspection, and support of law enforcement and security programs Department-wide. Team members represent the Secretary in interagency law enforcement and security matters and facilitate intra-agency coordination and cooperation.

In formulating the Fairness in Law Enforcement: Collection of Data plan (plan) the mission and authority of those bureaus with law enforcement components were reviewed as potential participants and/or eliminated. A description of the bureau law enforcement programs and the rationale for our decisions follows:

### **Bureau of Indian Affairs**

The Bureau of Indian Affairs Office of Law Enforcement Services (OLES) writes that their mission "is to uphold the constitutional sovereignty and customs of Tribes, while protecting the rights of all people; to protect life and property; ensure employment suitability and to promote and preserve peace within Indian country. This office is responsible for the overall management of the BIA Law Enforcement Program, and has primary responsibility for the investigation of crimes which occur in Indian country. By the end of this calendar year the OLES expects to have a law enforcement program with approximately 424 Police Officers and Criminal Investigators. Because of their mission and legislative authority, the overwhelming number of individuals the BIA law enforcement encounters on a daily basis are Indians. For this reason, the decision was made to remove this component from consideration.

### **Bureau of Land Management**

The Bureau of Land Management employs 206 law enforcement officers (56 special agents and 150 rangers) and describe their mission as "tasked with providing visitor and resource protection services in support of all BLM program areas." BLM officers conduct high-priority investigations and enforcement actions that focus on resource protection and public health and safety, with the goal of ensuring compliance with both Federal criminal laws and land use regulations on public lands under BLM's management jurisdiction. BLM law enforcement is also committed to reducing illegal drug activities on public lands, at the direction of the Office of National Drug Control Policy. The BLM focuses its efforts on reducing marijuana cultivation and illicit drug lab manufacturing, both of which pose a direct threat to the land, its natural resources, and legitimate land users. Bureau of Land Management law enforcement officers patrol approximately 264 million acres of public land, but have no General Authority legislation. After consideration of this component's mission, staffing, responsibilities and authorities, it was removed from consideration.

### **Bureau of Reclamation**

The mission of the Bureau of Reclamation is "to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public."

The Bureau of Reclamation presently has a law enforcement program only at Hoover Dam. The law enforcement authority for Hoover Dam, an American Icon, was ceded by the General Services Administration when the dam was turned over to the Department of the Interior. The law enforcement component is a 14 person Police Department. The decision was made to remove this small component from consideration.

### **U. S. Fish and Wildlife Service**

The U. S. Fish and Wildlife Service has two law enforcement components. The Division of Law Enforcement presently has 218 Special Agents responsible for specific law such as the Lacey Act, Endangered Species Act, CITES, and other laws, treaties and regulations. Their jurisdiction extends to all property, regardless of ownership, within the United States and territories. The Division of Refuges presently has 686 "commissioned" refuge officers. Of these only 70 are full time law enforcement officers. The remaining commissioned refuge officers are collateral duty officers whose primary duties range from tractor operator to resource management specialists and biologists. Because neither component of the U. S. Fish and Wildlife Service has General Authorities legislation, the decision was made to remove these components from consideration.

## Participating Components

### National Park Service

The "Organic Act" of August 25, 1916, states that "the Service thus established shall promote and regulate the use of Federal areas known as national parks, monuments and reservations . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

The National Park System of the United States comprises 378 areas covering more than 83 million acres in 49 States, the District of Columbia, American Samoa, Guam, Puerto Rico, Saipan, and the Virgin Islands. These areas are of such national significance as to justify special recognition and protection in accordance with various acts of Congress.

The National Park Service "General Authorities Act" of 1976 states: "The Committee intends that the clear and specific enforcement authority contained in this subsection, while necessary for the protection of the Federal employees so involved, will be implemented by the Secretary, to ensure that law enforcement activities in our National Park System will continue to be viewed as one function of a broad program of visitor and resource protection."

The National Park Service law enforcement program today consists of two separate and distinct, but interrelated components. Approximately 2202 National Park Rangers and Special Agents provide law enforcement protection for the majority of the 378 National Park Areas. They are for the most part, a full service law enforcement agency with additional expertise in many other skills, such as life and safety operations. These law enforcement personnel make hundreds of thousands of contacts each year. For this reason, it was decided that this component should be a part of this study and program.

The United States Park Police force is the oldest uniformed Federal Law Enforcement agency in the U. S. Its lineage traces to 1791. The United States Park Police is primarily responsible for National Park Service areas in Washington, DC, New York City, NY, and San Francisco, CA. Additionally, officials at the rank of Captain are assigned to 6 of the 7 Regional Offices and in other areas as Law Enforcement Advisors to the National Park Service law enforcement program. They are a full service police agency with internationally recognized expertise in Presidential and dignitary protection and in the handling of high-profile national celebrations and for crowd control during extremely large gatherings and demonstrations. The present staff consists of 645 officers. These law enforcement officers also make hundreds of thousands of contacts each year. It was decided that this component should be a part of this study and program.

## Sites

The MRPS/LEST in consultation with the National Park Service and U. S. Park Police propose the following sites:

In the Pacific West Region: Lake Mead National Recreation Area, NV/AZ, and Yosemite National Park, CA.

In the Intermountain Region: Grand Canyon National Park, AZ, and Glen Canyon National Recreation Area, AZ, UT.

In the Midwest Region: Jefferson National Expansion Memorial, St. Louis, MO, and Indiana Dunes National Lake Shore, IN.

In the Southeast Region: Natchez Trace Parkway, MS/TN, and the Blue Ridge Parkway, VA/NC.

In the Northeast Region: Valley Forge National Historical Park, PA, and the Delaware Water Gap National Recreation Area, PA/NJ.

In the National Capitol Region: The Baltimore Washington Parkway patrolled by U. S. Park Police officers.

Due to the lack of significant visitation and law enforcement contacts, the decision was made to remove the Alaska Region from site consideration.

The proposed sites represent high visitation areas where there are exceptionally active law enforcement programs.

## Data Sets

The DOI will utilize those codes developed and agreed to in consultation with the Departments of Justice and Treasury and approved by the Attorney General. The DOI proposes to collect the information by hard copy, paper forms. The form DOI proposes to use is attached for your consideration. Attached also is a draft General Order, written by the U. S. Park Police Planning and Development unit. Both National Park Service components have reviewed the form and concur that it will work. One important consideration discussed at both meetings we attended is that in identifying race and ethnicity, we will use officer perception vs. questioning those individuals with whom there is contact, but no search, warrant and/or arrest.



## **Training**

### **PRESENT**

All Department of the Interior commissioned and sworn law enforcement officers are trained at either the Federal Law Enforcement Training Center (FLETC) administered by the Department of the Treasury, or in the case of seasonal National Park Service rangers, at one of 13 approved academies. Included in the training received is the clear message that racial profiling is wrong and against Federal government policy.

### **PLANNED**

The MRPS/LEST in consultation with the NPS components and the FLETC will develop an orientation briefing on racial profiling and the collection of data. All officers, rangers and special agents assigned to the selected sites will be trained and will participate in this program. All law enforcement contacts will require the completion of the attached form. Additionally, the DOI will develop and implement a 1 hour discussion of Racial Profiling, which will be a mandatory core requirement of all DOI in-service training.

## **Reporting**

The DOI will conduct the field test using hard copy, paper only. The final DOI report will be placed in whatever format is required by the Attorney General, in order that we might submit a report which is compatible with the Justice and Treasury reports.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

October 1, 1999

Mr. Brian A. Jackson  
Associate Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue N.W.  
Washington, D.C. 20530

Dear Mr. Jackson:

In accordance with the President's June 9, 1999 Directive on Fairness in Law Enforcement that states in part, "the Attorney General shall report to me, in consultation with relevant agency heads..." and per your request, please find attached for review a draft of Treasury's report to the President.

The draft report is currently under review within the Department and the final report from Secretary Summers to the President is scheduled to be completed October 8, 1999.

Further, to ensure consistency within the law enforcement community, I would appreciate seeing a copy of the Department of Justice's draft report. As you know this matter is "time-sensitive", so I request you fax a copy of the draft to my office. My fax number is 202-622-9747.

If you have any questions, please feel free to contact Phyllis Throckmorton or me at 202-622-9750.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaime Cagigas", written over a printed name and title.

Jaime Cagigas  
Director

Office of Professional Responsibility

cc: James E. Johnson  
Under Secretary (Enforcement)

Draft, 10/01/99, 5:30 p.m.

**DEPARTMENT OF THE TREASURY  
REPORT ON FAIRNESS IN LAW ENFORCEMENT  
October 1999**

**INTRODUCTION**

On June 9, 1999, President Clinton issued a Directive, entitled *Fairness in Law Enforcement: Collection of Data*, directing the Secretary of the Treasury, the Attorney General, and the Secretary of the Interior to design and implement a system "to collect and report statistics relating to race, ethnicity, and gender for law enforcement activities." To gain a better understanding of actual practices, the Presidential Directive mandates that the Treasury, Justice and Interior Departments each develop a proposal "for a system of data collection and an implementation plan for a field test of that system." President Clinton also instructed the three Departments to "provide a report on the training programs, policies, and practices regarding the use of race, ethnicity, and gender in law enforcement activities, along with recommendations for improving these programs, policies, and practices." A report is to be submitted to the President within 120 days of the Presidential Directive. This report responds to that requirement.

