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

TO: LeAnne Shimabukuro FAX: 456-7028
FROM: Anthony S. Murry VOICE: (202) 305-1283
Associate Deputy Attorney General FAX: (202) 514-9368
DATE 10/27/99

Total Pages (excluding this cover): 14

Additional Message: Per our telephone conversation.

Eric -

*Revised DOJ current
policies document
per my email.*

Leanne

*Fairness in Law Enforcement: Collection of Data
DRAFT Report Addressing Policies, Training, and Recommendations*

I. INTRODUCTION

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

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

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

The challenge for law enforcement is (1) to develop policies and training programs enabling law enforcement officers to determine when information relating to the race or ethnicity of persons engaged in past or current illegal activities may be used in law enforcement operations; (2) to supervise and monitor law enforcement activities to ensure that these policies are implemented in the field; and (3) to identify and remedy those situations where race is inappropriately used to target individuals.

Recognizing the damaging effects that the impermissible use of race, ethnicity, or gender has on individuals and the community and recognizing the vital importance of instilling trust of law enforcement in all Americans, the Department of Justice has begun a review of our programs, policies, and practices to determine how these programs could be improved to ensure the fair enforcement of the laws. The Department of Justice has committed to an ongoing process, described more fully below, that will involve an extensive evaluation of current practice with regard to the use of race, ethnicity, and gender in law enforcement and recommendations for reforms to policies and training.

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This report describes the policies, practices and training programs of the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the Federal Bureau of Prisons (BOP), the Immigration and Naturalization Service (INS), and the United States Marshals Service (USMS) as they relate to the use of race, ethnicity and gender. This report also includes recommendations for the evaluation of existing policies, the evaluation and enhancement of training programs, and the development of interim policies and guidance for law enforcement officers.

In response to the first part of the June 9 Memorandum, the Department of Justice has submitted a separate report that describes the methods the various agencies will employ to collect the requested data. The Department of the Treasury and the Department of the Interior have each submitted separate reports detailing their data collection plans and respective programs, policies and practices pursuant to the June 9, 1999, Memorandum. The data collected by the Department of Justice will be analyzed as part of the Department's ongoing policy review process.

II. AGENCY MISSIONS, POLICIES, AND TRAINING

A. Drug Enforcement Administration

Mission

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

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

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

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scale. DEA agents personally participate in Jetway interdiction actions on the ground.

Operation Pipeline is a highway drug interdiction program that is led and implemented by the nation's state and local law enforcement agencies, with support from DEA's El Paso Intelligence Center. The program is composed of three elements: training, real-time communications, and analytic support. Each year, state and local highway officers conduct dozens of three-day training schools across the country for other highway officers. The DEA coordinates *Operation Pipeline* training through the DEA's El Paso Intelligence Center. The course content of each *Pipeline* school is individually tailored by the lead instructor-officer, who uses a basic training curriculum designed by the DEA. DEA agents do not personally participate in *Operation Pipeline* interdiction actions.

Policies and practices

DEA conducts investigations to determine which individuals or organizations are manufacturing and trafficking in illicit drugs. While DEA addresses the use of race and ethnicity in its *Operation Pipeline* and *Operation Jetway* training material, it does not have a separate written policy statement on the use of race, ethnicity, or gender in its law enforcement activities.

DEA investigations often reveal drug source and transit areas, trafficking routes, and trends and may also identify the race or ethnicity of individuals suspected of drug trafficking. Where an individual is specifically identified as a suspect in an investigation, racial and ethnic identifiers are used to assist law enforcement in locating and identifying the suspect. Investigations may also identify particular groups or organizations that are involved in drug trafficking. When investigative and intelligence activities collect information on the race or ethnicity of persons involved in such criminal activity, that information is given to the investigator who, in turn, can use that information as part of an investigation.

less
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before

In addition, DEA prepares intelligence reports based upon its investigations. If investigative activity indicates that a particular ethnic group is dominating the market for a particular drug at a particular time, that information is included in the intelligence report and shared with federal, state, and local law enforcement agencies. These reports are used internally, as well as shared with other federal, state, and local law enforcement agencies for use in their investigations. Also, intelligence reports disseminated to state and local law enforcement by the DEA could contain information received identifying the race or ethnicity of a specific alleged drug trafficker.

Training

DEA agents are trained to identify and articulate specific factors that distinguish individuals involved in smuggling contraband from other members of the traveling public. While

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there is no "national drug courier profile," there are patterns of activities, methods, and characteristics that may indicate criminal activity. For example, with respect to an airline passenger, these may involve details regarding the passenger's ticket and how it was purchased, characteristics of the passenger's luggage, excessive nervousness, and evidence suggesting the passenger may be smuggling contraband internally. DEA agents are trained that race and ethnicity are not characteristics that indicate criminal activity, and that agents may not approach a passenger based solely on race, ethnicity, religion, gender or age.

Operation Jetway training focuses on (1) legal issues in transportation interdiction investigations; (2) drug trafficking trends and key characteristics that are shared by drug traffickers; and (3) effective use of investigative tools and intelligence sources. The *Jetway* courses use a lesson plan that has been approved by the Office of Chief Counsel and DEA Training in Quantico. Course instruction includes constitutional law, search and seizure with regard to both consensual encounters and detentive stops, drug courier indicators and concealment methods. During *Operation Jetway* training, agents/officers are taught that the use of race, religion, ethnic origin, gender, or age should not be considered as indicators when pursuing an initial encounter. However, when agents/officers intend to temporarily detain a person, they are taught that they must be able to identify and articulate specific factors which, when viewed collectively, give reasonable suspicion that an individual is involved in smuggling contraband.

Similarly, *Operation Pipeline* instructors and prosecutors teach that highway officers are not to detain a motorist based on race, gender, or age. Instead, officers are taught that they must be able to identify and articulate specific factors which, when viewed collectively, give the officer reasonable suspicion that an individual has engaged in criminal activity. Attached as Appendix ___ are excerpts from *Operation Jetway* and *Pipeline* training materials.

In addition to the *Operation Jetway* and *Operation Pipeline* training, DEA incorporates ethics and integrity sessions into its basic training programs and its in-service training courses. The agency's Standards of Conduct states that "no employee may discriminate against any other employee, applicant for employment, or person dealing with DEA on official business because of race, color, religion, national origin, sex, age, or handicap."

B. Federal Bureau of Investigation

Mission

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

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public and is faithful to the Constitution of the United States.

Policies and practices

The FBI incorporates its policy against discriminatory use of race, ethnicity, or gender in law enforcement into its training programs. In conducting criminal investigations, the FBI typically gathers facts at crime scenes to determine the likely perpetrators. To identify those responsible for criminal activity, the FBI elicits and documents descriptive information, which may include the race, ethnicity, gender, age, size, and distinguishing characteristics of the criminal offender. Depending on the nature of the crime, the characteristics may include tattoos or other physical markings, DNA, voice tone, inflection, and manner of speech, and the type of clothing, car, and jewelry possessed by the perpetrator. In short, the FBI collects and analyzes all relevant information that will assist in identifying correctly those who have committed criminal acts, including, where available, the race and ethnicity of suspects.

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

The FBI does not investigate suspects without proper predication. Predication is defined as facts and circumstances that would provide a reasonable basis to suspect that an individual has engaged in or is engaged in conduct which is a violation of federal criminal laws. Predication is not based on any immutable characteristics. In the context of ongoing investigations, levels of predication vary depending on the intrusiveness and sensitivity of the investigative technique being contemplated. Before initiating a new investigative technique, such as wiretapping or surveillance, the FBI evaluates all of the facts and circumstances to determine whether use of the technique is appropriate. With respect to national security investigations, intelligence gathering involves a range of sophisticated investigative techniques, which are used to identify individuals and their affiliations. Illicit activities uncovered in the course of intelligence gathering may be used to predicate national security investigations. The FBI does not permit interdiction based on racial, ethnic, or gender factors in national security investigations.

Training

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The FBI attempts to ensure that its investigators do not make investigative decisions improperly on the basis of race, ethnicity, or gender, by providing a number of training and awareness courses to its employees.

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

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

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

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

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

C. Federal Bureau of Prisons

Mission

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

Policies and practices

The BOP monitors gang activity within its facilities for security reasons. This entails identifying and tracking various gangs and gang members. Identification is based on objective criteria such as tattoos and use of symbols, rather than race or ethnicity. While gang membership and affiliation may cross racial and ethnic groupings, some gangs self-identify based on distinctions such as race, ethnicity, and national origin. However, when the BOP monitors activity by such gangs, it is based solely upon disruptive behavior. Furthermore, the BOP only monitors gang members, suspected gang members, and associates.

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

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

Training

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

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gender issues.

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

D. Immigration and Naturalization Service

Mission

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

It is the responsibility of the INS to ensure appropriate documentation of aliens at entry and to deny entry to those who are not legally admissible, whether they attempt to enter through ports-of-entry or undetected across the border. The INS is also responsible for deterring illegal entry and stay, including enforcement of the criminal provisions of the immigration laws against individuals who act or conspire to promote such entry and stay. Further, it is the responsibility of the INS to detect, apprehend, and remove those non-citizens whose entry was illegal, whether undocumented or fraudulent, and those found to have violated the conditions of their stay.

Policies and Practices

Every mission decision by Immigration Officers involves a determination of nationality. The legislative authority for activities of the INS is the Immigration and Nationality Act of 1952 (INA), as amended. A number of court decisions also guide INS practice. The INA requires Immigration Officers at the border or port of entry to inspect all aliens seeking admission to or transit through the United States. See INA Section 235(a)(3). In addition the statute provides broad authority to Immigration Officers to interrogate, without a warrant, any alien or person believed to be an alien as to his or her right to be or remain in the U.S.

Under the 4th Amendment, certain immigration stops and searches are considered

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"seizures" and thus must be justified by a "reasonable suspicion." These kinds of stops include stops of vehicles by border patrol agents ("roving patrol" stops) and pedestrian stops where persons are detained by immigration officers. "Reasonable suspicion" has been defined as specific, articulable facts together with rational inferences that reasonably warrant the suspicion that a law has been violated which the officer has the authority to enforce. INS policy allows officers to use foreign appearance or apparent ethnicity as one factor among many in a "totality of the circumstances" that support reasonable suspicion and thus justify the officer's intervention. This practice is supported by Supreme Court case law. See United States v. Brignoni-Ponce, 422 U.S. 873 (1975). INS policy prohibits the sole reliance on apparent ethnicity or foreign appearance for 4th Amendment stops or searches.¹ This policy is applied nationwide and is not limited to persons who appear to be of Mexican or Hispanic descent.

Reasonable suspicion must be based on multiple factors and not on any one factor alone. Among the factors that may be used by INS officers and agents as "articulable facts" are:

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

What is crucial in making an officer's suspicion well-founded is not the presence of any specific factor, or the number of factors involved, but that the whole picture must yield a reasonable suspicion that justify the officer's intervention.

Other types of immigration stops or encounters are not governed by the 4th Amendment and thus by law do not require a predicate finding of "reasonable suspicion." For example, INS maintains fixed checkpoint stops, where agents may make a brief inquiry limited to the immigration status of the occupants of the vehicle. People stopped at these checkpoints also may be selectively referred to a secondary inspection area for further inquiry. Reasonable suspicion is also not required for inspections at ports of entry or consensual interviews at the worksite, although INS policies do require reasonable suspicion for worksite encounters where INS agents

¹ For example, the *Immigration Officer's Field Manual for Employer Sanctions* states that "[s]ervice officers need to be aware that by itself, mere foreign appearance, based on ethnic characteristics and language, does not constitute reasonable suspicion of alienage. It may, however, be considered in combination with other specific articulable facts - particular characteristics and circumstances which the officer can, if called upon, describe in words ..."

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are selecting employees for questioning. While INS policy and training curricula do not specifically address the proper use of ethnicity or race for these types of encounters, where no level of suspicion is legally required, agents are guided by INS policies that require at least some suspicion based on articulable facts. See United States v. Martinez-Fuerte, 428 U.S. 543 (1976) and INS v. Delgado, 466 U.S. 210 (1984).

Through the collection and analysis of intelligence from internal and external sources, INS develops useful information on the sources, traffic routes and destination points of illegal immigrants. Additionally, shared case information and leads may provide information on the businesses that allegedly have employed undocumented workers. This intelligence information sometimes includes the identification of an individual's or group's ethnicity.

Training

The INS trains its officers on how to identify and articulate rational factors for stops and searches, and on the different levels of suspicion that are required by the 4th Amendment and case law. The training includes instruction on INS policy that allows the use of "ethnic appearance" as one factor among many in a totality of circumstances.

Immigration Officer Academy

The Immigration Officer Academy is responsible for the basic training of all Deportation Officers, Immigration Agents, Immigration Inspectors, and Immigration Special Agents. All trainees receive eight hours of instruction in INS Statutory Authority focusing on Section 235 and, in greater detail, Section 287 of the INA. Trainees are taught that under Section 235 all applicants for admission are to be inspected by Immigration Officers at the port of entry for the purpose of establishing admissibility to the U.S. Also explained and discussed is an INS officer's authority to stop, board and search a vehicle at the port of entry.

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

Additional areas of instruction on INA section 287 include: a review of legal precedent that clarifies proper use of ethnicity in traffic stops and the reasonable suspicion requirement for

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detentive stops. At the conclusion of the course on statutory authority, trainees are shown a portion of the video entitled "Fourth Amendment Issues at the Worksite" which provides instruction by the INS Office of General Counsel on lawfully executed searches and seizures.