**TREASURY'S IMPLEMENTATION OF THE PRESIDENT'S DIRECTIVE**

It is the policy of Treasury and its law enforcement bureaus to prohibit their employees from selecting persons for inspection, investigation or other law enforcement activity on any impermissible basis such as their race, national origin, or gender. This policy is communicated to employees by Treasury and bureau management and is part of the training Treasury bureau personnel receive. Personnel who violate this policy are subject to disciplinary action.

Although Treasury and its bureaus' policies against discriminatory practices are longstanding, no comprehensive study has been done on how these policies are followed in the field. In accordance with the President's directive, Treasury has designed a data collection field test to gain a better understanding of actual practices. The data collected is to "be sufficiently detailed to permit an analysis of actions relevant to the activities of the included law enforcement agencies by race, ethnicity, or gender." The data acquired is not to contain any information that may reveal the identity of any individual. The Presidential Directive also provides that each Department must implement field tests within 60 days of finalizing the data collection proposal. Treasury's field test is scheduled to begin on December 1, 1999, and will conclude on December 31, 2000.<sup>1</sup> At the conclusion of the one-year field test, Treasury and Interior will provide the Attorney General with a summary of the information collected which will include "civilian complaints received alleging bias based on the race, ethnicity, or gender of the

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<sup>1</sup> Although Treasury's field test period for purposes of the Presidential Directive begins on December 1, 1999, Customs has already begun collecting the relevant data.

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complainant in law enforcement activities; the process for investigating and resolving such complaints; and the outcome of any such investigations."

As discussed in more details below, Treasury's field test will provide a statistical snapshot of traffic stops, pedestrian stops, and the more extensive inspections or interviews of entrants to the United States being conducted by the Secret Service and the Customs Service. This data, in turn, will assist Treasury and all of its bureaus in refining its policies and training to prevent racial profiling and other prohibited discriminatory actions.

### **Methodology**

The Department of the Treasury's Office of Enforcement convened a working group to formulate Treasury's data collection project and field testing plan. The working group was comprised of one or more individuals from each of the Treasury law enforcement bureaus who have expertise in data collection, computer systems, and stop and search issues. The working group reviewed bureau policies and training curricula, and developed a proposal for a data collection field test.

### **PART I: DATA COLLECTION PROPOSAL**

Treasury's data collection proposal will allow for the review of the law enforcement activities of two components of law enforcement bureaus: the United States Secret Service Uniformed Division, Foreign Missions Branch, and the United States Customs Service, Passenger Operations, at five inbound air ports of entry.<sup>2</sup>

Treasury's proposal will enable the Secret Service and the Customs Service to collect data on the race,<sup>3</sup> gender, and ethnicity on such actions as traffic stops, pedestrian stops, and more extensive inspections or interviews than are customarily conducted with entrants to the United States.

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<sup>2</sup> The other Treasury law enforcement bureaus, the Bureau of Alcohol, Tobacco, and Firearms, the Federal Law Enforcement Training Center, and the Internal Revenue Service, Criminal Investigation Division, do not generally perform traffic or pedestrian stops. Therefore, they do not have a basis to gather the information requested in the President's Directive.

<sup>3</sup> The Department of the Treasury will use the six combined minimum racial categories as outlined in the Office of Management and Budget's (OMB) October 1997 issuance on revision to Statistical Policy Directive 15 on the classification of Federal data on race and ethnicity. The combined racial categories are American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander, and White.

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**UNITED STATES SECRET SERVICE**

The Secret Service field test will consist of data collection on traffic and pedestrian stops within the Uniformed Division, Foreign Missions Branch. Uniformed Division officers (hereafter "officers") will record the reason(s) for the stop and data on the race, gender, ethnicity based on their observation.

**Field Test Area:** The Uniformed Division is organized into three branches: Foreign Missions, Naval Observatory, and the White House Branch. The Foreign Missions Branch has approximately 100 officers who are responsible for the protection of foreign diplomatic missions and personnel in the metropolitan area of the District of Columbia. Foreign Missions officers conduct patrols that cover Northwest Washington, D.C., and a small portion of Montgomery County, Maryland. The patrol boundaries extend from Constitution Avenue to East/West Highway in Montgomery County. Officers assigned to the Foreign Missions Branch provide protection through vehicle patrols, foot patrols and fixed posts. It is in providing protective coverage for diplomatic locations in the District of Columbia and the surrounding metropolitan area that the officers come in contact with the public.

**Authority:** Title 18, United States Code, Section 3056, is the primary enabling statute that allows the Secret Service to perform its protective mission and conduct investigations. The statute authorizes the officers and agents of the Secret Service to execute warrants issued under the laws of the United States, carry firearms, and make arrests without a warrant for any offense against the United States committed in their presence.

Title 3, United States Code, Section 202, provides the officers with law enforcement authority similar<sup>4</sup> to the District of Columbia's Metropolitan Police Department. This statute charges the Uniformed Division with protecting the Executive Mansion and grounds in the District of Columbia, any building in which Presidential offices are located, the Treasury Building and grounds, the President and his or her immediate family, foreign diplomatic missions located in the metropolitan area of the District of Columbia, the temporary official residence of the Vice President and grounds in the District of Columbia, the Vice President and members of his or her immediate family, foreign diplomatic missions located in metropolitan areas (other than in the District of Columbia), and foreign diplomatic missions located in such areas in the United States, its territories and possessions, as the President, on a case-by-case basis, may direct. The statute also enables the officers to make traffic stops and arrests.

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<sup>4</sup> Secret Service's powers nearly correspond to those of the Metropolitan Police Department of the District of Columbia, but relate to the Secret Service's mandated protective responsibilities.

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**Project Description:** Secret Service Uniformed Division officers are authorized to make a traffic or pedestrian stop when, in their view an individual is suspected of committing, has committed, or is about to commit any felony or misdemeanor prosecutable by the U.S. Attorney. It is the policy of the Uniformed Division that its officers shall, in situations justifying such action and within constitutional limits, exercise the authority to stop and frisk. This authority, if properly used, has been identified as an effective police procedure. Officers are not allowed to abuse this procedure, to harass persons or to cause them undue discomfort, embarrassment, or inconvenience. Furthermore, officers may not make these stops on an impermissible basis such as race or gender.

Once officers make the stop, they must establish radio contact with the Foreign Missions Branch Control Center. The officer must communicate the following information: identification of unit(s) conducting the stop, license number and description of subject vehicle, reason for conducting the stop, location where stop is initiated, location where vehicle stops (if different from where initiated), number and description of occupants, and general or specialized support needed (criminal records check).

If these stops result in an arrest, this information is gathered and tracked through the Uniformed Division's case tracking system. For purposes of this project, the officers will also gather data on these contacts with the public that do not result in an arrest.

**Data Collection:** Where a stop has been made, but no arrest occurs, officers will be required to complete a contact card<sup>4</sup> after each traffic or pedestrian stop. They will record the person's name, race, gender, ethnicity, and reason for the stop. The individuals stopped will not be required to provide any information; rather, the officers will record the race, ethnicity, and gender based upon their own observations. This process was deemed appropriate to prevent the traffic or pedestrian stop from escalating into a confrontational situation.

The officers will also indicate the reason for the stop, the location of the stop, and the reporting officer's name, unit, and section. For the purpose of this proposal, "Stop and/or Search" will mean any individual who is detained, asked to produce proof of identity, and subjected to a name search and/or records check through the appropriate law enforcement databases. The "Stop and/or Search" will not include those individuals who are subjected to a cursory stop and/or interview, such as an individual who is stopped for the purpose of permitting a motorcade to proceed, nor will it include contacts initiated by the citizen. Under those circumstances the contact card will not be completed.

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<sup>4</sup> The Secret Service uses the same contact card used by the District of Columbia's Metropolitan Police Department. It allows the law enforcement officer to indicate the type of stop (pedestrian, vehicle or bicycle), the location of the stop, the race and gender of the subject, and a justification for the stop or contact.

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At the end of each shift, officers will be required to turn in the contact cards to their shift supervisor. The shift supervisor will forward the contact cards to the Deputy Chief's staff office and the administrative lieutenant<sup>6</sup> will be responsible for entering the information into a Microsoft Access or similar database. Each contact card will be cross-referenced with the communication base radio log, when necessary. This process allows the shift supervisor to address any inconsistencies between the contact card and the communication radio log. For example, if an officer reports four traffic stops and turns in only three contact cards, the shift supervisor will request the additional contact card from the officer.

**Data Compilation:** All information on stop and arrests resulting from traffic or pedestrian stops will be retained in Microsoft Access or a similar database program for statistical purposes only. As indicated above, the administrative lieutenant's staff will be responsible for entering the data into the system. These statistics will only be disseminated to the appropriate requesting agencies. The database will not include personal identification;<sup>7</sup> however, the card file will be cross-referenced with a number in the database to verify accuracy and facilitate the investigation of any citizen complaint.

**Complaint Activity:** Any complaints that arise during this field test will be handled through the normal complaint processing channels. The current process allows for a citizen to file a complaint with the Director of the Secret Service through the Public Affairs Office. The Public Affairs Office determines the appropriate office to address the complaint, e.g., Inspection Division or Chief or Deputy Chief of the Uniformed Division. If complainants are not satisfied with the response, they may contact the Department of the Treasury. The Department of the Treasury contacts the Secret Service for additional information, provides the complainant with a response and takes appropriate action, if such action is deemed necessary.