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

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

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

Border Patrol Academy

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

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sanctions relating to violations of an individual's constitutional rights.

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

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

E. United States Marshals Service

Mission

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

Policies and practices

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

The Marshals Service does not operate its own detention facilities. It assumes custody of arrestees detained by the Federal courts and, if a conviction results, delivers such persons to the Bureau of Prisons. In addition to relying on the BOP, the USMS relies on private and local jails near each Federal courthouse to house the detainees. Consequently, the Marshals Service does not have policies for classifying detainees according to ethnic gangs or by using other ethnic classifications.

The Marshals Service has developed several policies that distinguish between male and

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

Training

The USMS trains its employees in general terms that, apart from suspect specific information, race and ethnicity are not to be considered in carrying out official duties. Deputy Marshals are instructed during basic training that there is no reason to rely on non-suspect specific information about race and ethnicity.

III. RECOMMENDATIONS

Given the importance of the issue of the use of race, ethnicity, and gender in federal law enforcement activities and the need to achieve a coordinated resolution of the important and complex legal and policy issues that the issue presents, the Department of Justice will establish a working group, headed by the Deputy Attorney General, to further evaluate current policies and training with regard to the use of race, ethnicity, and gender in DOJ law enforcement agencies and make recommendations as appropriate.

The working group, which will include representatives from the Department's law enforcement agencies and the Civil Rights Division, will evaluate the preliminary results from the data collection field tests as well as existing agency materials in order to:

- (1) Develop policy recommendations on the appropriate use of race and ethnicity in all agency law enforcement activities. This will include an examination of the appropriate use of intelligence reports and when information obtained as part of a law enforcement investigation is specific enough to warrant the use of a racial or ethnic identifier. This will also include an analysis by the INS to determine if some factors, including ethnic appearance, are more accurate than others in predicting

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alienage;

- (2) Expand and strengthen the training provided by Department law enforcement agencies to federal, state, and local law enforcement concerning the use of race and ethnicity; and
- (3) Ensure that the law enforcement agencies are appropriately supervising and monitoring their agents and employees and operations for any impermissible use of race and/or ethnicity.

We expect to conclude this review and make recommendations for reforms, as appropriate, soon after the receipt of interim results from the data collection effort.

In the interim, the Department's law enforcement agencies will take the following steps to enhance training, establish interim policies where gaps exist, and provide guidance to their officers.

- (1) The INS will issue interim policy guidance that clarifies that ethnicity cannot be the sole or determinative factor in the decision to conduct any stop — including those not subject to the 4th Amendment. This will result in a consistent agency policy with regard to stops covered and not covered by the 4th Amendment.
- (2) Each agency will review its training materials to ensure that all new, incumbent, line, and supervisory agents and analysts receive training on the agency's policies with regard to the use of race and/or ethnicity in all law enforcement activities. This will include a review of the training provided to state and local law enforcement to better ensure that officers trained by federal agencies are not basing their law enforcement activities on race or ethnicity.
- (3) The Department of Justice will explore ways to promote data collection on race, ethnicity, and gender of people stopped or searched by state and local law enforcement officers trained by Department agencies. This data collection will assist state and local law enforcement officers in complying with principles of non-discrimination.

— Eric?

Eric -

Attached docs:

- ① DOJ policies
- ② DOJ field test
Treas field test/plans
+ policies
- ③ Intumbor

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I. PURPOSE

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

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

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

II DRUG ENFORCEMENT ADMINISTRATION

Mission

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

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

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

Specific DEA Programs

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

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

Policies and practices

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

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

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

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

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

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

Training

[describe]

Recommendations

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

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

III FEDERAL BUREAU OF INVESTIGATION

Mission

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

Policies and practices

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

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

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

Training

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

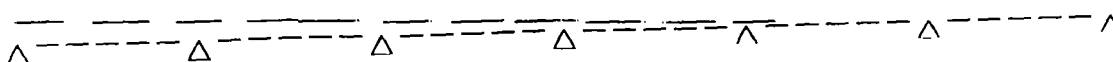
The FBI has instituted a training program for incoming Special Agents at the FBI Training Academy in Quantico. Developed by the Law Enforcement Ethics Unit (LEEU), within the FBI's Office of Professional Responsibility (OPR), this program entails sixteen hours of instruction as part of the overall training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

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

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

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

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



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

Recommendations

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

IV FEDERAL BUREAU OF PRISONS

Mission

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

Policies and practices

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

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

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

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

Grievance systems available to inmates

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

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

Recommendations

[insert]

V IMMIGRATION AND NATURALIZATION SERVICE



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

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

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

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

Training regarding race, national origin, and gender

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

Mission

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

Policies and practices

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Training

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

⁵ [cite].

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

stops.

Immigration Officer Academy

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

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

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

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

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

⁷ See Attachment 7

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

⁹ See Attachment 8

encountering and questioning aliens during the course of an investigation.

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

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

Border Patrol Academy

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

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

¹⁰ See Attachment 9

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

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

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

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

Recommendations

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

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

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

VI UNITED STATES MARSHALS SERVICE

¹³ See Attachment 10

Mission

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

Policies and practices

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

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

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

Training

[insert]

Recommendations

[insert]

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*.¹ 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-

¹ 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.²

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

² 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;³ 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

³ 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.

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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.⁴

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

⁴ 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.⁴

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.

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, 2000.¹ 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

¹ 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.

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

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.²

Treasury’s proposal will enable the Secret Service and the Customs Service to collect data on the race,³ 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.

² 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.

³ 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.

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

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 similar⁴ 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.

⁴ 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 card⁵ 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.

⁵ 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.

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

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 lieutenant⁶ 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;⁷ 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")

⁶ The administrative lieutenant is located in the Deputy Chief's Office.

⁷ 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 search⁸ for later transcription into Treasury Enforcement Communications

⁸ 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

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,⁹ 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"¹⁰ to more intrusive searches.¹¹ 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.¹²

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.

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

¹⁰ 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.

¹¹ 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).

¹² 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.¹³

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,

¹³ 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.

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 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.

CRIME-
racial
puff

THE WHITE HOUSE
WASHINGTON

6-8-99

June 7, 1999

JULY
1 Minyon Moore EO
2 of 2 - civil rights
3 Ruff - Profiting
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MR. PRESIDENT:

Attached is a DPC options memo on issuing a racial profiling data collection EO (or directive) prior to Wednesday's roundtable discussion with civil rights and law enforcement representatives. I've also attached a short memo from Chuck Ruff with his views. I recommend you read both.

Maria asked me to convey her thoughts; she thinks:

- it's important to note (as Chuck does) that the VP and AG have been publicly critical of racial profiling;
- civil rights groups may not view a data collection EO as bold leadership on this issue; and
- federal law enforcement agencies may not be *unalterably* opposed to the Edley approach.

DPC has a different view from Maria, especially on the last point. You should know that DPC did preview the EO with Wade Henderson, who responded favorably for the most part. Minyon Moore thinks it's important to tackle this issue in incremental steps (like this one), and believes it's worth doing before Wednesday's meeting.

Sean Maloney 

CC: PODESTA
ECHAN.
RUFF
TRAMONT.
MOORE, M.
KAGAN/REED

6-8-99
THE WHITE HOUSE
WASHINGTON

June 4, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Executive Order on Racial Profiling

You are scheduled to participate Wednesday in an hour-long roundtable discussion with about 30 representatives of the civil rights and law enforcement communities, possibly including Jesse Jackson, Kweisi Mfume, Al Sharpton, Wade Henderson, Hugh Price, FOP President Gil Gallegos, Boston Police Commissioner Paul Evans, and Baltimore Police Commissioner Thomas Frazier. This discussion is meant to help the civil rights and law enforcement communities find common ground on how to deal with police abuse and misconduct, including racial profiling. Although the Attorney General, Chuck Ruff, and I have met with most of the invitees in preparation for this meeting, many remain skeptical about each other's motives and about what the meeting will accomplish. We are hopeful that your involvement in the roundtable will help keep the civil rights and law enforcement communities working together on this issue.

Also in preparation for this meeting, we have worked with the Departments of Justice and Treasury to draft an executive order on this issue. The order starts with a preamble expressing, in general but strong terms, opposition to the use of racial profiling as a tool of law enforcement. The order then directs federal law enforcement agencies to set up a system to collect data on the race, ethnicity, color, and gender of the persons they stop, search, or otherwise examine. Within one year of implementing this system, the Attorney General must report the data collected and make any appropriate recommendations on how to promote greater fairness in federal law enforcement. Justice, Treasury, and the DPC believe that this order would constitute an effective way of demonstrating federal leadership in this area. The executive order essentially would do at the federal level what the civil rights community most wants done at the state and local levels (and what legislation by Congressman Conyers would require): institute a strong system of data collection and reporting to determine and disclose exactly where racial and other discrimination exists in traffic stops and other contacts with law enforcement.

Chris Edley has proposed a different kind of executive order, which would expressly prohibit (though, as explained below, perhaps with an exception) federal law enforcement officers from taking race, ethnicity, and other specified traits into account when making stop and search decisions. This approach would require you to confront quite explicitly a difficult issue (which the data collection order allows you to avoid, at least for now): whether to allow the U.S. Border Patrol to continue its current practice of using a person's perceived national origin or ethnicity (essentially, whether the person looks Hispanic) in deciding what cars to search near the border. The Edley executive order would either (1) effectively prohibit this practice, in the face

of the strong view of both the INS and Main Justice that it is an integral part of effective border enforcement, or (2) include a specific provision allowing the Border Patrol (the largest federal law enforcement agency and the one that most regularly conducts traffic stops) to continue this practice notwithstanding that it at least appears inconsistent with the general principles underlying the order. Because DOJ, Treasury, and the Counsel's Office object to the first approach on substantive grounds (believing that where national origin is an element of the suspected criminal offense, this kind of practice is both appropriate and necessary) and because DOJ and the DPC object to the second approach on political grounds (believing that it will cause a firestorm within the Hispanic community), all your agency and White House advisors oppose Edley's alternative executive order.

A more difficult question concerns whether to issue any executive order on Wednesday. The Justice Department strongly believes that the data collection order is necessary to show that we are making progress on this issue and doing something more than just talking. Both Justice and Treasury also believe deeply in the need for data collection and reporting, and worry that if we do not issue this order now, we also will find reasons not to issue it in the future. Counsel's Office, on the other hand, recommends that you put off issuing the data collection order and simply engage in general discussion of racial profiling at the conference. Chuck notes that the order may displease both sides of the debate -- the civil rights community because it does not expressly prohibit all federal law enforcement officers from engaging in all kinds of racial profiling, the law enforcement community because it does demand collection and reporting of racial and other data (which most law enforcement groups strongly oppose at the local level). He also notes that we will be issuing this controversial order before any members of the civil rights and law enforcement communities have had a chance to speak with you directly on the issue, perhaps appearing to preempt the very discussion in which you will be participating.

DPC believes this is a close issue, but ultimately comes down on the side of releasing the executive order on Wednesday. To the extent that release of this order on Wednesday will provoke criticism on one side or the other (or both), we do not think the order will become any less controversial with the passage of time. (We are mindful that the crime bill is being marked up this week by the House Judiciary Committee and that the support of the law enforcement community for our crime proposals is important; we believe, however, that through careful consultations, we can minimize any adverse effect of this executive action on the broader debate in Congress.) We also believe, as noted above, that this executive order does something useful and allows us to exercise leadership in this area.

Sign the executive order to collect data on federal law enforcement stops.

Do not sign the executive order to collect data on federal law enforcement stops.

Let's discuss.

THE WHITE HOUSE
WASHINGTON

6-8-99

June 6, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Charles Ruff 

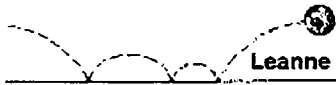
SUBJECT: Executive Order on Racial Profiling

A few comments on Bruce's memorandum concerning the racial profiling executive order:

1. Although the proposed executive order would parallel the data collection mandated for the states by the Conyers legislation, in my view it would be seen by the civil rights community as reflecting less forceful leadership on the issue of racial profiling than they are expecting. This is so particularly because both the Vice President and the Attorney General are already on the public record with statements declaring racial profiling to be improper.
2. The issue of current Border Patrol practice is a difficult one, and we are trying to work through with the INS how its need to enforce a law that has national origin as its central element can be squared with the presumptive impropriety of using ethnicity and national origin as a factor in making law enforcement decisions. The Border Patrol's current practice does permit it to use ethnicity and national origin as one element in deciding whether to make highway stops north of the Mexican border, and our goal, at a minimum, must be to ensure that any use of those indicia is carefully circumscribed and monitored so that it does not become the equivalent of a New Jersey Turnpike traffic stop.
3. On the issue of when to issue the executive order, I have two concerns. First, since it will be seen as overriding state law enforcement objections and as being less than the civil rights community expects, to issue it before meeting with both groups will leave both disappointed (and angry) and, as a matter of process, will give them the impression that you came to the meeting with your mind made up. Second, I fear that the specifics of the order will become the sole focus of the discussion and eliminate any meaningful chance to discuss the broader issues on the agenda.

I believe that the meeting will work better if you come to listen to the opposing (or at least different) views of the participants, make clear your strong belief that racial profiling is wrong, and then issue the executive order shortly thereafter, having taken the groups' recommendations into account. You will have to be prepared to address the

special problem of the Border Patrol but can do so in a setting in which you will have made your basic principles clear and can express concern that any use of national origin by the INS must be carefully constrained and monitored. I acknowledge the risk that the meeting will not be as newsworthy if you do not issue the order, but I believe the risk is greater that the participants will react badly to the timing (and the substance) of the order if it is issued beforehand.



Leanne A. Shimabukuro

08/17/99 06:25:43 PM

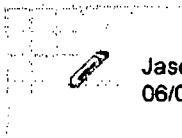
Record Type: Record

To: Anna Richter/OPD/EOP@EOP

cc:

Subject: Fact Sheet: Increasing Trust Between Communities and Law Enforcement

----- Forwarded by Leanne A. Shimabukuro/OPD/EOP on 08/17/99 06:25 PM -----

Jason H. Schechter
06/09/99 12:16:32 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Fact Sheet: Increasing Trust Between Communities and Law Enforcement

**INCREASING TRUST BETWEEN COMMUNITIES AND LAW ENFORCEMENT:
COMBATING RACIAL PROFILING**
June 9, 1999

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

Getting the Facts on Racial Profiling

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

- (1) begin collecting data on the race, ethnicity, and gender of individuals subject

to traffic and pedestrian stops, inspections at entries into the U.S., and certain other searches by federal law enforcement agencies, including the Immigration and Naturalization Service, Drug Enforcement Agency, Customs Service, and National Park Service; and

(2) after one year, report on the findings of the new data collection system and make additional recommendations based on those findings on how to ensure greater fairness in federal law enforcement's procedures.

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

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

-more-

More Progressive Policing for the 21st Century

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

###

ROUNDTABLE PARTICIPANTS

Attorney General Janet Reno

Deputy Attorney General Eric H. Holder, Jr.

Associate Attorney General Raymond C. Fisher

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

Message Sent To: _____

HARVARD LAW SCHOOL
CAMBRIDGE MA 02138

June 8, 1999

Re: Racial Profiling

Dear Mr. President:

I feel that I owe you this note because the stakes are high and I have reason to doubt that you were presented with the arguments below. Please forgive the breach of process. I first raised the executive order idea last fall, searching for some action to include in the book. DPC opposed the idea, but agreed to start an interagency process. It has taken just short of forever, and it is still just an order to direct research.

My initial proposal was a flat ban. When Eric Holder told me in January that there might be compelling operational needs at the Border Patrol, I crafted a compromise order - a ban but with an escape hatch if a cabinet officer were persuaded of a compelling need. The principal objections to that modified ban are that (1) it would advertise that you might support racial profiling in certain situations, and (2) it risks a news story focusing on that support, rather than your general opposition to racial profiling.

Please consider these principles.

- Be forthright about what the agencies actually do. Do not permit INS or other agencies to cover up racial profiling practices, if that is what is going on (and there remains a little bit of uncertainty, empirical and definitional). Do not defend their policies unless you both understand and agree with them. Discuss race honestly.
- I consider it a transparent evasion to just do data collection and say, "I can't ban racial profiling because I don't know for sure that INS is doing it." There are symbolic and prophylactic reasons to order a ban or modified ban, and then collect data to enforce the prohibition. Moreover, DOJ and DPC admit that the Border Patrol is doing something. So, do you support it, or don't you? And, until the facts are clear, is the presumption against profiling, or is the presumption against interfering with the INS?
- If you are not going to hide the policy, then you have three choices. First, you can order a stop to it with a flat ban: *make your actions match the rhetoric that your speechwriters are preparing*. Second, you can honestly defend the INS and say that border enforcement is different because of the nature of the offense being investigated. Third, you can take a middle ground, as I reluctantly suggested in the draft book.
- This third option would ban racial profiling but permit cabinet officers to create narrowly tailored, carefully monitored exceptions, with public notice. My belief is, if

the INS thinks they have a compelling operational need, they should say so; Dorris and Janet should be put to the test of explaining why they need it and how they are going to prevent abuses. *Meanwhile, ban the practice.*

Now think about the roundtable at DOJ. I don't know the format or who the participants are. But, as a prediction, you should expect to be asked why you don't exercise principled leadership by issuing a ban, even if there is uncertainty, rather than just conducting research. Hispanics or others there may ask you about the Border Patrol. Comparisons may be drawn in the roundtable, or by reporters, with Governor Whitman, who ultimately acted forcefully, and with Mayor Giuliani, who has ordered politeness, rather than research.

Finally, please remember that the Vice President has stated his own flat opposition to racial profiling. In a meeting I coordinated on crime policy last week, Bill Galston raised the profiling question and made an impassioned statement condemning it. The Vice President said he fully agreed. Playing devil's advocate, I presented the Border Patrol problem and pressed him, testing the firmness of his view. He quickly insisted that, "It is just wrong." Bruce Reed was present, but said nothing on that issue.

Thanks for your time.

Warm regards,



Christopher Edley, Jr.
Professor of Law and
Co-Director, the Civil Rights Project at Harvard

**CONFERENCE ON STRENGTHENING POLICE-COMMUNITY
RELATIONS
SUGGESTED HYPOTHETICALS AND QUESTIONS
FOR ROUNDTABLE DISCUSSION**

Facilitators: Charles Ogletree, Harvard Law School
Christopher Stone, Vera Institute of Justice
Moderator: The President

1. HYPOTHETICAL SITUATION

Ogletree/Stone: The police chief in a mid-size city is presented with requests from neighborhood watch organizers and other residents in a minority, high crime neighborhood to increase police patrols in that area. They particularly are concerned about young men loitering on the corners and in front of liquor stores, and they complain of gang activity and drug buys. When the chief added patrols in the past, the police were criticized strongly by others from this same community and civil rights activists for being heavy-handed.

Suggested Questions for THE PRESIDENT:

1. **Suggested Question to Hugh Price, National Urban League:**
What steps would you take to work with the police to meet the real needs of the neighborhood residents to combat crime, while also addressing the civil rights concerns?
2. **Suggested Question to Tom Frazier, Baltimore Police Department or Richard Green, Crown Heights Youth Center:**
What steps can a police department take to get community approval for increased crime control, without creating tensions and a perception of bias or lack of respect for residents?
3. **Suggested Question to Chuck Sha-King, Youth Force or Attorney General Reno:**
How can police best learn how to talk to youth?

2. HYPOTHETICAL SITUATION

Ogletree/Stone: The Chief of Police of a major city has an aggressive program to stop cars in the city that appear to be carrying gang members and to question the driver and passengers. Gang activity in the city principally has involved gangs of African American, Hispanic, Asian, and Eastern European young people.

The police chief has just come to see the Mayor about a crisis. A few hours ago, two officers, one white and one Hispanic, stopped a low-riding car carrying three teenage black males based on a minor traffic violation, but something went terribly wrong. After the stop, there was an argument and the officers thought they saw one of the passengers reach into the back seat; they saw something shiny and thought it was a gun. They opened fire, injuring the driver and one of the passengers. No gun was found in the car. However, there was a shiny metallic object (wrench?) that may have been what the officers mistook for a gun.

The chief is prepared to support a full investigation and let the chips fall where they may. She is worried that the reaction to the incident may endanger her anti-gang traffic stop program, which she believes has been crucial to bringing down crime. Her community meetings over the last few years have convinced her that the public broadly supports this program. The mayor and chief of police will hold a press conference in two hours.

Suggested Questions for THE PRESIDENT:

1. **Suggested Question to Robert Stewart, National Organization of Black Law Enforcement Executives or Bob Scully, National Association of Police Organizations:**
What strategy would you recommend to the Mayor if you were chief of police?
2. **Suggested Question to Gil Gallegos, Fraternal Order of Police or Kweisi Mfume, NAACP:**
As Mayor, what should your priorities be in responding to the incident? How broadly or narrowly do you want to focus the issue?
3. **Suggested Question to Ron Neubauer, International Association of Chiefs of Police:**
What policies have been successful in other cities in preventing these kinds of tragedies?

3. HYPOTHETICAL SITUATION

Ogletree/Stone: A new police chief has been hired and the local paper published a series of op-ed pieces discussing the issues that the new chief should address. In one, the editorial board called on the chief to move beyond the slogans of community policing to the real spirit of community policing: giving local communities, particularly communities of color, a real say in how the police serve them.

Suggested Question for THE PRESIDENT:

1. **Suggested Question to Paul Evans, Boston Police Department or Wade Henderson, Leadership Conference on Civil Rights:**

What practical steps can we take to move us closer to the spirit of community policing in cities across this country?

IF TIME ALLOWS THE FOLLOWING QUESTIONS/SITUATIONS COULD BE ADDRESSED:

4. QUESTION

Ogletree/Stone: Traffic stop enforcement is an important law enforcement tool for a variety of reasons, not the least of which is traffic safety and decreasing traffic fatalities. Secretary Slater, I know that you have a seat belt initiative that you believe is particularly important in the African American community and in other communities of color. How will addressing the concerns of racial profiling in traffic enforcement affect the receptiveness of these communities to your initiative?

5. HYPOTHETICAL SITUATION

Ogletree/Stone: Police have been called to a minority neighborhood because a man who appears to be mentally ill has been shouting abusively at residents. When two policemen arrive, they announce that they are police, but the man responds by pulling out a knife. When the police shout at the man that he should drop the knife, instead he lunges forward at one of the officers. The other officer fires his weapon, seriously wounding the man. This incident has occurred against the backdrop of increasing tensions between the police and members of the minority community.

Suggested Questions for THE PRESIDENT:

1. **Suggested Question to Dan Smith, National Sheriff's Association or Raul Yzaguirre, National Council of La Raza:**

If you are the chief of police, what steps should you take to avoid community unrest?

2. Suggested Question to Ken Lyons, International Brotherhood of Police Officers or Karen Narasaki, Asian Pacific American Legal Consortium:

What steps should we be taking to minimize these types of incidents?

[This hypothetical could also be used as springboard for discussion of fact that some incidents, while avoidable and tragic, and perhaps the result of lapses in police policy, may not be ones that can or should be prosecuted.]

3. Suggested Question to Antonia Hernandez, Mexican American Legal Defense & Educational Fund:

You are the police union representative for the officer involved in the shooting. Civil rights leaders are calling for prosecution of the officers. What position should you be taking?

**ROUNDTABLE DISCUSSION ON
STRENGTHENING POLICE-COMMUNITY RELATIONS**

June 9, 1999

President Clinton will serve as the moderator for today's roundtable discussion on police-community relations. With the assistance of Professor Charles Ogletree from Harvard Law School and Christopher Stone from the Vera Institute of Justice, the President will outline several hypothetical situations involving interactions between law enforcement officers and members of the community. He will then follow up by asking individual panel participants a series of questions as to how they would respond to such situations. Some of the examples that the President will use during this discussion are:

HYPOTHETICAL SITUATION #1:

The police chief in a mid-size city is presented with requests from neighborhood watch organizers and other residents in a minority, high crime neighborhood to increase police patrols in that area. They particularly are concerned about young men loitering on the corners and in front of liquor stores, and they complain of gang activity and drug buys. When the chief added patrols in the past, the police were criticized strongly by others from this same community and civil rights activists for being heavy-handed.

HYPOTHETICAL SITUATION #2:

The Chief of Police of a major city has an aggressive program to stop cars in the city that appear to be carrying gang members and to question the driver and passengers. Gang activity in the city principally has involved gangs of African American, Hispanic, Asian, and Eastern European young people.

The police chief has just come to see the Mayor about a crisis. A few hours ago, two officers, one white and one Hispanic, stopped a low-riding car carrying three teenage black males based on a minor traffic violation, but something went terribly wrong. After the stop, there was an argument and the officers thought they saw one of the passengers reach into the back seat; they saw something shiny and thought it was a gun. They opened fire, injuring the driver and one of the passengers. No gun was found in the car. However, there was a shiny metallic object (wrench?) that may have been what the officers mistook for a gun.

The chief is prepared to support a full investigation and let the chips fall where they may. She is worried that the reaction to the incident may endanger her anti-gang traffic stop program, which she believes has been crucial to bringing down crime. Her community meetings over the last few years have convinced her that the public broadly supports this program. The mayor and chief of police will hold a press conference in two hours.

HYPOTHETICAL SITUATION #3:

A new police chief has been hired and the local paper published a series of op-ed pieces discussing the issues that the new chief should address. In one, the editorial board called on the chief to move beyond the slogans of community policing to the real spirit of community policing: giving local communities, particularly communities of color, a real say in how the police serve them.

The thirty participants in the roundtable discussion are:

CHAIR

President William J. Clinton

PARTICIPANTS

Attorney General Janet Reno

Deputy Attorney General Eric H. Holder, Jr.