The Deputy Chief, Foreign Missions Branch will be responsible for tracking and maintaining all complaints related to this data collection project. In addition, based on the data collected, the Deputy Chief, Foreign Missions Branch will identify any significant trends and identify any potential concerns.

**UNITED STATES CUSTOMS SERVICE**

The Customs Service's field test will consist of data collection on the inbound personal search process at five air ports of entry: Chicago O'Hare International Airport, New York JFK International Airport, Los Angeles International Airport, Newark International Airport, and Miami International Airport. Customs inspectors (hereafter "inspectors")

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<sup>6</sup> The administrative lieutenant is located in the Deputy Chief's Office.

<sup>7</sup> If the officer makes an arrest, the person's name will be included in the database.

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will record data on the race, gender, and citizenship on passengers subjected to a personal search.

**Field Test Area:** The Passenger Operations Branch, which will serve as the test area for the Customs Service, is responsible for the passenger enforcement process. The Passenger Operations Branch's principal mission is to increase seizures of contraband while facilitating passenger traffic flow. With the ever-increasing number of passengers entering the United States, and increased pressure to meet its interdiction responsibilities, while still minimizing disruptions to passengers and commercial traffic, Customs uses a passenger enforcement selectivity process as an important and necessary aspect of its drug interdiction mission. The passenger enforcement process enables inspectors to determine which passengers should receive closer attention. It identifies the potential risk of incoming flights and their passengers in order to determine the level of examination needed.

**Authority:** Title 19, United States Code, Section 1581 et sec., gives inspectors the authority to search, inspect, and/or examine all persons, luggage, and merchandise discharged or unladen from a carrier arriving in the United States from a foreign destination. It also enables inspectors to conduct searches of persons at the border to detect the presence of contraband. Inspectors use training, experience, subject-matter expertise, information and intelligence related to smuggling trends, and analysis of recent seizures to determine who, among over 450 million people arriving at the borders each year, should be searched.

**Project Description:** The Customs Service, who voluntarily initiated such a procedure prior to the Presidential Directive, will collect the required data on persons stopped and searched in the inbound personal processing units at five selected ports of entry. The personal search data on international travelers is collected and analyzed by the Passenger Data Analysis Team. The team monitors personal searches, analyzes local and national trends, uncovers any potential problems, and reports critical areas of concerns to Customs management. The Passenger Data Analysis Team identifies potential areas of risk using a four-step process. The team will also use these steps when working with port offices to develop local passenger compliance and enforcement strategies. The four steps are: (1) identify potential risks in passenger compliance; (2) analyze and assess risks to fully comprehend issues; (3) prescribe action to mitigate the risks; and (4) track and follow-up progress action plan.

**Data Collection:** Inspectors use the Personal Search Worksheet to record information on any personal search<sup>8</sup> for later transcription into Treasury Enforcement Communications

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<sup>8</sup> It is important to note that personal searches are conducted in private rooms or areas away from the view of the general public. Those personal searches that require moving a person to a medical facility for a medical examination require the approval of the port director or person designated to act in his/her



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System (TECS). Inspectors are responsible for entering the data into TECS prior to the end of their shift. When the search results in a seizure and/or arrest, the Worksheet becomes part of the seizure documentation. When no enforcement action results, the Worksheet will be retained locally for two years and three months from the date of the search.

The TECS report includes data elements such as race, gender, and citizenship, as well as detailed narratives regarding the circumstances surrounding the search and/or detention. Inspectors are required to ensure that times are recorded accurately, including specific start-stop times for completing various steps or types of searches (e.g., "patdown", partial body, and drive time to and from the medical facility.)

The TECS report contains the objective and articulable facts that support the particular search or detention. Inspectors complete as much information as possible concerning the description of the person and circumstances surrounding the search, including factors that not only led to a "patdown," but also those factors that led from a "patdown" to a more intrusive search.

Inspectors obtain supervisory approval of all records of personal searches entered into the TECS database. Supervisors certify that the TECS report contains all required information and that sufficient detail exists regarding the circumstances surrounding the search. Where details are missing or unclear, the supervisors coordinate with the inspectors to correct the report.

Port directors ensure that TECS reports pertaining to personal searches are reviewed periodically to determine personal search effectiveness at the port, including whether there may be any improprieties in the conduct of these searches. Where reports indicate that effectiveness has decreased or that improprieties exist in the conduct of searches, the port directors assess whether corrective action is needed. In addition, supervisors are required to take remedial action for deficiencies. As indicated above, the field test data collection project will only report on the race, gender, and citizenship of personal searches.

**Data Compilation:** The Customs Service has implemented significant changes to its computer system that will improve the data integrity for all personal searches. For

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absence, provided they are grade GS-13 or above and have consulted with Customs Counsel.

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example, race, gender, and citizenship, which were existing data fields, have now become mandatory fields. In addition, Customs has added new mandatory data fields, such as port of departure, port of embarkation, port director and chief counsel notification, reasons for the search, and the referring officer for the search. These changes to the computer system will allow the Customs Service to better identify who they search by race, gender, and citizenship, and provides the ability to do statistical and trend analyses by ports of entry and Customs-wide. The computer enhancements will also allow the Customs Service to conduct trend analysis on all personal searches by source country and transit country for targeting purposes. More importantly, the Customs Service will be able to perform trend analysis to identify potential concerns.

**Complaint Activity:** During the data collection field test, all complaints on personal searches will be handled through the newly established Customer Satisfaction Unit (CSU). The CSU ensures that complaints are correctly addressed and that passengers receive appropriate feedback. The CSU also has responsibility for providing current information to senior management and analyzing trends within the complaint system. If complainants are not satisfied with the response, they may contact the Department of the Treasury. The Department of the Treasury contacts the Customs Service for additional information, provides the complainant with a response and takes appropriate action, if such action is deemed necessary.

## **PART II: POLICIES, PROCEDURES AND TRAINING**

The Presidential Directive also requests a report on "training programs, policies, and practices regarding the use of race, ethnicity, and gender" in "law enforcement activities, along with recommendations for improving those programs, policies, and practices." Accordingly, Part II of this report describes the relevant Treasury and bureau policies relating to fairness in law enforcement, as well as an overview of how such policies are implemented. It also discusses the training programs Treasury and its bureaus have in place to train law enforcement personnel on the relevant policies. While only particular offices within the Customs Service and the Secret Service were discussed in Part I, all Treasury law enforcement bureaus are discussed in Part II.

### **Policies**

As discussed in more detail below, Treasury and its bureaus have issued a number of policies related to fairness in law enforcement issues. In addition to these specific policies, policies in other areas may be relevant. In particular, Treasury and its bureaus, like all executive branch employees, are required to follow the *Standards of Ethical Conduct for Employees of the Executive Branch*, issued by the United States Office of Government Ethics, and the *Office of Personnel Management Employee Responsibilities and Conduct Regulations*. Additionally, Treasury has issued its own *Department of the Treasury's Employee Rules of Conduct*, which includes an explicit ban on discrimination

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or harassment of persons on the basis of that person's race, color, national origin, sex, sexual orientation, age, or disability. Similarly, ATF, the Customs Service, the Internal Revenue Service, Criminal Investigation Division (IRS-CID), and the Secret Service each has its own policies prohibiting discrimination and sexual harassment. Finally, the Treasury has issued a *"Policy on Off-Duty Conduct, Bias-Motivated Conduct, and Membership or Participation in Hate Groups by Law Enforcement"* to ensure that all law enforcement personnel are aware Treasury's expectations regarding off-duty and on-duty conduct. That policy specifically addresses issues regarding integrity, professionalism, and public trust.

### **Specific Policies Related to Fairness in Law Enforcement**

**Secret Service:** On August 26, 1997, the Secret Service issued a memorandum to all employees entitled *"Professional Behavior in the Secret Service."* This memorandum reaffirms the Secret Service's policy of maintaining a professional work environment that is reflective of high caliber employees. This memorandum reminds Secret Service employees that they should be professional and courteous when dealing with fellow employees and the public.

Further, the memorandum establishes Secret Service's "zero tolerance" discrimination policy and it holds managers and supervisors accountable to react to and properly address reports of inappropriate actions that come to their attention. It further advises all employees that they will be held accountable for any inappropriate behavior that occurs within their areas of responsibility.

**Customs Service:** Inspectors performing searches and seizures of persons and property at the border, the functional equivalent of the border, or extended border must adhere to the policies set forth in the Personal Search Handbook CIS HB #3300-04A.

The goal of the Handbook is to assist inspectors in performing their enforcement duties in a manner that will ensure personal integrity and will also permit officers to perform a professional service for the public. Customs policies, procedures and training all reinforce that the Constitution guarantees the protection of an individual's right against unreasonable searches and seizures. Customs Service employees are trained to be diligent in their efforts to protect those rights while still accomplishing their enforcement mission. Treasury and the Customs Service prohibit the abuse of constitutional or statutory authority by Customs personnel. Customs Service personnel are aware of the limits of their authority and are required to use that authority judiciously, conscientiously, and courteously.