Associate Attorney General Raymond C. Fisher

Acting Assistant Attorney General Bill Lann Lee, Civil Rights Division

Secretary Rodney Slater, Department of Transportation

Ronald Daniels, Center for Constitutional Rights

Paul Evans, Boston Police Department

Thomas Frazier, Baltimore Police Department

Gilbert Gallegos, Fraternal Order of Police

Richard Green, Crown Heights Youth Center

Penny Harrington, National Center for Women in Policing

Wade Henderson, Leadership Conference on Civil Rights

Antonia Hernandez, Mexican American Legal Defense & Educational Fund

John Justice, National District Attorneys Association

Representative Sheila Jackson Lee, 18th District, Texas

Ken Lyons, International Brotherhood of Police Officers

Kweisi Mfume, NAACP

Karen Narasaki, Asian Pacific American Legal Consortium

Ron Neubauer, International Association of Chiefs of Police

Professor Charles Ogletree, Harvard Law School

Hugh Price, National Urban League

Robert Scully, National Association of Police Organization

Rev. Al Sharpton, National Action Network

Chuck Sha-King, Youth Force

Dan Smith, National Sheriff's Association

Robert Stewart, National Organization of Black Law Enforcement Executives

Christopher Stone, Vera Institute of Justice

Beverly Watts-Davis, San Antonio Fighting Back

Mayor Anthony Williams, District of Columbia

Raul Yzaguirre, National Council of La Raza

**ROUNDTABLE DISCUSSION ON
STRENGTHENING POLICE-COMMUNITY RELATIONS**

June 9, 1999

President Clinton will serve as the moderator for today's roundtable discussion on police-community relations. With the assistance of Professor Charles Ogletree from Harvard Law School and Christopher Stone from the Vera Institute of Justice, the President will outline several hypothetical situations involving interactions between law enforcement officers and members of the community. He will then follow up by asking individual panel participants a series of questions as to how they would respond to such situations. Some of the examples that the President will use during this discussion are:

HYPOTHETICAL SITUATION #1:

The police chief in a mid-size city is presented with requests from neighborhood watch organizers and other residents in a minority, high crime neighborhood to increase police patrols in that area. They particularly are concerned about young men loitering on the corners and in front of liquor stores, and they complain of gang activity and drug buys. When the chief added patrols in the past, the police were criticized strongly by others from this same community and civil rights activists for being heavy-handed.

HYPOTHETICAL SITUATION #2:

The Chief of Police of a major city has an aggressive program to stop cars in the city that appear to be carrying gang members and to question the driver and passengers. Gang activity in the city principally has involved gangs of African American, Hispanic, Asian, and Eastern European young people.

The police chief has just come to see the Mayor about a crisis. A few hours ago, two officers, one white and one Hispanic, stopped a low-riding car carrying three teenage black males based on a minor traffic violation, but something went terribly wrong. After the stop, there was an argument and the officers thought they saw one of the passengers reach into the back seat; they saw something shiny and thought it was a gun. They opened fire, injuring the driver and one of the passengers. No gun was found in the car. However, there was a shiny metallic object (wrench?) that may have been what the officers mistook for a gun.

The chief is prepared to support a full investigation and let the chips fall where they may. She is worried that the reaction to the incident may endanger her anti-gang traffic stop program, which she believes has been crucial to bringing down crime. Her community meetings over the last few years have convinced her that the public broadly supports this program. The mayor and chief of police will hold a press conference in two hours.

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Raul Yzaguirre, National Council of La Raza

**Increasing Trust Between Communities and Law Enforcement:
Combating Racial Profiling
June 9, 1999**

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

Getting the Facts on Racial Profiling

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

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

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

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

More Progressive Policing for the 21st Century

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

Race-racial profiling

THE WHITE HOUSE
WASHINGTON

6-8-99

June 7, 1999

*John
Minion Moore to
DPC - Civil Rights
Policy - Priority
1/2/99*


MR. PRESIDENT:

Attached is a DPC options memo on issuing a racial profiling data collection EO (or directive) prior to Wednesday's roundtable discussion with civil rights and law enforcement representatives. I've also attached a short memo from Chuck Ruff with his views. I recommend you read both.

Maria asked me to convey her thoughts; she thinks:

- it's important to note (as Chuck does) that the VP and AG have been publicly critical of racial profiling;
- civil rights groups may not view a data collection EO as bold leadership on this issue; and
- federal law enforcement agencies may not be *unalterably* opposed to the Edley approach.

DPC has a different view from Maria, especially on the last point. You should know that DPC did preview the EO with Wade Henderson, who responded favorably for the most part. Minyon Moore thinks it's important to tackle this issue in incremental steps (like this one), and believes it's worth doing before Wednesday's meeting.

Sean Maloney 

CC: PODESTA
ECHAN.
RUFF
FRAMONT.
MOORE, M.
KAGAN/REED

6-8 79

THE WHITE HOUSE
WASHINGTON

June 4, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Executive Order on Racial Profiling

You are scheduled to participate Wednesday in an hour-long roundtable discussion with about 30 representatives of the civil rights and law enforcement communities, possibly including Jesse Jackson, Kweisi Mfume, Al Sharpton, Wade Henderson, Hugh Price, FOP President Gil Gallegos, Boston Police Commissioner Paul Evans, and Baltimore Police Commissioner Thomas Frazier. This discussion is meant to help the civil rights and law enforcement communities find common ground on how to deal with police abuse and misconduct, including racial profiling. Although the Attorney General, Chuck Ruff, and I have met with most of the invitees in preparation for this meeting, many remain skeptical about each other's motives and about what the meeting will accomplish. We are hopeful that your involvement in the roundtable will help keep the civil rights and law enforcement communities working together on this issue.

Also in preparation for this meeting, we have worked with the Departments of Justice and Treasury to draft an executive order on this issue. The order starts with a preamble expressing, in general but strong terms, opposition to the use of racial profiling as a tool of law enforcement. The order then directs federal law enforcement agencies to set up a system to collect data on the race, ethnicity, color, and gender of the persons they stop, search, or otherwise examine. Within one year of implementing this system, the Attorney General must report the data collected and make any appropriate recommendations on how to promote greater fairness in federal law enforcement. Justice, Treasury, and the DPC believe that this order would constitute an effective way of demonstrating federal leadership in this area. The executive order essentially would do at the federal level what the civil rights community most wants done at the state and local levels (and what legislation by Congressman Conyers would require): institute a strong system of data collection and reporting to determine and disclose exactly where racial and other discrimination exists in traffic stops and other contacts with law enforcement.

Chris Edley has proposed a different kind of executive order, which would expressly prohibit (though, as explained below, perhaps with an exception) federal law enforcement officers from taking race, ethnicity, and other specified traits into account when making stop and search decisions. This approach would require you to confront quite explicitly a difficult issue (which the data collection order allows you to avoid, at least for now): whether to allow the U.S. Border Patrol to continue its current practice of using a person's perceived national origin or ethnicity (essentially, whether the person looks Hispanic) in deciding what cars to search near the border. The Edley executive order would either (1) effectively prohibit this practice, in the face

of the strong view of both the INS and Main Justice that it is an integral part of effective border enforcement, or (2) include a specific provision allowing the Border Patrol (the largest federal law enforcement agency and the one that most regularly conducts traffic stops) to continue this practice notwithstanding that it at least appears inconsistent with the general principles underlying the order. Because DOJ, Treasury, and the Counsel's Office object to the first approach on substantive grounds (believing that where national origin is an element of the suspected criminal offense, this kind of practice is both appropriate and necessary) and because DOJ and the DPC object to the second approach on political grounds (believing that it will cause a firestorm within the Hispanic community), all your agency and White House advisors oppose Edley's alternative executive order.

A more difficult question concerns whether to issue any executive order on Wednesday. The Justice Department strongly believes that the data collection order is necessary to show that we are making progress on this issue and doing something more than just talking. Both Justice and Treasury also believe deeply in the need for data collection and reporting, and worry that if we do not issue this order now, we also will find reasons not to issue it in the future. Counsel's Office, on the other hand, recommends that you put off issuing the data collection order and simply engage in general discussion of racial profiling at the conference. Chuck notes that the order may displease both sides of the debate -- the civil rights community because it does not expressly prohibit all federal law enforcement officers from engaging in all kinds of racial profiling, the law enforcement community because it does demand collection and reporting of racial and other data (which most law enforcement groups strongly oppose at the local level). He also notes that we will be issuing this controversial order before any members of the civil rights and law enforcement communities have had a chance to speak with you directly on the issue, perhaps appearing to preempt the very discussion in which you will be participating.

DPC believes this is a close issue, but ultimately comes down on the side of releasing the executive order on Wednesday. To the extent that release of this order on Wednesday will provoke criticism on one side or the other (or both), we do not think the order will become any less controversial with the passage of time. (We are mindful that the crime bill is being marked up this week by the House Judiciary Committee and that the support of the law enforcement community for our crime proposals is important; we believe, however, that through careful consultations, we can minimize any adverse effect of this executive action on the broader debate in Congress.) We also believe, as noted above, that this executive order does something useful and allows us to exercise leadership in this area.

Sign the executive order to collect data on federal law enforcement stops.

Do not sign the executive order to collect data on federal law enforcement stops.

Let's discuss.

THE WHITE HOUSE
WASHINGTON

6-8-99

June 6, 1999

MEMORANDUM FOR THE PRESIDENT

FROM:

Charles Ruff 

SUBJECT:

Executive Order on Racial Profiling

A few comments on Bruce's memorandum concerning the racial profiling executive order:

1. Although the proposed executive order would parallel the data collection mandated for the states by the Conyers legislation, in my view it would be seen by the civil rights community as reflecting less forceful leadership on the issue of racial profiling than they are expecting. This is so particularly because both the Vice President and the Attorney General are already on the public record with statements declaring racial profiling to be improper.

2. The issue of current Border Patrol practice is a difficult one, and we are trying to work through with the INS how its need to enforce a law that has national origin as its central element can be squared with the presumptive impropriety of using ethnicity and national origin as a factor in making law enforcement decisions. The Border Patrol's current practice does permit it to use ethnicity and national origin as one element in deciding whether to make highway stops north of the Mexican border, and our goal, at a minimum, must be to ensure that any use of those indicia is carefully circumscribed and monitored so that it does not become the equivalent of a New Jersey Turnpike traffic stop.

3. On the issue of when to issue the executive order, I have two concerns. First, since it will be seen as overriding state law enforcement objections and as being less than the civil rights community expects, to issue it before meeting with both groups will leave both disappointed (and angry) and, as a matter of process, will give them the impression that you came to the meeting with your mind made up. Second, I fear that the specifics of the order will become the sole focus of the discussion and eliminate any meaningful chance to discuss the broader issues on the agenda.

I believe that the meeting will work better if you come to listen to the opposing (or at least different) views of the participants, make clear your strong belief that racial profiling is wrong, and then issue the executive order shortly thereafter, having taken the groups' recommendations into account. You will have to be prepared to address the

special problem of the Border Patrol but can do so in a setting in which you will have made your basic principles clear and can express concern that any use of national origin by the INS must be carefully constrained and monitored. I acknowledge the risk that the meeting will not be as newsworthy if you do not issue the order, but I believe the risk is greater that the participants will react badly to the timing (and the substance) of the order if it is issued beforehand.

Race - race profiling

**NATIONAL PRESS CLUB LUNCHEON SPEAKER:
JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES
NATIONAL PRESS CLUB BALLROOM 1:01 P.M. EDT THURSDAY,
APRIL 15, 1999**

Good afternoon, and thank you for having me.

Across the country communities are considering the ways in which police officers do their jobs, how they handle deadly confrontations and how they protect and respect the people they serve.

Police officers have one of the hardest jobs there is. A police officer is charged with ensuring public safety, but she or he is also empowered to use force and, if necessary, to take a life to protect others from death or great bodily harm. The police are there to protect us from crime, but they must protect our rights at the same time. And to do their work effectively, the police must have the trust and confidence of the communities they serve. They must develop a partnership and a relationship with the citizens they protect.

Professional, sensitive, and dedicated police officers have done so much across this country to make their community a far better place to live. In many communities police and citizens are working together to prevent crime and to build understanding and to bring people together.

The crime rate has fallen every year for the past six years in virtually every category. Policing has contributed to that drop. The thousands of community-oriented police officers who are on the streets, due to the president's COPS initiative, have made a difference. All across America neighborhoods are safer.

But some people, especially those in minority communities, are wondering whether our success in reducing crime has been due in part to overly aggressive police officers who ignore the civil liberties of Americans. That concern has escalated and shown a more public face following the tragic shooting death of Amadou Diallo in New York two months ago.

This nation's heart goes out to the family and friends of Mr. Diallo for their terrible loss. The case is now with the courts to decide, and it would be inappropriate for me to comment.

But the issue is not just one city. The issue is national in scope and reaches people all across this country. For too many people, especially in minority communities, the trust that is so essential to effective policing does not exist because residents believe that police have used excessive force, that law enforcement is too aggressive, that law enforcement is biased, disrespectful, and unfair.

Too often I have heard stories similar to the following account. A black man is driving down

the road. He is coming back from the store, or returning home from work. A siren sounds, the lights start to flash. And in his rearview mirror he sees a police car. He pulls over. The officer comes up besides the car and asks for identification. He hands it over. The police officer asks questions, and then hands the license back, telling him without further explanation to drive on. The driver is left with unspoken questions. Why did he pull me over? Is because I am black? Is it because I am driving a nice car? Is it because people like me aren't often found in this part of town? The driver may never learn the answers. But he is left with a clear perception, the perception that he was being pulled over for being black.

But, indeed, the officer may have had a good reason to make that stop. Perhaps the vehicle was speeding. Perhaps the officer was searching for a man who was driving a car identical to the one belonging to the driver. The driver's perception may be completely wrong. But if the driver is never told why he was pulled over, he has no reason to change that perception. And as he drives away, it is not just his time he will have lost, but his confidence in law enforcement as well.

Whether these feelings are based on individual experiences or based on the stories and the perceptions of others, what matters most is that these feelings are very real on the part of too many Americans. When even a U.S. attorney who is African American feels he has to instruct his son to be cautious of the police when he drives, we have a problem.

When minority communities, in the wake of a shooting, immediately assume the police officer, not the suspect, is at fault, we have a problem. And the tensions that arise between the police and minority residents have serious consequences both in terms of effective policing and community unrest.