To ensure that this occurs, Commissioner Raymond W. Kelly is committed to improving the passenger enforcement process. While serving as the Under Secretary of Enforcement, Mr. Kelly tasked the Office of Enforcement's Office of Professional

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Responsibility (OPR) with assessing passenger enforcement targeting and reviewing inspector training to ensure that targeting does not discriminate on the basis of race, color, national origin, ethnicity, religion, gender or sexual orientation. During the course of OPR's review, Mr. Kelly was nominated and confirmed as the Commissioner of Customs. Prior to the issuance of the OPR report, Commissioner Kelly implemented a number of the recommended changes, including: mandating more intensive training for all new inspection personnel to include improved communication and intercultural skills, providing comment cards for passengers to provide feedback on Customs' services, and establishing a Customer Satisfaction Unit to process passenger complaints. In addition, Commissioner Kelly has established two committees, one internal and one external,<sup>9</sup> to review the procedures used in personal searches. Commissioner Kelly has tasked the committees to review the criteria used to identify passengers for more intrusive inspections, as well as analyze the search data to determine if the Customs Service is correctly selecting the high-risk passenger.

The *Personal Search Handbook* outlines the procedures for conducting personal searches. Under a new policy recently introduced by Commissioner Kelly, there may be as many as ten steps involved in a personal search, which can range from a "patdown"<sup>10</sup> to more intrusive searches.<sup>11</sup> As the personal search becomes more intrusive, the inspector must receive increasingly higher levels of supervisory approval. Additionally, at any point during the personal search process, the inspector and supervisor can consult with the Office of Chief Counsel. Thus, while a supervisor may approve a "patdown", a port director must approve a medical examination. An inspector, however, may terminate the secondary inspection at any time without supervisory approval.<sup>12</sup>

ATF: On July 7, 1998, ATF issued a policy statement on employee professionalism. The ATF policy statement on professionalism states "ATF employees are expected to conduct themselves in a professional manner." In addition, the policy states that all employees are responsible for maintaining the highest professional standards in the way they act and present themselves to their clients and their colleagues. This policy governs the behavior of employees within and outside of the workplace.

<sup>9</sup> Constance Newman, Under Secretary for the Smithsonian Institution, chairs the external committee (the Customs Personal Search Review Commission).

<sup>10</sup> A "patdown" is defined as "a search for contraband or other merchandise hidden on a person's body." In accordance with Customs' policy, all "patdown" personal searches require at least one "articulable fact" before the supervisor will authorize the search.

<sup>11</sup> If, after the patdown, the inspector continues to have reasonable suspicion that the person has contraband or other merchandise concealed on the body, a more intrusive (non-routine) personal search will be permitted with supervisory approval. More intrusive personal searches include a partial body search, the x-ray search, body cavity search, and detention for a monitored bowel movement (MBM).

<sup>12</sup> At any stage in the secondary inspection process, any person involved in a personal search, who is detained two hours after a personal search has begun, will be afforded the opportunity to have someone notified by the Customs Service personnel of their delay in Customs.

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**IRS:** The IRS issued the *Reform and Restructuring Act of 1998 (RRA98) Section 1203 Procedural Handbook*, which provides guidance on the fair treatment of employees, taxpayers, and taxpayer representatives. The Handbook states that "IRS is committed to treating employees, taxpayers, and taxpayer representatives fairly and equitably without regard to their sex, age, race, color, national origin, religion, or disability." The Handbook also mandates termination of any employee who engages in discrimination or other types of unfair law enforcement practices. It is the responsibility of the supervisor to discuss the contents of the RRA98 with all employees.

### Procedures

Treasury bureaus ensure employees understand and follow Treasury and bureau policies, including those outlined above, through communication, inspection, and discipline.

**Communication:** The bureaus ensure that employees are aware of and understand all applicable policies by having employees certify their awareness of certain policies, such as Customs' requirement that its inspectors certify that they have received a copy of the *Personal Search Handbook*. They also accomplish this goal by issuing management memoranda and statements to employees reinforcing and clarifying bureau policy, such as the Secret Service's requirement that each supervisor must remind employees of the written conduct standards during employee mid-year performance appraisals.

**Inspection:** All bureaus place responsibility for ensuring compliance with bureau policies on managers and supervisors. Managers are held accountable through management inspections. ATF and Customs employ self-inspection processes to help monitor compliance. For example, Customs has established its Self-Inspection Program (SIP) to verify that the Customs mission is "performed in the most effective and efficient way." The SIP allows supervisors to evaluate their success in managing, assessing and reporting on the conditions of their individual operations. The major focus of the SIP for managers and the Management Inspections Division (MID) are areas susceptible to vulnerability and corruption, mission performance, resource utilization, and internal and external relations.

As part of the SIP, at least semi-annually, supervisors execute Self-Inspection Worksheets (SIWs) for all areas over which they have delegated authority. SIWs have been tailored to assess particular areas of Customs' operations, including, where appropriate, passenger processing and other issues relating to fairness in law enforcement. The SIWs for Airport and Seaport Passenger Operations, for example, ask if the responding office has certified its personal search procedures for the reporting period.

Each core area examined is found to be either "Acceptable" or "Need Improvement." Reporting supervisors and next level supervisors certify their findings, and they are

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responsible for taking corrective action where necessary. The results of the inspections are channeled through the appropriate chain of command and ultimately to the Assistant Commissioners and the Commissioner.

Program level supervisors and managers are tasked with analyzing the results of self-inspections as a quality control measure and making program modifications in response to substantive findings. In addition, program managers must intervene in areas where critical deficiencies have been identified. Finally, the Customs Service has also appointed program coordinators for each major office within the Customs Service. They manage and oversee the SIP and coordinate with MID.

**Discipline:** All Treasury law enforcement bureaus discipline employees who violate bureau policies. Such discipline may range from verbal counseling to dismissal, depending upon the particular circumstances of the violation.

### Training

Treasury and its law enforcement bureaus also have training programs to ensure that all employees are aware of Treasury and bureau policies. In January 1999, in conjunction with a review of the Customs Service's Office of Internal Affairs by the OPR, all of the Treasury law enforcement bureaus were asked to provide an accounting of the ethics and related training broadly categorized as "professionalism" provided to law enforcement officers (LEOs). LEOs were identified as individuals who are authorized to make arrests and carry firearms and badges in the performance of their duties. The bureaus were asked to include basic and in-service level training courses.

The courses listed under the broad professionalism category exemplify the integration of ethics and integrity throughout the law enforcement officer's training process. Professionalism, as defined in this report, includes ethical conduct and integrity, as well as the related principles of honesty, respect, quality, impartiality, and selflessness. In addition, other principles related to professionalism such as sexual harassment prevention, interpersonal awareness, corruption prevention, use of force, cultural diversity, and civil rights - are also introduced and continuously reinforced throughout all phases of training.

**FLETC:** The Federal Law Enforcement Training Center (FLETC) is responsible for providing law enforcement training for over 70 federal agencies. In addition to providing training to the Treasury law enforcement bureaus, other participating organizations include the United States Park Police, the Immigration and Naturalization Service, and the Border Patrol. FLETC, with facilities located in Georgia and New Mexico, primarily trains federal law enforcement officers, but also provides state, local, and international law enforcement officers with training tailored to their special needs.

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All Treasury law enforcement bureaus receive basic training at FLETC. Additionally, most of the federal organizations conduct some or all of their advanced and in-service law enforcement training operations at FLETC, and over twenty have established on-site offices to oversee their training programs. Three of Treasury's law enforcement bureaus - IRS, ATF, and the Customs Service - conduct their bureau-specific training at FLETC; while the Secret Service performs its bureau-specific training at its facility in Beltsville, Maryland.

For the purpose of this report, FLETC provides two courses of interest to all federal LEOs - the *Criminal Investigator Training Program* (CITP) and the *Mixed Basic Police Training Program* (MBPTP). The CITP course, an in-depth study of basic law enforcement concepts and techniques, has an overall instructional period of 367 hours, 6% of which is devoted to the area of professionalism. Among the subjects taught within the professionalism area are human behavior, modern investigative technology, cultural sensitivity, civil rights, anti-corruption, sexual harassment prevention, and use of force. The seventy-two participating organizations are eligible to participate in this course.

MBPTP is a study of basic law enforcement concepts of importance to the LEO and has an overall instructional period of 342 hours, of which 8.4% is dedicated to discussions of professionalism. During the MBPTP, new officers also receive training offered by the Behavioral Science Division, stressing the importance of individual awareness and responsibility for ethical conduct within the law enforcement occupation. In addition, several topics similar to those taught in the CITP course, such as civil rights and the Federal Torts Claims Act, are also discussed.

Among the agencies participating in the MBPTP are the Capitol Police, U. S. Supreme Court Police, and the Secret Service, Uniformed Division.

**Secret Service:** The Secret Service offers two orientation-level training courses outlining agency requirements. These two courses also include discussions on ethics, interpersonal awareness, and the minimum standards of conduct required by all LEOs.

Secret Service provides advanced training for new officers in the Uniformed Division, as well as special agents. The new Uniformed Division Officers complete the *Uniformed Division Officer Training Course*, which discusses professionalism as it relates to the mission and activities that Secret Service Uniformed Division Officers perform. This course has a total of 500 instructional hours, of which 12% is dedicated to the professionalism subjects of ethics and integrity. New Secret Service special agents complete the *Special Agent Training Course*, with an instructional period of 550 hours of which 20% of which is dedicated to aspects of professionalism. As part of their overall instruction, special agents and inspectors are informed that Secret Service does not target persons or groups for investigation based on their color, national origin, gender, or political or religious affiliation, but rather for known or suspected criminal activity.

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On-the-job training and advanced in-service training programs supplement classroom study.

The Secret Service offers in-service training to all LEOs during the term of their careers. One example of the courses offered is the *Leadership and Organizational Behavior* course. This course focuses on such subjects as ethics, integrity, moral dilemmas, and employee responsibility. Over 20% of the course is dedicated to subjects that would be considered professionalism. Secret Service also offers to all employees a course entitled *Conference on Employee Diversity Issues*. This 40-hour course discusses key issues facing management and non-management employees in the area of mixing cultures on the job.

**Customs Service:** The Customs Service does not have a new employee orientation course. However, new inspectors and investigators must successfully complete basic training before they are sworn in and allowed to assume inspectional or investigative functions.

The *U.S. Customs Service Integrated Training Program* (USCSI) is specialized training that FLETC and the Customs Academy provide jointly for the Customs Service. Included in this 11-week program is an examination of cross-cultural communications. Professionalism is discussed with respect to victim/witness assistance, carrying and use of firearms, and employee conduct and responsibilities. Prior to the appointment of Raymond W. Kelly as Commissioner of Customs these and similar subjects related to professionalism were allotted 5.2% of the entire program time. Upon his appointment as Commissioner, Mr. Kelly mandated that all inspectors and special agents receive extensive training on interpersonal communication, cultural interaction, confrontation management, personal search policy, and passenger enforcement selectivity. These training courses, totaling 40 hours of instruction, have now become part of the USCSI. Refresher training in these topics is currently being conducted at the 38 airports handling the largest passenger volume. The USCSI now has over 20% of its instructional hours dedicated to professionalism.

The Customs Service's Internal Affairs training staff presents an eight-hour program of ethics reinforcement and anti-corruption training to all students attending USCSI. In addition to familiarizing new inspectors with the code of conduct, this curriculum focuses on two additional areas: (1) focusing student's attention upon the ethical issues and challenges attending their professional responsibilities; and (2) providing them the analytical tools necessary to preserving their integrity.

The goal of the USCSI course is to prepare inspectors to perform their duties in a manner that will ensure personal integrity and will also permit inspectors to perform a professional service for the public. During this course, inspectors who perform searches



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and seizures are taught that they must adhere to the policies set forth in the Personal Search Handbook.<sup>13</sup>

The *Customs Basic Enforcement School* (CBES) which includes the Criminal Investigator's Training Program consists of a total of 720 hours of criminal investigator training. Of these 720 training hours, 31 hours are specifically dedicated to the review of the professional and ethical requirements of federal service. In addition, ethical and professional standards are included in most of the numerous blocks of instruction throughout the entire 17-week program.

Customs provides several courses at the in-service level for its employees. Of particular interest are: *Customs Supervisory School*, *Special Field Agent Seminar* (SAFS), *Sector Enforcement Specialists*, *Senior Inspector*, and the *Technical Enforcement Officers*. With the exception of SAFS, the training courses are taught in part by the Customs Internal Affairs Training Staff at the Customs Academy and consist of a combined total of 400 hours, 6% of which is dedicated to professionalism training. The training that is provided at this level to career employees, as well as those entering or already in supervisory positions, serves to reinforce the corruption prevention material taught at the basic level of training. SAFS is a 40-hour course taught by the Southern Police Institute. Included in this course is four hours of discussion of the code of values that guides agents' choices and actions.

**ATF:** There are three basic training programs related to the overall subject of fairness in law enforcement and professionalism. Although ATF does not offer any training programs entitled "Fairness In Law Enforcement" or "Professionalism", both subjects are addressed during *CORE Training*, *New Professional Training*, and *Supervising in ATF*.

*CORE* training is a 3-day orientation program provided to all professional series employees and currently includes 4 hours of training dedicated to ethics, integrity, sexual harassment and equal employment. This program places special emphasis on the issue of discrimination and specifically informs employees that they may not discriminate or harass other employees, applicants for employment, or other persons dealing with the bureau, on the basis of race, color, religion, national origin, sex, sexual orientation, age or disability. One of the fundamental purposes of *CORE* training is to instill in the new employee the concept of professionalism, and the need to treat all people in a fair and impartial manner.

*New Professional Training (NPT)* is a 13-week basic training course for new special agents and a 9-week basic training course for new inspectors. During the NPT course, special agents and inspectors learn the laws and regulations enforced by ATF,

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<sup>13</sup> See section on Fairness In Law Enforcement Policies for further discussion of the *Personal Search Handbook*.

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investigative techniques and policies and procedures. Professionalism and integrity are central themes that are continually reinforced throughout the training programs. As part of their overall instruction, special agents and inspectors are informed that ATF does not target persons or groups for investigation based on their color, national origin, gender, or political or religious affiliation, but rather for known or suspected criminal activity.

*Supervising in ATF* is a 2-week training program design to teach new ATF supervisors how to apply the principles of professionalism and integrity as first line supervisors. The program currently includes 8 hours of integrity, ethics and related training.

**IRS:** IRS-CID new employee orientation course focuses on the core values of professionalism - ethics, respect, honesty, quality, and selflessness- using group activities and scenarios which utilize role-playing.

The IRS-CID advanced level course, *Special Agent Investigative Techniques*, provides training in tax law and investigative techniques and serves as a re-introduction to the core values model introduced at the basic level. The core values model provides IRS agents with a sense of the attributes necessary for becoming successful federal LEOs. While ethics and integrity are the crux of the model, other values such as honesty, respect, and selflessness are emphasized as well throughout the course.

IRS-CID offers numerous in-service training courses and requires that its agents receive continuing professional education each year. One course is of particular interest. The *New Group Manager Orientation Program* which discusses ethics and integrity in managing employees, employee performance and discipline issues in a fair and ethical manner, responsibility and accountability as a manager, ethical choices as a manager, and prevention of sexual harassment. Over 50% of a combined total of 24 hours is dedicated to professionalism training.

## **RECOMMENDATIONS**

The Presidential Directive also requests recommendations for improving the training programs, policies, and practices of Treasury and its bureaus. Accordingly, this section of the report addresses these issues. The recommendations are as follows:

(1) That at the conclusion of the field test, Treasury and its law enforcement bureaus review and analyze the data collected from the projects being conducted by the Secret Service and the Customs Service and, based on this review and analysis, make any necessary changes to Treasury or bureau policies or procedures.

(2) That the bureaus ensure that specific professionalism training, as defined by this report, is provided prior to the LEOs entering FLETC for basic training. All Treasury law enforcement bureaus should have new employee orientation courses in order to instill the core values of professionalism within each LEO at the start of their career. This

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orientation will also allow the LEO to identify with his or her bureau, its mission, vision, values, and expectations. Specifically, the bureaus should look to the IRS course, which utilizes role-play, group scenarios, and other group-oriented activities, as an adequate model when reevaluating their orientation-level training courses.

(3) That FLETC conducts a formal curriculum review conference every two to three years for the Criminal Investigators Training Program and Mixed Basic Police Training Program. FLETC should continue its practice of periodically reviewing courses offered to the new LEOs to ensure those specific training subjects within the area of professionalism, diversity, sensitivity, interpersonal awareness, EEO issues, sexual harassment, ethics, and cultural diversity are conducted in a uniform, comprehensive, and timely manner. Individual subjects may be reviewed any time at the request of FLETC or a participating organization.

(4) That the bureaus continue to ensure that specific training on diversity, sensitivity, interpersonal awareness, EEO issues, sexual harassment, ethics and integrity are provided. Professionalism training must continue throughout an individual's career and should focus on the specific areas evidencing a need for improvement or reassessment. The training officers should conduct an annual review of current policy and procedures on professionalism and ensure that all lesson plans are current. The review should also ensure that all LEOs are receiving sufficient hours dedicated to professionalism subjects. All training should be provided in a timely manner and with the highest possible level of quality necessary to meet the challenges of today's LEO.

## **CONCLUSION**

As discussed in this report, Treasury and its law enforcement bureaus have longstanding policies aimed at ensuring that their employees do not target persons for inspection, investigation or other law enforcement activity on any impermissible basis such as their race, national origin, or gender. Treasury and its bureaus also have put in place processes to ensure that such policies are complied with and that if violations do occur appropriate disciplinary steps are taken.

As the President's Directive recognizes, however, the federal government must continue to search for ways to ensure that its law enforcement officials do not engage in unlawful profiling based on race, gender or ethnicity, or any other prohibited forms of discriminatory conduct. Through Treasury's field test, it will develop a better understanding of how its policies are applied by Secret Service and Customs personnel in making traffic stops and pedestrian stops, and in conducting more extensive inspections and interviews than customary with entrants to the United States. This understanding should not only enable Treasury to provide the data needed to respond to the President's Directive, but also to enhance its policies, procedures, and training aimed at preventing discriminatory activities by its personnel. As recommended in this report, Treasury and

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all its relevant bureaus will review and analyze the data collected during the field test and then, if necessary, revise their policies, procedures and training to reflect what was learned through the data collection.

As the President has made clear, there is simply no room in federal law enforcement for discriminatory conduct based on race, ethnicity, and gender. Indeed, the President's commitment that all members of the public be treated fairly by federal law enforcement personnel is clear, longstanding, and consistent. The Treasury Department shares this commitment, and dedicates itself to a course of action designed to achieving the President's goals. The information presented in this report is but one aspect of the Department's effort to ensure, in both word and practice, that its commitment to fairness in law enforcement is reflected not only in formal policies and procedures, but in all of its day-to-day operations.