When citizens do not trust their local police officer, they are less willing to report crime and less willing to be witnesses in criminal cases. When there is a breach of trust, it means people are more distrustful of the police, more tense when there is an encounter, and less likely to cooperate. As a result, police officers are more tense, and they may be more likely to react with more force than necessary. Suddenly, a routine encounter can become a deadly clash.

Since I became Attorney General, I have tried to get all parts of our communities to work together to deal with the problem of crime in this country -- state and local law enforcement working together with the federal government identifying a problem and working together to solve it. I've tried to get businesses and clergy, schools and social agencies to come together to the table. Crime is a problem that all of us must work together to solve because no one of us can solve it alone. It is now time for all of us to come together in our communities, with citizens from all parts of the community, to build the trust and confidence of all Americans in law enforcement.

Over the past several weeks, I have met with police chiefs, union representatives, community leaders, with young people at risk, and offenders on probation, listening as they have described

the problem and made suggestions -- good, positive, constructive proposals -- that would generate trust and build a solid relationship. Both law enforcement and community leaders understand that we are and that we must continue to be together if we are to solve this problem. There is probably no task more important to safe neighborhoods and civil rights than improving relationships and building greater trust between minority communities and law enforcement.

And every police chief I have talked to and every community leader I have met shares this commitment.

Effective policing does not mean abusive policing. Effective policing does not ignore the constitutional rights and the civil liberties that police officers are sworn to uphold. On the Ninth Street side of the Justice Department building, inscribed across the top, are the words describing the law that we live under. "The common law is derived from the will of mankind, issuing from the life of the people, framed through mutual confidence, sanctioned by the light of reason." For police officers to be effective, their enforcement of the law must be framed in mutual confidence between the people served and the people who serve them. Every American must respect the law, but the law must respect every American.

Across the country, there are nearly 700,000 law enforcement officers, and the overwhelming majority are hard-working public servants who do a dangerous job justly, fairly, with excellence and with honor. They put their lives on the line every day in the pursuit of justice and public safety, and they do that because they care about the people they are committed to serving.

I support and salute these dedicated officers. We owe them a great debt of gratitude. But we as a society cannot tolerate officers who cross the line and abuse their position by mistreating law-abiding citizens or who bring their own racial bias to the job of policing. No person should be subject to unreasonable force. No person should be targeted by law enforcement based on the color of his or her skin. Equal justice under law must mean the same thing to minority communities as it means to the nation as a whole.

Police chiefs and rank and file officers alike agree. They tell me that if we want to maintain the trust and confidence of the community, we must take decisive action against those few officers who violate their oaths and deny citizens their constitutional rights by the use of excessive force or harassment. Police organizations, such as the International Association of Chiefs of Police, and then the Police Executive Research Forum, have stated very clearly that police activity that is race or ethnic-based is neither legal, consistent with democratic ideals and principles of American policing, nor in any way legitimate and defensible as a strategy for public protection. Indeed, last Friday, representatives of Oregon and Washington state law enforcement agencies and police unions signed an unprecedented resolution condemning race-based profiling, that was facilitated by the Community Relations Service of the Justice Department.

Today I am announcing that I will be convening law enforcement leaders, community representatives, including young people, who must be heard from, civil rights advocates and

experts in police practices to identify and share strategies that are working and to understand suggestions that can be implemented to address this issue.

I will also be reviewing the suggestions that I have been provided by civil rights leaders and law enforcement officials with whom I have met.

Last week the Police Executive Research Forum brought 20 police chiefs from around the country to Washington. The chiefs were asked to bring one or two community leaders from their cities, so they could discuss the issues surrounding police misconduct. That was an excellent discussion, and very constructive.

Today I would like to focus on five areas that I think will form the foundation of our efforts to foster police integrity and eliminate police misconduct.

The first step is to expand and to promote the kind of partnership and dialogue which develops the mutual trust and confidence between police and the people they serve.

The concept of community policing can teach us a great deal, for it seeks to improve public safety by involving the community itself and the people themselves in establishing police priorities and involving police officers in the communities they serve. It involves partnerships between the police and institutions, such as the school and the clergy. In cities across this country, officers organize and participate in community activities and develop ways for the community to participate in police decision-making.

By breaking down suspicions, building up the trust, the community-oriented police officer becomes the peacemaker and the problem-solver without relinquishing his or her enforcement duties.

Sometimes it just boils down to taking the time to learn how to talk to each other. In Winston-Salem, the police department has housed its basic law enforcement training program at a school for at-risk youth. As part of that basic law enforcement training, these police trainees were working as mentors with young people in the school. I was there last week, and I talked to trainees and youth together.

One teenager was very eloquent. "I didn't like the police. I didn't trust them. I used to walk away from them when I saw them coming. When they first came to the school and started talking to me, I didn't listen to them. They kept talking to me, and I started hearing and started listening, and they really had something to say."

Those trainees and those young people, sitting together, were learning how to talk to each other, and in the limited time they had had, they were each learning from the other. It was one of the best experiences I have seen in terms of seeing police and young people relate together.

In Baltimore, police officers are working together with community service officers and parents and community volunteers to build trust and mutual respect between young people and adult authority figures. The Police Athletic League operates 27 centers around Baltimore, serving the needs of more than 7,000 youths by creating safe havens that are open after school until 10:00 p.m. at night. Unsurprisingly, in neighborhoods where Police Athletic League centers are located, crime involving young people has dropped dramatically.

And police departments can also find valuable partners in the faith community. In Boston, a group of ministers, the 10 Point Coalition, has played a vital role in the city's recent and remarkably successful fight against violent crime. The coalition's outreach and work with at-risk youth was vital. Even more critical, however, was the coalition's effort to change the way the police in Boston's inner-city community relate to each other. The coalition created a balance between the community's desire for safe streets and the community's reluctance to see their children put in jail. In this way, the coalition served as a bridge of trust and reconciliation between the community and the police.

Last month President Clinton announced that we will expand the creation of Citizen Police Academies. These academies, in intensive discussion over many weeks, explain clearly and honestly just what the police do and how they operate. These center demystify the police and enable citizens to better understand the challenges that police officers face day in and day out.

Our second undertaking is this: We must insist on police accountability. And I begin with the Department of Justice. We are conducting a self-assessment of our own use of force and civil rights processes, coordinated by the Inspector General, to ensure that we have procedures in place which hold us accountable to the American people, to all of the American people.

All law enforcement agencies -- federal, state and local -- from the director, chief or sheriff on down, must send a clear message that misconduct will not be tolerated, rude or unfair treatment will not be countenanced. But this is not a responsibility of management alone, rank and file officers must join together to promote a climate of integrity, civility, accountability and responsibility.

They must be intolerant of misconduct by fellow officers, and they must make it unacceptable to keep silent about other officers' misconduct.

Every law-enforcement agency should have a complaint process so people can file complaints without fear. If individuals fear retaliation, then they won't file complaints, and the agency will never know that it has a problem on its hands. Some police departments have moved their Internal Affairs unit to a separate building so that individuals do not have to worry about coming face to face with the officer they are complaining about. Other departments have set up a phone-in reporting process or distribute brochures on how to file a complaint.

Every police department should make sure that it has in place a vigorous system for

investigating allegations of misconduct thoroughly and fairly. A fair system ensures due process both for the officer and for those filing complaints. Departments must ensure that there is sufficient funding and staffing to pursue each complaint so citizens see that they have not been ignored. Agencies must have the will to swiftly discipline officers or agents when a complaint has been sustained. If they do not, some will think that they can cross the line with impunity.

Police departments should also know when officers use force, why the force was used and whether it was appropriate. Police agencies can implement what are known as early-warning systems to help identify officers who may need more training or reassignment, if necessary.

Finally, police departments need ways to get an independent view of their performance. In Washington, the police chief asked the Justice Department to come in and review its use of force. The Los Angeles Police Department, as a result of the Christopher Commission reforms, created an inspector general for the department. As a result of a similar commission, the L.A. Sheriff's Office now has an outside monitor.

Third, we need to ensure that police departments recruit officers who reflect the communities they serve, who have high standards and who are then properly trained to deal with the stresses and the dangers of police work. In years past, too many departments had few, if any, minority officers. That has improved significantly. We now have, not just men in blue, but women in blue; not just whites, but people of all colors.

When someone who grows up in the neighborhood becomes an officer there, they understand the people, and they know the languages spoken.

They are men and women our youth can look up to as role models. Old stereotypes and prejudices are not as likely to be passed on to the next generation of police departments if those departments represent a diverse mix of society.

I'm proud of this progress, but we need to do more. The San Antonio police department cadet program targets neighborhoods for recruits where they receive citizen complaints about the police. They attend community meetings and ask community leaders to identify candidates for the cadet program. The department works with those candidates by providing them mentors to help them prepare for the selection process.

We must also emphasize fairness and integrity in our recruitment. As Tom Frazier (sp), the chief of Baltimore's police department puts it, "we must recruit those who come to policing in the spirit of service, not in the spirit of adventure." Having recruited the right officers, we must then do a better job of training them. They must know when it is appropriate to use force and when other non-forceful means will do. They must know how to serve all the people.

The job of a police officer is very difficult. Try for a moment to picture it from the officer's perspective: You've just received a call about a drugstore that was robbed. The suspects are two

teenagers. You happen to be in the area. You see two youths walking briskly down the street. You yell out to them and suddenly they start to run. You give chase, they split up, you focus on one of the two, letting the other go. You follow him into an alley in a high-crime neighborhood.

All of a sudden, you realize he's trapped. You yell out that you're police and you order him to put his hands in the air. But instead, the panicked youth suddenly swirls around holding a tiny, shiny object that appears to be a gun. Equally panicked, you pull out your gun and without time to reflect, pull the trigger.

Was it a gun? Why did the suspect run? Did your shots hit the youth? Was he, in fact, the robber? Were you right to pursue him in the first place? We don't know the answers to such questions about this hypothetical, but the most relevant question may be whether you were trained for such an encounter and whether you did everything possible to avoid the use of force.

It is also important that residents realize that police officers in situations like I described are fearful of their own lives. They, too, fear the unpredictable nature of crime and violence on the street. We need to deal with these fears in trying to prevent excessive force incidents.

Over the last decade, 688 law enforcement officers were killed in the line of duty, 633 with firearms. We need to develop strategies to address these fears and deal with some of the stress of police work.

What we cannot do is allow officers' fears to become exaggerated and develop into mistrust of an entire community and suspicions based on stereotypes. In a recent speech, Washington D.C.'s police chief Charles Ramsey noted that those fears are brought on by a narrow view of the world. He says for many police officers, especially those working in high crime areas, their lives have become a good versus a bad guy drama played out in the communities they serve. And these officers see so many of the latter that they lose sight of the former: the good, law-abiding people who make up the vast majority of residents, even in the most crime-infested communities.

This fear among both police officers and community members tends to breed mistrust, which in turn fosters stereotypes, which in turn leads to an exaggerated sense of the differences between our two groups.

Thus our training must prepare officers for violent confrontations, but it also must deal with non-deadly confrontations. Officers must know how to interact with citizens, how to use alternatives to force, and that it is wrong to assume that the race or ethnicity of a person determines on which side of the law that person falls.

And most of all, we've got to look at teenagers and understand that the great, great, great majority, even those who get in trouble, are good kids who want to be somebody and want to make a difference. We've got to learn how to talk to them, learn how to encourage them, and work together to give them a strong and positive future.

Fourth, we must increase our civil rights enforcement. The steps I have outlined so far are things we can do to prevent incidents of police misconduct in the first place. But when they do occur, we must take swift, sure action, and that means prosecution when appropriate.

Most cases of police excessive use of force are prosecuted by state and local authorities. But the Justice Department has a very important role to play. At any given time, the Civil Rights Division and the FBI are investigating several hundred allegations of criminal police misconduct around the country. During the past five years the Justice Department has criminally prosecuted over 200 law enforcement officers for excessive force. We pursue these cases vigorously. But we recognize that the law sets a very high standard of proof. To prove a federal crime, we must prove beyond a reasonable doubt that the officers had the specific intent to use more force than was reasonably necessary under the circumstances, given their training, experience and perceptions.

We need to be successful in another way, too.

We need to do a better job in the Department of Justice of explaining to the public why we are bringing a case or why we can't bring a case, so that both police officers and the members of the community know what to expect from the Department while at the same time not doing anything that would affect a pending investigation or pending prosecution. I am resolved to pursuing that effort.

In addition to prosecuting individual officers, we also have the authority to sue police departments when we believe there is a pattern of misconduct. Under this authority, known as our "pattern and practice" authority, we can go to a court to force a police department to change the way it does business. Using this authority, we are currently investigating several law enforcement agencies across the country. In two instances, we have negotiated agreements with police departments that contain many of the good practices I outlined previously. But as we pursue our pattern and practice investigations, we also will be working with departments on preventative measures so that we can address police integrity issues without litigation, where possible.

Fifth and last, we must take steps to gather the data that will help define the scope of the problem and measure our efforts to solve it. Right now we have only anecdotes and allegations. We need more. For the past several years, pursuant to the requirements of the 1994 Crime Control Act, the Department of Justice has tried to develop ways of measuring the level of excessive force incidents. Because police departments often don't keep such records, and because they are not required to report to the federal government statistics on the use of force by officers, we have had only limited success in developing the information.

That's why we're trying a new tack. Every year we conduct a survey of households across the country, asking whether residents have been victims of a crime. The Crime Victimization Survey is perhaps one of the most accurate reflections of law enforcement trends. This year we're going

to update the survey to include questions on police misconduct -- questions like, "During the last year, have you had an encounter with the police in which physical force was used?" By doing this, we can get a better sense of the relationship people have with law enforcement and we will know whether the efforts police departments make are succeeding.