U.S. Department of Justice  
Drug Enforcement Administration  
Office of the Deputy Administrator

Washington, D.C. 20537

October 4, 1999

Mr. Brian A. Jackson  
Associate Deputy Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Mr. Jackson:

I am forwarding this letter to express some thoughts and concerns following our October 1, 1999 meeting on the President's Order, *Fairness in Law Enforcement: the Collection of Data*. I had come to the meeting prepared to discuss the pilot program that DEA intends to use in order to fulfill the Order. But the meeting took another course that led me to believe the Department may be expanding the limits of the Order by questioning the DEA's reliance on race and ethnicity in other areas, such as intelligence collection and analysis. This, it seems, broadens the requirement and intent of the Order and to the detriment of law enforcement activities and the public.

At the outset, it is necessary to restate emphatically that DEA Agents and analysts do not use race, ethnicity, or religion as a criteria in determining whether or not to initiate an investigation or in the course of their investigations or analyses. In accordance with its mission, DEA targets individuals and criminal organizations responsible for manufacturing and trafficking illicit drugs. Enforcement activity based solely on race or ethnicity is not only poor law enforcement, but is unconstitutional. DEA will not tolerate any form of ethnic-targeting or race-based profiling.

Yet, law enforcement must recognize the realities and dynamics of crime, especially at a time of such world changes. Today, more than ever, law enforcement is driven by information. To fulfill its mission and protect the public, DEA must collect information on individuals or organizations that traffic illicit drugs—regardless of who or where they are. One reality is that drugs are manufactured in key regions of the world. It is imperative, therefore, that agents and analysts have information and reliable intelligence, such as on drug source and transit areas, trafficking routes and trends.

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Further, we must expect that investigations will naturally generate information on organization members, including their race and ethnicity. DEA has experience this, especially in recent years while carrying out Presidential Decision Directive 42 (on transnational crime), which focuses on criminal organizations that happen to be based in the Former Soviet Union, Eastern Europe, Asia, Latin America, and Africa. In a time of limited resources, this information becomes even more crucial for investigators to pinpoint and arrest those criminals who pose the greatest danger to our communities and the nation.

During our discussion Friday, it was asked when is it appropriate for law enforcement to use racial and ethnic identifiers. There seemed to be a consensus that when an individual is specifically identified, their race and possibly ethnicity are appropriate to assist law enforcement to locate and identify the suspect. However, I do not believe there was any consensus beyond that point. Source, transit and transportation information is essential to investigators, as well as local trafficking patterns. For instance, if a city that is experiencing an influx of a drug by a particular organization, information must be collected and passed to the investigator, even if that information points to a specific ethnic group. To ignore that information would hamper the investigation.

The courts have found there must be a balance between law enforcement's use of race as a factor and the public interest. The courts have found there is a compelling interest in detecting those who would traffic in deadly drugs for personal profits. The obstacles to detect this illegal conduct is unmatched in any other area of law enforcement.

This has caused the courts to allow the use of race when there exists other sufficient criteria and the government can show that the encounter was not initiated solely on the basis of race. This was pointed out in my memorandum of September 24, 1999. In that memorandum, I cited a case in which the courts held that the use of race in a general trafficking pattern was considered to be acceptable police practice. Yet, despite the court's ruling, I was puzzled on Friday with the group's dissatisfaction with that standard and its attempt to create a policy that would seem to be substantially higher than the law.

Also, during the meeting, there were questions of where on the "continuum" is race applied by law enforcement. The appropriate time for an investigator to consider race or ethnicity in an investigation simply cannot be quantified or measured. Rather, a standard of reasonableness should be applied. To establish a policy of strict scrutiny or one that is narrowly tailored would exceed the current legal standards, and is dangerous. It will place investigators in the precarious position of defending himself each time he encounters an individual of specific ethnic or racial heritage. Further, this could cause investigators to overlook potential suspects, second-guess their encounters, and possibly even place them in danger. We will create racial and ethnic groups that will require a

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higher standard of proof than the rest of the nation. A more appropriate response to this concern is a policy statement that the Department will not tolerate the use of race or ethnicity as a primary or "overly weighed" factor when conducting investigations-- not the creation of a policy beyond the legal standard.

The second issue pertains to the tracking of encounters in the pilot program all the way down to the investigator's level. DEA is very concerned about this recommendation. It is likely that, if implemented, this recommendation would come at a great cost. It would not add to the statistical validity of the information that the pilot program seeks to obtain. The President's order requires the collection of statistics. This recommendation would go farther and gather information on the officers themselves. The anonymity of the information required in the pilot program is essential to gathering accurate information on the perceived racial and ethnic identities of the public contacted by police. This will create a much more hostile environment for the investigators chosen to participate. Additionally, the department will then be requiring the agency to keep this data by officer and if subpoenaed by the court for any reason it would have to be disclosed.

If the pilot program indicates that the activities of one of the sites merits further evaluation, it is the responsibility of DEA management to pursue this issue through its established chain of command. It is wholly inappropriate for a third party to perceive that an individual officer is abusing individuals of a certain race or ethnicity based solely on the review of statistics.

DEA nominates Charleston, South Carolina (bus) and Cleveland, Ohio (train) as additional sites as requested. The Detroit airport detail is also available as a site if required.

DEA would like to participate on the committee that determines what groups are going to be identified on the survey instrument. I have great concern over the expansion of the list beyond race and Hispanic/non-Hispanic as an ethnicity.

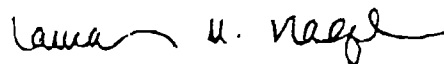
Last, I find it necessary to reiterate my concern that this pilot project is going to focus law enforcement officers on an area that they are explicitly prohibited from considering as a sole factor when conducting an investigation, this is going to outweigh anything positive that could result. DEA is committed to ensuring that its investigations



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are based solely on criminal behavior and nothing else. To ensure this, 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.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura M. Nagel".

Laura M. Nagel, Chief  
Executive Policy & Strategic Planning Staff  
Office of the Deputy Administrator



Office of the Deputy Attorney General  
United States Department of Justice  
950 Pennsylvania Ave. NW  
Washington, D. C. 20530

TO: *LEAH S.*

FROM: *BRIAN JACKSON*

FAX: *456-7028*  
VOICE: *456-5574*

VOICE: *514-1855*  
FAX : *514-6897*

Total Pages (including this cover): *10*

Additional Message:

**DEPARTMENT OF JUSTICE PROPOSAL  
RESPONDING TO THE EXECUTIVE MEMORANDUM ON FAIRNESS IN LAW ENFORCEMENT**

**I. Purpose**

To respond to the Executive Memorandum on Fairness in Law Enforcement.

**II. Background**

On June 9, 1999, President Clinton issued an executive memorandum to the Secretary of the Interior, the Attorney General, and the Secretary of the Treasury directing them "to design and implement a system to collect and report statistics relating to race, ethnicity, and gender for law enforcement activities in each department." Each Department was required to submit their data collection proposal by October 9, 1999.

The executive memorandum requires each of the agencies within the respective Departments to improve data collection at all levels of law enforcement to address the problem of racial profiling. Department of Justice representatives have worked with Interior, Treasury, and Office of Management and Budget officials to ensure the use of standard race and ethnicity definitions and collection methods.

The executive memorandum explicitly requires the collection and reporting of data describing persons who are stopped or searched by Federal law enforcement. Data describing persons arrested by Federal law enforcement and prosecuted by U.S. attorneys will also be collected and analyzed.

Pursuant to the executive memorandum, four tasks are required of the Departments:

- (1) within 120 days of the memorandum, a proposal for a system of a data collection and implementation plan will be developed;
- (2) to the extent practicable, data sufficiently detailed to permit further analysis, will be collected on the activities of each Department's law enforcement agencies; and
- (3) prepare a report summarizing the information collected during the first year including (a) an evaluation of the field test, (b) an implementation plan for expanded data collection, and (c) recommendations for improving the fair administration of Federal law enforcement activities.
- (4) within 120 days of the memorandum, prepare a report describing training programs, policies, and practices regarding the use of race, ethnicity, and gender in law enforcement practices and recommendations for improvement.

Within 60 days of the submission of this proposal the agencies are required to begin the field test of the data collection systems. Following the first year of the field test, the Attorney General will prepare a report for the President summarizing the information collected during the first year including (a) an evaluation of the field test, (b) an implementation plan for expanded data collection, and (c) recommendations for improving the fair administration of Federal law enforcement activities. This report will be prepared by May 31, 2001.

This document describes the proposed data collection plans for the participating Department of Justice law enforcement agencies. Within the Department of Justice, the Drug Enforcement Administration and the Immigration and Naturalization Service were determined to be the agencies that routinely engage in nonsuspect specific public encounters on a regular basis. The Federal Bureau of Investigations, U.S. Marshals Service, and the Bureau of Prisons do not engage in nonsuspect specific public encounters.

While only the Drug Enforcement Administration and the Immigration and Naturalization Service were selected for the field test of a data collection system for nonsuspect specific public encounters, all agencies will provide data collected on arrests made, or in the case of the U.S. Attorneys, suspects prosecuted. The analysis of these data will assist in the identifying racial or ethnic disparities in Federal law enforcement agencies' activities related to arrests, prosecutorial decisions, and issues relating to the sentencing of Federal offenders under the provenance of the U.S. Attorneys, e.g., motions for downward departures for substantial assistance to the government.

### III. Issues relating to the collection of race and ethnicity

On October 30, 1997, the Office of Management and Budget (OMB) revised the *Standards for the Classification of Federal Data on Race and Ethnicity*.<sup>1</sup> As part of the revised OMB standards, Federal agencies are required to collect a minimum of five categories for data on race:

- American Indian or Alaska Native,
- Asian,
- Black or African American,
- Native Hawaiian or Other Pacific Islander, and
- White.

Additionally, two categories are required for data collected on ethnicity:

- Hispanic or Latino, and
- Not Hispanic or Latino.

OMB encourages agencies to collect data concerning race and ethnicity by self-report using the two-question format and allowing multiple responses to the race question. For purposes of implementing the Executive Memorandum on Fairness in Law Enforcement, Federal agencies will be permitted to record a single race category by observation. A "combined format" may be used for observer-collected data on race and ethnicity. The combined format has six categories – the five categories of race plus "Hispanic or Latino." OMB standards encourage the collection of greater detail as long as additional categories can be aggregated into the minimum categories for race and ethnicity.

Federal programs collecting data for use in household surveys, administrative forms and records, and other data collections must be consistent with the OMB standards as soon as possible but not later than January 1, 2003.

To ensure consistency and comparability of data across its agencies, the Department of Justice will require that agencies collect race and ethnicity data using the categories prescribed by OMB. Currently, only the Bureau of Prisons and the Drug Enforcement Administration collect race and ethnicity data using the two-question format.

#### A. Determining race and ethnicity: self-report vs. observation

At the Attorney General's June 1999 conference on *Strengthening Police-Community Relationships*, participants generally agreed that race and ethnicity data collected during a public encounter by law enforcement should be based on the observation of law enforcement officers rather than self-

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<sup>1</sup> 62 Fed. Reg. 58782 (1997).

reports by the person contacted. Conference attendees generally agreed it would be improper for law enforcement officers to ask questions about a person's race and ethnicity during a public encounter. Such questioning may, in fact, aggravate extant perceptions of racial discrimination by law enforcement officers.

OMB standards permit the collection of data on race and ethnicity through observation in instances where it is deemed impractical to collect such data through self-reports, e.g., by a medical examiner when completing a death certificate. Following the recommendation of conference participants, the Bureau of Justice Statistics (BJS) in the Department of Justice has informed OMB that the collection of data on race and ethnicity will be through observation when making nonsuspect-specific public encounters.

#### **B. Issues relating to ethnicity**

Currently, the minimum designation for ethnicity as part of the OMB *Standards for the Classification of Federal Data on Race and Ethnicity* is "Hispanic or Latino." With regard to implementing the Executive Memorandum on Fairness in Law Enforcement, additional ethnic groups should be recognized so as to permit the monitoring of encounters involving other ethnic groups that are of particular interest or concern to specific Federal law enforcement agencies. Where appropriate, additional categories will include Arabic/Middle Eastern or Southeast Asian.

#### **IV. Agency data collection proposals**

For a complete picture of Federal law enforcement activities and processing of defendants, data describing Federal law enforcement activities will be collected and analyzed describing (1) nonsuspect public encounters, (2) suspects arrested by Federal law enforcement agencies, (3) defendants prosecuted in Federal courts, and (4) defendants sentenced in Federal courts. Several Federal agencies -- including the US Marshals Service, the Executive Office for the US Attorneys, the Federal Judiciary, the US Sentencing Commission, and the Bureau of Prisons -- currently provide data on the processing of Federal defendants to the Bureau of Justice Statistics as part of its Federal Justice Statistics Program.

##### **A. Nonsuspect specific public encounters**

The executive memorandum requires that a field test of the proposed data collection system begin within 60 days of finalizing the proposal, or December 7, 1999. While many of the activities can begin on or around that date, it is unlikely that a completely automated data entry system could be designed and implemented by that date. As a result of competing Y2K issues, the DOJ agencies (and in the case of the Immigration and Naturalization Service, the U.S. Customs Service) are not expected to have automated systems in place until March 31, 2000. Until automated systems are in place, data collection will be conducted manually.<sup>2</sup>

##### **1. Drug Enforcement Administration**

Despite intervening Y2K priorities, the Drug Enforcement Administration has proposed to implement interim procedures to collect information on nonsuspect-specific public encounters. As with its current procedures relating to arrest data, data will be collected by special agents in hard copy. Data collection forms will be forwarded by each participating field office to DEA Headquarters in Arlington, VA on a regular basis and keypunched by DEA data entry staff. Following the design and implementation of modifications to its Divisional Enforcement Activity Log system, data entry will be completed in each

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<sup>2</sup> The U.S. Customs Service maintains the Interagency Border Inspection System used by INS. According to INS, any changes to this system will need to be accomplished by the U.S. Customs Service.

participating field office. Hard copies of the data collection forms will continue to be forwarded to Arlington for archiving and quality control.

As part of its *Operation Jetway* drug interdiction program, DEA special agents routinely make pedestrian stops in airports, train and bus stations, and parcel facilities. The Drug Enforcement Administration has identified a set of factors it considers when approaching an individual suspected of transporting controlled substances. Searches – both consent and warrantless – of persons encountered may be conducted of those stopped.

The Drug Enforcement Administration is proposing six *Operation Jetway* sites for the field test: Newark International Airport, Chicago-O'Hare International Airport, George Bush Intercontinental Airport (Houston), Miami International Airport, Albuquerque, NM train station, Cleveland, OH train station, Charleston, SC bus station and Sacramento, CA bus station. The selection of six varied sites will provide for the monitoring of people using different modes of transportation under the observation of DEA special agents. BJS will analyze the data collected by DEA.

To determine whether race and ethnicity are used by DEA agents as criteria for initiating contact, an independent study of the demographic characteristics of persons using those transportation terminals will eventually be needed. Certain modes of transportation and transportation terminals in certain areas may be used more frequently by persons of particular racial or ethnic groups. Therefore, it is important to determine the demographic composition of the population observed by DEA special agents as part of *Operation Jetway*.

BJS is pursuing a variety of research and monitoring techniques available to help estimate the demographic composition of the total population under consideration. This is necessary to determine whether law enforcement disproportionately encounters a particular race or ethnic group in non-suspect stops.

## **2. Immigration and Naturalization Service**

The field test by the Immigration and Naturalization Service is complicated by three factors: (1) the data systems used by INS are developed and maintained by the U.S. Customs Service; (2) INS is statutorily required to process passengers arriving into the United States by plane within 50 minutes of arrival;<sup>3</sup> and (3) the volume of entrants processed by INS – more than 450 million primary inspections are conducted annually – would make any data collection involving the population of those entering impractical.

According to the Department of Treasury, it is unlikely that the Interagency Border Inspection System (IBIS) can be modified to incorporate changes required of this effort before the end of the calendar year. Customs Service resources are committed to resolving Y2K issues before any new applications can be developed or existing applications modified.

All persons entering the United States are interviewed by INS inspections officers at land border crossings, seaports, and airports. (At some land borders, INS and Customs inspectors share duties.) The Immigration and Naturalization Service has identified a set of factors its agents consider when making secondary referrals. Additionally, INS Border Patrol agents routinely patrol areas near land borders for persons illegally crossing into the United States and INS investigators routinely investigate employers to determine

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<sup>3</sup> get citation.

whether they employ illegal aliens. Investigations of employers will be excluded from the field test because these investigations are initiated following a review of employment and tax records rather than onsite inspections.

To determine the demographic characteristics of those entering the United States, the collection of race and ethnicity data on a statistical sample of those entering the United States would be most practical. Samples could be drawn from the INS's Advance Passenger Information System. Full data collection would be conducted on those persons referred for secondary inspection.

The Immigration and Naturalization Service is proposing ports of entry for the field test including John F. Kennedy International Airport, George Bush Intercontinental Airport (Houston), and Seattle/Tacoma Airport. In addition, Border Patrol agents conducting "roving patrols" stationed at the El Cajon Station (near San Diego, CA), Yuma Station (near Yuma, AZ), and El Paso Station (near El Paso, TX) will also participate in the field test. A fixed checkpoint station will be included in the field test (at a site to be determined). Inclusion of a land-based port of entry also under active consideration.

The U.S. Customs Service has proposed John F. Kennedy Airport as a site for its field test. Accordingly, the collection of data on the enforcement activities of the Drug Enforcement Administration, the Immigration and Naturalization Service, and the U.S. Customs Service at the same airports (e.g., JFK Airport: INS and Customs; Houston: DEA and INS) will permit comprehensive monitoring of the law enforcement activities relating to persons using a selected ports of entry.

The Immigration and Naturalization Service submitted a proposal to BJS describing the scope of its activities relating to the Executive Memorandum (See, Attachment 1)

### 3. Data elements to be collected

A core set of data elements is proposed for the participating law enforcement agencies to collect on each nonsuspect-specific public encounter or, in the case of the Immigration and Naturalization Service, on each referral for secondary inspection. Information describing demographic characteristics such as gender, race, ethnicity, national origin, and date of birth will be based on the agents' observation of the person encountered or official documents, e.g., drivers' license and passports, where available. The minimum data elements that will be collected are:

- **Date of the encounter.** Month, day, and year of the encounter.
- **Time of the contact (start):** Time of day the contact was initiated.
- **Gender.** The person's observed gender – Male or Female.
- **Race and Ethnicity.** Race and ethnicity will be collected in accordance with the OMB Standards for the Classification of Federal data on Race and Ethnicity (See, attachment 2).
- **National origin:** National origin will be collected for all encounters at land border crossings, sea ports, International airports, and roving patrols by INS Border Patrol Agents. National origin will be based on the agents' review of travel documents including passports and visas.
- **Location of contact.** General information describing the location of the encounter such as the name of the border crossing, seaport, airport, train or bus station, or street address. For encounters in airports, information identifying the terminal (domestic, international (arrivals or departures)) will also be collected.