I believe data collection in the area of police stops is also very important. By keeping track, by race, of who is pulled over, why they were stopped, which motorists are subjected to searches and the outcomes of the stops, we can see where the problems exist and how extensive they are. If the numbers show that there is not a problem, then minority communities will have a better outlook on law enforcement and if the numbers are, in fact, disproportionate, then police departments will be able to study the issue and set out ways to reduce the discrepancy.

Just last month I traveled to San Diego, where I met Police Chief Sanders who is developing a program requiring officers on the beat who make stops to put those stops into the computers that they have with them. I watched it in action and it's easily done. It takes very little time and I don't think its disruptive of the officers' day. I think that speaks volumes for what the police can do to identify the scope of the problem and to take steps to correct it.

There is a problem. America is beginning to face it. We must come together and face it as one.

We also know that there are many examples of great policing in the field that can renew the level of trust and confidence in police, among young people, and the community they serve. Both sides must continue to reach out, talking to each other.

Together we can and will solve the problem so that police can serve their community with dedication, compassion, understanding and courage. And young people and people who feel like they have been treated unfairly can become a player in the community, a participant in the community and contribute the tremendous energy, the wonderful qualities they have that are oftentimes unnoticed and too often lost for the whole community.

I have been to so many communities in this country, seeing people come together, work together to make a difference. I am convinced that with the resolve we have used in other situations, we can successfully and quickly address this situation. It is a situation that must be solved. (Applause.)

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1ST STORY of Level 1 printed in FULL format.

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April 26, 1999 19:11 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1596 words

HEADLINE: Gore April 25 Remarks as Prepared for Delivery to NAACP Detroit Metro Chapter (1/2)

CONTACT: Office of the Vice President, 202-456-7035

DATELINE: WASHINGTON, April 26

BODY:

Following is a transcript of remarks as prepared for delivery by Vice President Gore at NAACP Detroit Metro Chapter (part 1 of 2):

Sunday, April 25, 1999

As I was preparing to come here tonight, I realized something remarkable. This is the very last time the Detroit chapter will meet in the 1900s. So tonight, let us first pause to look back on a legacy of struggle for justice and righteousness that has truly defined this Century. And then let us look forward with commitment and dedication to the work that lies ahead.

The history we remember tonight is long. But the cord that connects us to ages past is short. If you close your eyes and listen to Mayor Archer, you can feel the passion of Booker T. Washington. Lean back and listen to Carolyn Cheeks Kilpatrick, and you can feel the leadership of Shirley Chisolm. Listen to John Conyers, and you can hear the justice of Thurgood Marshall. If you wonder what it was like to talk to Fannie Lou Hammer, spend a few minutes talking to Mrs. Bullah Work. If you wonder what Roy Wilkins was like, spend a few minutes with Dr. Lionel Swann. If you wonder about the wisdom of Mother Pollard, you'll get the same good advice from Mrs. Irene Graves.

Although she is not here tonight, I know you are proud to have as a member of this chapter a true American legend, not just to African Americans, but to all Americans -- Ms. Rosa Parks. Thanks to the taken just this week -- Rosa Parks now joins Nelson Mandela, Mother Teresa, and Robert Kennedy as one of the few Americans to receive our highest civilian honor, the Congressional Gold Medal.

I feel a connection to that struggle and to the NAACP in a personal way. You see, I was raised to believe in racial justice and civil rights.

My father was a United States Senator from the South who had courage. He fought against the poll tax in the 1940s, and for civil rights in the 1950s. He was one of only two Senators to refuse to sign the hateful Southern Manifesto. He voted for the Voting Rights Act of 1965 and he voted against Supreme Court nominees whose commitment was suspect. And those brave stands probably cost him his career.

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I remember when I was eight years old, we lived in a little house on Fisher Avenue, halfway up a hill. At the top of the hill was a big old mansion. One day, as the property was changing hands, the neighbors were invited to an open house. My father said: "Come, son, I want to show you something." So we walked up the hill and through the front door.

But instead of stopping in the parlor, or the ornate dining room, or the grand staircase with all the other guests, my father took me down to the basement and pointed to the dark, dank stone walls -- and the cold metal rings lined up in a row.

Slave rings.

I thank God that my father taught me to love justice. Not everyone was eager to learn. One unreconstructed constituent once said, in reference to African Americans -- though that was not the term he used -- "I don't want to eat with them, I don't want to live with them, I don't want my kids to go to school with them." To which my father replied gently: "Do you want to go to heaven with them?"

After a brief pause came the flustered response: "No, I want to go to hell with you and Estes Kefauver."

We need to know that history. We need to recognize just how far we have come in this century -- toward that more perfect union we all seek for our children. But now we must take stock of the present -- and we must look to the future. The next time you meet, it will be the dawn of not just a new century, but a whole new era in human history.

Will we build on the progress of this century toward justice and tolerance and inclusion? Will we make the 21st Century the brightest time our nation has ever seen?

In the 20th Century, we broke down barriers and overcame discrimination in our laws. We learned along the way that sometimes, good laws aren't good enough.

Tonight, I pledge to you: if you stand with me, we will lead America into a 21st Century where we break down barriers not just in our lawbooks -- but also in our workplaces, in our schoolhouses, in

We've made a lot of progress these past six years: more African-American business owners, homeowners, and CEO's than ever before. African-American poverty and unemployment are at their lowest point in recorded history. The doors to college open wider than ever before. We're bringing long-overdue justice to America's black farmers. And over the past six years, our administration has named more African-Americans to Cabinet seats, judgeships, and high posts than any administration in history.

As the NAACP has taught us for 90 years, we are not successful as a nation in spite of our diversity -- we are successful because of it.

But let's be honest: we have a lot of unfinished business ahead of us.

Today, an African American child is one and a half times more likely to grow up in a family whose head did not finish high school. Two times as likely to

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be born to a teen mother. Two and a half times more likely to be born at low birthweight. Three times more likely to live in a single parent home. Four times more likely to have a mother who had no prenatal care. And nine times more likely to be a victim of a homicide.

I'll tell you: those numbers should weigh on our national consciousness as strongly as the number "three-fifths" did 150 years ago.

To borrow from your theme, I want a "level playing field" in America.

Tonight, I want to present four ideas -- things we can do right now -- to make this nation more equal and open for all Americans. I am here tonight to ask you to stand with me, and help me put them into practice.

The first thing I want to ask you to do is help me expand economic opportunity and tap the untapped markets of America's cities -- because I believe America's inner cities are America's hidden jewel.

That begins with a strong, job-creating economy -- one that leaves no one behind, keeps interest rates low, and does even more to help African-American-owned businesses invest and grow. I was proud last year to call on the Small Business Administration to guarantee a record \$3.5 billion in loans to African-American and Hispanic-American businesses by the year 2000. But we need to do more.

Expanding opportunity also means opening new markets around the world -- and saying as loud as we can: yes, trade with Africa is good for America.

But let's be clear: some of the greatest untapped markets for our products today aren't halfway around the world, they're halfway down the street, in our inner cities and urban communities.

We need to light up our neglected neighborhoods with the spark of private investment. I am proud that I have led our Empowerment Zone initiative, which has brought more than \$2 billion of new investment to Detroit.

Now I call on Congress to fully fund our second round of Empowerment Zones, which have the potential to create 90,000 jobs and stimulate more than \$20 billion in public and private investment. Let's give our cities the hope and opportunity they deserve.

We've also proposed a new \$15 billion markets initiative to get more start-up capital into the hands of people who need it. This initiative will help create more than just jobs -- it will also create more black-owned businesses in America's cities, and I urge Congress to pass it.

It will also do one other thing: it will help more minority women smash through the glass ceiling. At a time when African-Americans earn just 62 cents on each dollar that white Americans earn, don't you think it's time for an equal day's pay for an equal day's work?

The second thing I want you to help me do is to protect civil rights in America, including affirmative action. I've heard the critics of affirmative action. They're in favor of affirmative action if you can dunk the basketball or sink a three-point shot. But they're not in favor of it if you merely have

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the potential to be a leader of your community and bring people together, to teach people who are hungry for knowledge, to heal families who need medical care.

I have a different view: America still needs affirmative action. And while scientists work to slow down the speed of light, all of us need to work to speed up the speed of justice. People like Martin Luther King died to give us the civil rights laws on the books today. The least we can do is enforce them.

Last year, from Dr. King's pulpit at Ebenezer Baptist Church, I was proud to announce the largest increase in civil rights enforcement in nearly two decades. I fought for that increase, and we won it last year. But were not done: Congress still won't vote to confirm Bill Lann Lee as head of the Civil Rights Division at the to be done. So I say to Congress: let's give Bill Lann Lee the up-or-down vote he deserves.

Civil rights include basic rights, too -- and that includes the right to be treated with respect.

Now, I am proud of our nation's law enforcement. I'm proud of the 100, 000 new community police we are putting on our streets, and the work they are doing to protect all of our families.

LANGUAGE: ENGLISH

LOAD-DATE: April 26, 1999

5TH STORY of Level 1 printed in FULL format.

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April 26, 1999 19:13 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1560 words

HEADLINE: Gore April 25 Remarks as Prepared for Delivery to NAACP Detroit Metro Chapter (2/2)

CONTACT: Office of the Vice President, 202-456-7035

DATELINE: WASHINGTON, April 26

BODY:

Following is a transcript of remarks as prepared for delivery by Vice President Gore at NAACP Detroit Metro Chapter (part 2 of 2):

But I want to be perfectly clear: the strong arm of justice must also respect justice. I am outraged by recent reports of "racial profiling." DWI is a crime in this nation. DWB shouldn't be. It is wrong to pigeon-hole and punish innocent citizens on the basis of race. It is wrong to stereotype somebody as a suspect simply because of the color of their skin.

Let be very clear: I believe we should abolish racial profiling in America. And any police department in America that is using it should stop right now.

Right now, our administration is exploring this issue -- to see what we can do to help end this hateful practice, once and for all.

While we work to protect rights, the third thing I want you to do is to help me give every child in this country a world-class education.

Who in this room tonight believes we need revolutionary change in our public schools?

Who believes we can do a better job of working with the parents and teachers who want to see real reform -- not ten years from now, after their child graduates, but right away?

Then stand with me for the change our children deserve.

Most of our kids in urban schools are ready to learn and ready to study. But how can we expect them to learn the skills they need for the future if 26 percent of our urban teachers who teach math have never studied math? If 40 percent who teach chemistry have never studied chemistry? And 71 percent who teach physics haven't studied physics?

How can we expect them to get the attention they need if there are 35 other students shoehorned into the classroom? How can we build the experienced, highly-trained teaching corps we need for our future when nearly half the teachers in poor, minority schools leave after only three years?

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How can we expect them to learn the Internet if in some urban schools, you blow the circuits if you even plug in a computer? African-American children are 40 percent less likely to use a computer at home. We didn't tear down the cotton curtain in this country to replace it with a digital divide.

I will fight to bring more accountability in our school system. That's why I'm working right now to pass the President's plan to turn around failing schools, and narrow the disparities in our education system. To end the social promotion that is only failing our children. To raise up standards -- and give students and teachers more of the tools to meet them. To rebuild crumbling schools, and hire 100,000 new teachers to reduce class sizes in the early grades. To bring more discipline and character education to the classroom.

At the beginning of the 21st Century, I'll tell you what else I want to do:

I want to reduce class sizes not just in the early grades, but in all grades. I want to make pre-school available to every child, in every community in America. I want to cut in half the achievement gap between rich and poor, and between racial and ethnic groups.

And at a time when our nation is becoming more diverse, I am deeply committed to the goal of integration. Today, more than one-third of all black and Hispanic students attend schools with greater than 90 percent minority enrollment. A minority student is 16 times more likely than a white student to be in a high-poverty school. I say we should use voluntary tools such as charter schools, magnet schools, and public school choice to seek more diversity, not less, in our schools. Schools are our best hope to break the chains of racial isolation in our nation.

Some people say "be patient." But it's too late to be patient. Our children will not be young forever, and their future won't wait. We need to fix our schools today. Stand with me, and we will.

We need a strong economy. We need revolutionary change in our schools. But our children can't reach for their dreams if they're ducking for cover. The tragedy at Columbine High School in Colorado shows just how much more work we must do -- to make our communities safe, to banish violence and hate, and to replace a culture of violence with a culture of values.

And this is the fourth thing I want you to help me do. Help me build a safer society and safer schools for all our children.

I just came from Littleton, Colorado, where I met with the families of the children who were brutally slain last week at Columbine High School. Included among the dead was a 17 year-old boy named Isaiah, who was killed simply because he was black.

Julian Bond likes to say that when he was a child, bad boys fought with knives, not automatic weapons. And crack was something that, if you stepped on it, would break your mothers' back.

For parents, last Tuesday's tragedy yielded more questions than answers: how do two teenage boys get their hands on TEC-9 assault weapons, sawed off shotguns, and pipe bombs?

I want to work with you to change a popular culture that glorifies violence and mayhem. We must cut off our young people's easy access to guns and deadly weapons. We must invest in the programs that prevent our children from turning to a life of crime and drugs in the first place.

I call on Congress to pass a new initiative to help schools hire and train 2,000 new community police officers -- to work closely with teachers and students to prevent violence. Let's pass it into law.

And I believe we need more drug counselors and violence prevention coordinators in our middle schools. I have seen the work that is being done through peer mediation and violence prevention programs -- and it is cooling tempers and saving lives. I call on Congress to work with us and hire another 1,300 drug counselors and violence prevention coordinators across the country.