- **Suspected criminal activity:** The illegal activity for which the person is suspected will be collected. NCIC codes describing criminal activity will be used (See, attachment 3).
- **Reason(s) for contact:** The reasons the agent initiated contact with the person will be recorded. For INS inspections, only the reasons the person was referred to secondary inspection will be recorded, since primary inspection is required of all persons attempting entry into the United States.
- **External sources of information on the person contacted:** Any external sources of information regarding potential illegal activity by the person will be recorded.
- **Law enforcement action taken:** Actions taken by agents in response to the initial encounter will be recorded. Possible actions by agents include: citation, consent searches, warrantless searches, temporary detention, arrest, and voluntary departure (INS only).
- **Time of contact (end):** Time of day the contact was concluded.

Additionally, the agencies may collect supplemental data elements for administrative purposes.

## **B. Arrest and Prisoner data**

Currently, each of the DOJ law enforcement agencies collects information describing persons arrested. As part of its tasks related to the executive Memorandum, the Bureau of Justice Statistics reviewed each agency's data collection system to determine the extent to which data describing the arrestee's race, ethnicity, and gender was collected and whether those data elements were collected in a manner consistent with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*.

The Bureau of Justice Statistics plans to incorporate Federal arrest data into its ongoing Federal Justice Statistics Program. Through its Federal Justice Statistics Program, the Bureau of Justice Statistics currently compiles Federal criminal case processing data from the U.S. Marshals Service, the Executive Office for U.S. Attorneys, the Administrative Office of the U.S. Courts, the U.S. Sentencing Commission, and the Bureau of Prisons. By incorporating arrest data into an existing program, BJS can ensure that these data are regularly and systematically analyzed and reported. Arrest data can be used to monitor the racial and ethnic composition of persons at each stage of the Federal criminal justice system.

### **1. U.S. Marshals Service.**

The U.S. Marshals Service is a central repository for information on persons arrested and booked by Federal law enforcement agencies for Federal offenses. During fiscal year 1998, the U.S. Marshals Service processed 106,180 arrestees (See, attachment 4). Of these, the U.S. Marshals arrested 29,024, or 27% of all Federal arrestees.

The U.S. Marshals Service Prisoner Tracking System does not comply with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*. Currently, the only racial or ethnic categories collected by the Marshals Service are: *White, Black, Asian, Indian, and Other*. For the Marshals Service to meet the minimum requirements of the OMB standards, the race/ethnicity data element would need to be expanded to include *Hispanic and Native Hawaiian or Other Pacific Islander*.



## **2. Drug Enforcement Administration.**

The Drug Enforcement Administration (DEA) collects information on all persons arrested by DEA special agents regardless of whether the person is prosecuted in Federal, State, or foreign courts. The court of jurisdiction is identified. During fiscal year 1998, DEA special agents arrested more than 30,000 persons.

The Drug Enforcement Administration Defendant Statistical System and Division Enforcement Activity Log do not comply with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*. The DEA systems currently lacks a separate racial group for *Native Hawaiian or Other Pacific Islander*. These racial groups are collected as part of the *Asian* category. For DEA to comply with the OMB standards, the current category *Asian-Pacific Islander* will need to be disaggregated into *Asian* and *Native Hawaiian or Other Pacific Islander*.

## **3. Federal Bureau of Investigation.**

The Federal Bureau of Investigation (FBI) collects information on all persons arrested by FBI special agents regardless of whether the person is prosecuted in Federal, State, or foreign courts. During fiscal year 1998, FBI special agents arrested \_\_\_\_\_ persons.

☒ [Discussion of FBI compliance with OMB standards forthcoming.] ☒

## **4. Bureau of Prisons.**

The Bureau of Prisons collects information on all persons under its jurisdiction, *i.e.*, pretrial detainees in selected metropolitan areas, sentenced offenders, and certain other long-term detainees. Bureau of Prisons correctional officers make few arrests. As of December 31, 1998, 123,041 persons – about 90% of whom had been convicted – were under the jurisdiction of the Bureau of Prisons.

The Bureau of Prisons SENTRY data system does not comply with the OMB Standards for the Classification of Federal data on Race and Ethnicity. The BOP system currently lacks a separate racial group for *Native Hawaiian or Other Pacific Islander*. These racial groups are collected as part of the *Asian-Pacific Islander* category. For BOP to comply with the OMB standards, the current category *Asian-Pacific Islander* will need to be disaggregated into *Asian* and *Native Hawaiian or Other Pacific Islander*.

## **5. Immigration and Naturalization Service.**

☒ [Discussion of INS data system forthcoming.] ☒

## **C. Prosecutions in Federal court**

Currently the Executive Office for U.S. Attorneys does not collect demographic information on persons investigated or prosecuted by U.S. Attorneys. Demographic information on persons arraigned on Federal charges is available from the Federal judiciary.<sup>4</sup>

To facilitate a more comprehensive analysis of prosecutorial decisions – particularly U.S. Attorney declinations - the Executive Office for U.S. Attorneys will incorporate into their existing data

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<sup>4</sup> These data are routinely obtained by the Bureau of Justice Statistics as part of its Federal Justice Statistics Program.

collection system – LIONS – information on the race, ethnicity, and gender of persons investigated.

**D. Sentencing of convicted Federal defendants**

The Executive Office for U.S. Attorneys does not collect demographic information on persons convicted and sentenced in the Federal courts. Demographic information on persons sentenced in the Federal courts is available from the U.S. Sentencing Commission.<sup>4</sup>

**V. Coordination with the Departments of Interior and Treasury**

**A. Department of Interior**

The Department of Interior has submitted a data collection proposal under separate cover. (See, Attachment 5)

The Department of Interior employs sworn law enforcement officers in five different agencies: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, and the U.S. Fish and Wildlife Service. Officers in many of these agencies do not have general law enforcement authority, seldom have regular contact with the public, and make few arrests. The National Park Service – both U.S. Park Police and Park Rangers – was the only agency identified by the Department of Interior as having regular contact with the public and making a substantial number of arrests.

The Department of Interior has agreed to collect data in the manner prescribed by the Department Justice. The data collection system will be field tested in 10 sites:

- Lake Mead National Recreation Area (Nevada and Arizona)
- Yosemite National Park (California)
- Grand Canyon National Park (Arizona)
- Glen Canyon National Recreation Area (Arizona and Utah)
- National Expansion Memorial (Missouri)
- Indiana Dunes National Lake Shore (Indiana)
- Natchez Trace Parkway (Mississippi and Tennessee)
- Blue Ridge Parkway (Virginia and North Carolina)
- Valley Forge National Historical Park (Pennsylvania)
- Delaware Water Gap National Recreation Area (Pennsylvania and New Jersey)
- Baltimore Washington Parkway (Washington DC and Maryland)

Data collected by the Department of Interior will be analyzed by the Bureau of Justice Statistics and included in the report to the President prepared by the Attorney General.

**B. Department of Treasury**

The Department of Treasury has submitted a data collection proposal under separate cover.

The Department of Treasury employs law enforcement officers within the Bureau of Alcohol, Tobacco and Firearms, Internal Revenue Service, U.S. Customs Service, and U.S. Secret Service. The uniformed division of the Secret Service and the U.S. Customs Service were the two agencies identified by the Department of Treasury as having regular contact with the public and making a substantial number of arrests resulting from that contact.

The Department of Treasury has agreed to follow the general data collection standards identified by the Department of Justice -- particularly as they relate to the collection of data on race and ethnicity. Treasury will field test their data collection system in Washington DC (for the uniformed division of Secret Service) and at Chicago O'Hare International, JFK International, Newark International, Miami International, and Los Angeles International airports (for the U.S. Customs Service).

The Department of Treasury will separately analyze and report on data collected as part of the field test. This analysis will be included in the report from the Attorney General to the President.

meeting on 9/21/97.

- Proximity to border area.
- characteristics of vehicle, (size? hiding people?)
- Activity being investigated.

### Hispanics

There are large #s of Hispanics at this airport. Don't stop all of them for questioning. Only if they dress a certain way, look confused.

① ~~clothing~~

② large groups following a guide in an airport that has incidences of illegal entry.

### INS Regulations

handbook **K?**

- ① ethnicity must be one of many factors <sup>considered</sup> for questioning, policy, religion context.
- ② Part of training + written guidelines.

"Cortez vs. U.S., Supreme Court decision"

① Northern Border  
Western Region } most apprehensions

max center  
Oct. 97 report

Recommend specific policies on use of force

2 steps

① deciding who to talk to  
② deciding who to detain

you can come

Martinez vs. Supreme Court case

5 million people here illegally at present

300,000 - 350,000 new arrivals annually

Policy - general  
Training - regional

mission of INS is different from police, any policy written on this?

Handwritten signature/initials