And I'll tell you what my wife Tipper would say if she were here. She would say: "Al, don't forget to tell them this: when a first-grade teacher sees a new class of students the first week of the year, they can tell you at the end of that first week that one, two, or three of those kids are troubled already, even at that age. And we need to have more resources devoted to community mental health centers and mental health treatment and mental health counseling for families that need it.

These are some of the things we must do at the national level. But we all know: responsibility begins in the home.

Parents, we've got to talk to our children. We've got to know what's going on in our children's lives. If a child is making pipe bombs in the garage, we've got to know about it. We've got to teach them right from wrong. And we must teach them that embracing the right values can transcend a moment's cheap sensation. Or a sudden impulse of hatred and revenge. Or the easy surge of power learned from a violent culture with too few anchors, too little family stability, and a dearth of spiritual nurturing.

It's not just the responsibility we have to our children -- it's the responsibility we have to each other. Take your child to school. Meet your child's teachers. Trade phone numbers with other parents and teachers. Turn off the television at night. Help them with their homework. Pick up their report cards. Play a role in their lives.

Ladies and gentlemen, stand with me, and help me do these four things. For if we can build a nation of opportunity through jobs and education, and a nation of safety and justice through and strong values, then we can reach for our highest aspirations. Then we can build that more perfect union our founders envisioned.

I believe that God's hand has touched the United States of America -- not by accident, but on purpose. He has given us not just a chance, but a mission, to prove to men and women throughout this world that people of different racial and ethnic backgrounds, of all faiths and creeds, can not only work and live together, but can enrich and ennoble both themselves and our common purpose.

We don't need more division in America. We don't need more scapegoats. What we need is more love and understanding and cooperation. We need to work

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together on solutions, to give our children and our families the future they deserve.

Jesus said in the Gospel of Matthew: "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and greatest commandment. And the second is like unto it, thou shalt love thy neighbor as thyself. On these two commandments hang all the laws and the prophets."

So let us not be weary in well-doing as we address the unfinished agenda of NAACP. Let us make his dream our agenda for action. And always remember, in the words of the hymn:

"In Christ there is no east or West, In him, no South or North, but one great fellowship of love throughout the whole wide earth.

"Join hands, disciples of the faith, whate'er your race may be, who serves my father as a child is surely kin to me."

LANGUAGE: ENGLISH

LOAD-DATE: April 26, 1999



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

750 First Street, N.E., Suite 920 • Washington, D.C. 20002-4241
(202) 842-4420 • (800) 322-NAPO • (202) 842-4396 FAX
E-mail: napo@erols.com

President
THOMAS J. SCOTTO
President, Detectives' Endowment Association of New York City New York, NY

FOR IMMEDIATE RELEASE
April 14, 1999

CONTACT: (202) 842-3560
JODY HEDEMAN COUSER

Executive Director
ROBERT T. SCULLY
General Counsel
STEPHEN R. McSPADEN
Legislative Consultants
JULES BERNSTEIN
LINDA LIPSETT

Executive Vice President
B. D. "BUD" STONE
President, Berkeley POA Berkeley, CA

NATIONAL POLICE GROUP ALARMED WITH BILL THAT WOULD REQUIRE THE COLLECTION OF DATA DURING TRAFFIC STOPS

Recording Secretary
MIKE DERBYSHIRE
President, Central Coast Chapter, PORAC Salinas, CA

Treasurer
WILLIAM BIRDSEYE
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Executive Secretary, Ohio PBA Berea, OH

Executive Secretary
SANDRA J. GRACE
Secretary, New Bedford Police Union New Bedford, MA

WASHINGTON, DC - The National Association of Police Organizations (NAPO) announced today its alarm over the 'Traffic Stops Statistics Study Act of 1999,' introduced by Representative John Conyers, Jr. (D-MI), and other members of Congress. Representative Conyers introduced a similar bill in the last Congress, which NAPO lobbied actively against, and thanks in part to NAPO's efforts, the bill died in the Senate. NAPO represents more than 220,000 sworn law enforcement officers through 4,000 police unions and associations nationwide.

The bill would require the Attorney General to conduct a study of stops for routine traffic violations by law enforcement officers. It would require officers to record the following types of information: the number of individuals stopped for routine traffic violations; and identifying characteristics of each individual stopped, including race and/or ethnicity, approximate age, and gender, among other requirements.

"What I think needs to be made clear to the American public is that there is no need for new legislation on this issue. The Attorney General of this country already has the authority to collect this data in any area of the country where she sees a problem of alleged racial profiling by

police officers during traffic stops," said Robert T. Scully, executive director, NAPO. "Representative Conyers is reintroducing a bill that died in the Senate during the last Congress. The new version is essentially the same as last year's with one major exception. Last year's legislation limited the use of the data obtained from the study only for research or statistical purposes. The data, in last year's bill, could not have been used selectively in any legal or administrative proceeding to establish inferences of racial discrimination. In other words, the data could not be used to go after certain police departments or individual police officers in an unreasonable or unfair way. The newly proposed bill, however, would make the data readily available to the cottage industry of lawyers who make their living suing police officers across the country," continued Scully.

"Has Representative Conyers forgotten the need to have probable cause for a traffic stop? If an individual, whether that person be African-American, Caucasian, Latino, or any other race or ethnic group, has been pulled over by an officer with probable cause to make that traffic stop, and it turns out that that individual has done nothing wrong, then what is the problem? As a society, sometimes law-abiding citizens will be inconvenienced when police aggressively enforce the laws and investigate crimes," said Scully. "Just being stopped by the police when they have good reason to do so should not cause those stopped to believe that their rights were violated. Isn't one's safety on the street more important than the occasional, if not rare, occurrence of the aggravation or inconvenience one might face when being questioned by an officer," continued Scully. "As the nation's violent crime rate continues to drop, is it an acceptable time to change police practices that have contributed to this drop in crime?" continued Scully.

"NAPO is strongly opposed to any instances of blatant racial discrimination, such as pulling over an automobile, searching personal property or detaining an individual, when based solely on the individual's race, ethnicity, gender or age and not on any reasonable suspicion of danger or violations of law. As the former Police Commissioner of New York City, William J. Bratton, was quoted in a recent *New York Times* article, officers develop what can be called 'street smarts' or 'awareness,' sometimes also called the *sixth sense*. Having a sixth sense is often a sign of a seasoned or skilled law enforcement officer – one that you would surely want protecting your neighborhood," said Scully.

"NAPO acknowledges that the police profiling debate is a challenge faced by both America's law enforcement officers, as well as by the public. The solution to this challenge is not found in the legislation introduced by Representative Conyers," said Scully.

The bill is based on two presumptions. First, that law enforcement officers routinely stop racial and ethnic minorities of color for traffic violations purposely to discriminate against such individuals, and secondly, that the number of citations issued are disproportionate as compared to numbers of citations for individuals whose color is white. This is not the case. Often police officers do not know the race or ethnic background of an individual when they see a traffic offense, especially at night but often even during daylight. Officers are trained to immediately pursue a vehicle for a traffic infraction irrespectable of the driver's appearance.

If passed into law, the bill would place a burden on the police and lengthen traffic stops. For example, to obtain the information required by the bill, the police officer would have to ask about race or ethnicity and age. Also, for each stop the officer would also have to develop a record as to whether a search was instituted, how it was conducted, the rationale for the search, and the nature of any contraband, all in addition to asking about other items. The information on personal characteristics would likely be considered highly offensive by many individuals. If an officer is uncertain of someone's ethnic background (there are many dark-skinned individuals who may look African American but may be Latino or vice versa; or who may look Latino but may be of Arabic origin or perhaps of another ethnic group such as Sudanese, Ethiopian, Pakistani, or Iranian), the officer would often have to ask for this information and can be expected to meet resistance and hostility to such questions. Also, the time necessary to fill out these forms would take away from law enforcement efforts.

One of the most vulnerable moments for a law enforcement officer, is when he or she pulls over a car for a traffic violation. The statistics on the numbers of officers killed feloniously or assaulted in the line of duty during traffic stops confirm this danger. Since the advent of the automobile, approximately 300 law enforcement officers are known to have died during traffic stops, and approximately 80% of those were shot to death. The proposed study would make a dangerous situation worse and escalate bad tempers, by bringing race into the discussion. An officer's life may be put further at risk, as well as the passenger's if the officer has to act in self-defense.

It is also unclear what the study would prove. If the study focuses on inner city police departments, it would indicate a greater number of minorities stopped as compared with suburban police departments, reflecting the population makeup of those communities. As proposed, this study would have a weak statistical basis. It is inconceivable that the data will be accurate unless an officer

does verify racial and ethnic background and the violator responds cooperatively. If some of the individuals stopped for a traffic offense do not want to cooperate and provide this personal information – which can be expected, the data will be skewered and inaccurate.

“This bill threatens to produce a practice of reverse discrimination. Law enforcement officers across the country will find themselves even more threatened by lawsuits and that threat may surface in a practice of reverse discrimination. It could even potentially lead to an unofficial parity based on race, ethnicity, age or gender. Does the American public really want to see a lower standard of probable cause being applied to Caucasians and a higher standard being applied to African-Americans or Latinos? This will result in lawlessness. This will send the wrong message to criminals across the country,” said Scully.

“I urge everyone, law enforcement and members of the general public alike, to come together in discussions on how to handle this debate. Let’s search for solutions rather than create problems. To those persons running to the microphone to criticize the police, I urge you to unite and work with us, rather than igniting more hostility by adding fuel to the fire,” said Scully.

The National Association of Police Organizations (NAPO) is a coalition of police unions and associations from across the United States that serves in Washington, DC to advance the interests of America’s law enforcement officers through legislative and legal advocacy, political action and education. Founded in 1978, NAPO now represents more than 4,000 police unions and associations, over 220,000 sworn law enforcement officers, 3,000 retired officers and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement.

###

Race - Racial Profiling

- President

- EO??

Racial profiling Mtg

1. ISS enforcement

EH: ethnicity can't be taken out

can't be only thing

to say we're not going to do this is to make mockery of this from start.

more imp the closer you get to the border

IV: Getting the data makes a huge difference

It knows for every person you encounter

FAX TRANSMISSION

PRESIDENT'S INITIATIVE ON RACE

NEW EXECUTIVE OFFICE BUILDING

WASHINGTON, D.C. 20503

(202) 395-1015

FAX: (202) 395-1020

To: Elena Kagan

Date: March 12, 1999

Fax #: 456-2878

Pages: 2, including this cover sheet.

From: Christopher Edley

Subject: Racial Profiling and the President's Book on Race

COMMENTS:

John -

This simply cannot be allowed to happen. We have policy processes for a reason. This one is running extremely well. We would like to talk with you about this.

Bruce + Elena

HARVARD LAW SCHOOL
CAMBRIDGE MA 02138

March 12, 1999

MEMORANDUM

To: Eric Holder
Jim Johnson

cc: Maria Echaveste, Chuck Ruff, Elena Kagan, Ben Johnson

Re: Racial Profiling and the President's Book on Race

1. Sorry that my teaching schedule precluded attending Elena's meeting on 3/11. It was reported to me that both of you now oppose the President saying in his book that he wants the Attorney General, in consultation with enforcement agencies and others, to prepare an executive order establishing federal policy. Instead, you both favor a directive on data collection, covering federal agencies.
2. I am rather puzzled by this conclusion, because I had inferred from the earlier discussion that both Justice and Treasury favored something rather bolder from the President. (The caution of the White House staff was unsurprising; cf. the lagged responses on other race issues.) I see nothing wrong with data collection, but it strikes me as too little too late after months of agency debate on this issue, the public uproar, our certainty that the President is deeply troubled by the practice, and his desire to lead on race. Admittedly an executive order is largely about symbolism, but leadership so often is.
3. Before pressing ahead to put the executive order idea in front of him in the book draft, I'd like an opportunity to understand your substantive and political reasoning. By copy of this memorandum I'm asking Maria Echaveste to have a conference call for the four of us to talk this through a bit. It should only take 15 minutes.
4. Ultimately, what I foresee on this and several other issues is that my book team will draft what in my best judgment the President would probably want to say, and leave it to the Deputy Chief of Staff to add a memorandum conveying the objections and reservations of key White House and agency folks. I hope the memorandum is shorter than the book.
5. I don't have perfect pitch, nor do I (generally) believe in miracles. So I'm perfectly prepared not only to move forward with a minority view, but to have the President decide against me. What I don't want to do, however, is let a staff process deprive the President of an opportunity to consider bold options.

I hope Maria's office will schedule something in the very near future.

The television monitor flickers on and we see a smeary black-and-white shot of a gangly man in a checkered shirt. He is standing by a car, alongside some highway in the boondocks, trailer trucks roaring by. On the tape, it is the dead of winter, overcast and blustery, and the man keeps brushing long strands of hair from his eyes as he nervously answers questions from the two Arkansas state troopers towering over him. He is nobody, some jobless hillbilly plucked from the traffic stream by two cops who have been specially trained—like us—to spot suspicious characters.

The troopers give the man the once-over and tell him they want to search his car. He reluctantly agrees and is shoved into the backseat of their unoccupied prowl car, behind the dash-mounted video camera, and from then on, we watch through his eyes as the Pipeline team searches his car.

When the trunk lid pops open, the man begins to whimper. When one of the troopers reaches in and tosses a black plastic garbage bag onto the hood of the patrol car, he lets loose with a piercing off-camera shriek.

"Help me! Help me, God! Help me, God! Please, God, save me! Oh, God! Oh, my God!"

He keeps it up, alternating between wails and moans, for what seems like an eternity, gibbering at the visions he is conjuring of his near future. Just when he seems finished, when it seems certain his lungs can take no more, he starts up again, screaming even louder than before. *"Oh, God, save me! Oh, sweet God, please! Please save me!"*

"Now, look, look," our instructor says excitedly, pointing at the screen. "The troopers are finally gonna hear him!"

As a gut-wrenching howl erupts from inside the patrol car, one of the cops looks up slowly from the Screamer's trunk and gives the camera a puzzled glance. Comedy.

The classroom explodes with laughter.

CURTIS V. RODRIGUEZ IS A SAN JOSE LAWYER. HE LOOKS FAR YOUNGER THAN HIS forty years, has a couple kids, owns a house, drives a nice car. He's a prime example of an emerging army in California: educated urban professionals who happen not to have white skin.

Last June, he and a friend, fellow attorney Arturo Hernandez, drove Rodriguez's Mazda Millenia to Merced on a mundane legal task: taking pictures of a client's house. On their way through the windy Pacheco Pass, in the mountain range separating the Pacific coast from the dusty farms of the San Joaquin Valley, they saw some cars that had been pulled over and were being searched by California Highway Patrol officers. In every instance, it seemed, the car's driver was a dark-skinned male.

On the way back, hours later, they saw more. One after another, every couple of miles.

"After seeing the third car in a row—same deal, driver is a dark-skinned Latino and the cops have them standing off on the side of the road—Art and I looked at each other and said, 'Do you believe this?'" Rodriguez says. "It was obvious whom they were stopping. It's not like there are that many dark-skinned Latinos on the road, but that's all they had. Art got the camera out and started taking pictures of the stops, because we figured no one would believe us."

Hernandez began snapping away, getting photos of a fourth car whose dusky occupants were being questioned by the roadside. As the Millenia whizzed by the fifth such vehicle, a highway patrolman looked up and saw Hernandez with the Olympus. Soon, the Mazda's rearview mirror was filled with the chrome grille of the trooper's hard-charging Crown Victoria.

"I'm driving like a saint," Rodriguez recalls. "I'm going under

**YOU MEAN YOU PULLED OVER
SOMEONE BECAUSE HE
LOOKED LIKE A DRUG DEALER?
THE JUDGES GASPED. WHAT
WAS YOUR PROBABLE CAUSE?**

the speed limit, straight down the middle of the lane. There's nothing he can do to me. But he turns on his lights and pulls me over. He walks up and tells me I was weaving, which is a total lie, because I was driving that car like it was on rails."

The trooper then told Rodriguez he wanted to search the Mazda, and Rodriguez scoffed. To hell with that, he thought. I didn't go to law school for nothing. No way, he told the officer, am I consenting to a search. I know my constitutional rights. Art and I are criminal lawyers. The Fourth Amendment protects us from this kind of nonsense. If you want to search the car, get a warrant. Otherwise, just give me a ticket and let me go.

The trooper was unmoved. He looked at the two attorneys calmly and ordered them out of the vehicle. I'm in fear for my life, he informed them in a monotone. The passenger made suspicious motions, which gives me the right to search your car—for my own safety. Rodriguez's license and registration were taken back to the cruiser, where a drug dog sniffed at them indifferently. Not surprisingly, the search turned up nothing.

Rodriguez was dumbfounded. "The whole thing was about as illegal as you can get. He had no cause to pull me over. He had no reason to search my car. He knows I'm a lawyer, and he goes ahead and does it anyway! So the thing I'm wondering is, what happens to the people who aren't lawyers?"

What sometimes happens is this: They get frisked, and sniffed by dogs, their luggage gets dumped out and pawed, on occasion their cars are towed away and dismantled back at the police station. Other times, their vehicles are taken apart on the spot. If they're lucky, they are simply left standing alongside the road, frightened and mystified, holding an expensive traffic ticket they didn't deserve and wondering why, out of all the cars on the highway, the police came after them.

In most cases, it can be summed up in two words: *Operation Pipeline*. Like tens of thousands of other innocent motorists, Curtis Rodriguez had been sucked up and spit out by one of the federal government's more secretive antidrug campaigns, a giant vacuum cleaner of a program financed by the U. S. Drug Enforcement Administration and run by hundreds of state and local police agencies across the country. Over the past thirteen years, *Operation Pipeline* has been waging an expanding and largely invisible war on the nation's highways against "mules," people who haul cash and drugs for dope dealers. In its time, Pipeline has scored some impressive victories. But as with any war, it has left considerable collateral damage in its wake: legions of law-abiding motorists who have been ticketed, interrogated, and searched simply because they looked or acted funny—or happened not to be white.

"It isn't just blacks and Hispanics, though they do seem to be the majority," says Utah attorney W. Andrew McCullough. "In my experience, any motorist who looks different is a candidate for getting pulled over by these folks."

Complaints of racially motivated traffic enforcement are nothing new, of course. But in the last couple of years, these complaints have become louder and more persistent. Some legal experts, such as constitutional-law professor David A. Harris of the University of Toledo, believe we are in the midst of a "national

epidemic of race-based traffic enforcement."

That perception has been strengthened by recent civil-rights suits filed in Maryland and New Jersey and statistical studies done in North Carolina and Florida proving that on some highways, the traffic laws have been enforced far more stringently against dark-skinned drivers. Because of these documented cases of roadside racism, Democratic congressman John Conyers of Michigan was able to persuade the Republicans in the House last year to pass a bill requiring traffic police to record the race of the drivers they stop so that the phenomenon could be studied nationwide, but the measure died in the Senate. Last September, the California legislature overwhelmingly passed a similar bill—sponsored by Senator Kevin Murray of Los Angeles, who himself had been subjected to a questionable search—only to see it vetoed by Governor Pete Wilson.

For the most part, police characterize these cases as isolated lapses in judgment by rogue officers or insensitive police commanders who've sent out the "wrong signal" to the troops. But what no one has seemed to notice so far is the thread that connects many of these seemingly unrelated cases: this unheralded federal program called Operation Pipeline.

I ended up inside Pipeline last summer as an investigator for the California Legislature after hearing stories from law-enforcement sources about special CHP units that were pulling Latino motorists off the interstates on a whim and rousting them in an effort to find guns, cash, and drugs. What was happening on California's highways, I discovered, was happening across the country—methodically and with increasing frequency.

Operation Pipeline has helped give rise to a new catchphrase in the minority community: DWB, Driving While Black, or Driving While Brown. Yet few outside of law-enforcement circles have even heard of Operation Pipeline.

The DEA, Operation Pipeline's federal sponsor, doesn't talk about it much, which is odd, since the agency considers Pipeline to be "one of the nation's most effective drug-interdiction programs."

But with 301 police commands in forty-eight states now participating in Pipeline in some fashion—from the tiny Picayune Police Department in Mississippi to the New York State Police—the program is in danger of becoming a victim of its own excess. The problems have become so obvious to the CHP that the agency recently embarked on a major overhaul of its Pipeline program.

Two months before Curtis Rodriguez had his car tossed, a reporter had asked a veteran California Highway Patrol sergeant to explain the operating principle behind this campaign to remove contraband from highway travelers. The answer: volume, volume, volume.

"It's sheer numbers," he said. "Our guys make a lot of stops. You've got to kiss a lot of frogs before you find a prince." California Highway Patrol canine units kissed nearly thirty-four thousand frogs in 1997. Only 2 percent of them were carrying drugs. In other states, up to 95 percent of all Pipeline searches have been found to be dry holes.

An Ohio trooper testified in a drug-seizure case a few years ago that he'd personally conducted 786 searches in a single year, sometimes for no other reason than to keep in practice. The state judge, James Brogan, was outraged.

"If we multiply this among all agencies and officers who are currently using routine traffic stops to search the vehicles of citizens they suspect of no crime, the number of individual citizens being asked to relinquish their privacy rights . . . is staggering," Brogan wrote.

Within the past year, according to one DEA official, Attorney General Janet Reno and her top aides have begun asking ques-

tions about Pipeline, wondering why the program keeps spawning complaints from black and Hispanic motorists and lawsuits accusing the police of racism and selective enforcement.

Frankly, it's not much of a mystery. The answer can be found in the muddy median strip of I-95, a four-lane concrete corridor that cuts through the desolate coastal swamps of Florida. It's where Operation Pipeline arose and where it grew to become what it is today.

LIKE THE PHRENOLOGISTS OF THE NINETEENTH CENTURY, WHO BELIEVED THAT A person's personality could be divined from the shape of his skull, Robert L. Vogel Jr. believes he can spot drug traffickers from the general cut of their jib.

"Bob has a God-given sixth sense," Vogel's dark-haired wife, Jeannie, says earnestly. "A lot of people are jealous of that or can't understand it."

Vogel discovered his unusual talent in the mid-1980s, while working as a Florida state trooper, cruising I-95 outside Daytona Beach and Port Orange, looking for traffic miscreants. Certain drivers, he noticed, just gave him a bad feeling inside. When he searched their cars, he would frequently find drugs or weapons.

A compact, soft-spoken Vietnam vet who bears a faint resemblance to Richard Gere, Bob Vogel is a deliberate, methodical man, serious about his job, so he began compiling his observations about the drivers who set off the alarm bells in his head. He discovered common traits among them and gathered these together into a list of "indicators," which he began mentally checking off whenever he pulled someone over.

He broke down the indicators into two types: physical and behavioral. The physical indicators were the ones he could see as he scanned the interior of his quarry's car. Such things as car phones and pagers, radar detectors and radio scanners, were obvious. But there were many others. Cops regard the indicators as something akin to a magician's secrets. Our Pipeline instructor warned against disclosing them in court lest "the bad guys" find out. But in truth, records of them can be found in a good public library. Among the most common:

- Air fresheners, especially the ones that look like leaves or little pine trees. Pipeline cops call them "the felony forest." They can be used to mask the odor of drugs. Having fabric softener, coffee grounds, or laundry detergent lying around is also a sign something could be amiss.

- Fast-food wrappers on the floor. Evidence of "hard travel"; suggests a desire not to leave the drug load, even to get a sit-down meal. Pillows and blankets in the car fall under this rubric as well.

- Maps with cities circled on them. A circled "drug source" or "drug destination"—which covers just about all major cities—is more evidence of a motorist's true nature.

- Tools on the floor, for easy access to those hidden compartments full of drugs and money. Tinted windows, new tires on an older car, or high mileage on a new car are also worrisome signs.

- A single key in the ignition. Most people, presumably, have lots of keys on their key chains. Solitary keys suggest someone just handed the driver a key.

- Not enough luggage for a long trip or too much luggage for a short one. Rental cars are extremely suspicious, as is an auto-registration certificate in someone else's name.

Vogel acknowledges that each of these indicators can be found in the cars of innocent citizens and, by itself, is no indication of criminal activity. But when they are found in combination, he insists, it means you've got a potential drug mule on your hands. Spotting them is nothing more than good, basic police work, he says, and, as shown by the thousands of drug seizures Pipeline units make every year, obviously he is right.

But it's when you get to the next step—the behavioral indicators—that things get a bit trickier, that Vogel's sixth sense comes into play. It's also when good, basic police work can sometimes mutate into racism and stereotyping. In a deposition in 1997, Utah state trooper Paul Mangelson, one of the nation's best-known Operation Pipeline instructors and a frequent consultant to other police agencies, offered an insight into how the behavioral indicators work: "The secret of criminal interdiction is being able to read people. And there are things about people and things they do that are a definite tip-off," Mangelson explained. "I don't necessarily teach this, but on a freeway, prior to stopping somebody, I like to pull up in the inside lane, traffic permitting, and observe the individual."

"Now, when you pull up alongside of somebody and take a look at them," Mangelson was asked, "would this be any joe motorist or somebody that has already attracted your attention?"

"Somebody that I've already decided I'm going to stop. I want to see his reaction as I pull up alongside of him. For example, will he make eye contact with me? And I maintain that if a guy is doing something illegal, ninety-nine times out of a hundred he won't look at you. Number two, he knows good and well that you are there, and he is going to have a death grip on that steering wheel, and you can probably see that his knuckles are turning white. That's a very good indicator that guy is dirty. Something is illegal in that car."

Other indicators, he said, are adornments like "earrings, nose rings, eyelid rings. Those are things that are common denominators with people who are involved with crimes. Tattoos would go along with that," particularly tattoos of "marijuana leaves."

Bumper stickers also give him a feel for the soul of the driver.

THE POLICE OFFICER ASKS THE MAN HE HAS JUST PULLED OVER HOW HE IS DOING. "NOT VERY GOOD," THE MAN REPLIES. "COULD BE WORSE," THE OFFICER SAYS. "COULD BE BLACK."

"Deadhead stickers are things that almost—the people in those kinds of vehicles are almost always associated with drugs."

How about ACLU stickers? "Yeah, I look for them."

"What about, for instance, Hispanics in an out-of-state vehicle?"

"A lot of Hispanics are transporting narcotics," Mangelson said. "That's common knowledge. I don't think it matters whether they're in an out-of-state vehicle or not."

What if he saw pornography in the car? "I would certainly have a belief that drugs could be in the vehicle."

Not surprisingly, such unorthodox crime-fighting techniques were not immediately embraced by the courts. In Florida, Bob Vogel was viewed as something of an oddball at first. Judges, he learned, were simply unwilling to make allowances for a cop with clairvoyance.

When the federal eleventh-circuit court of appeals got a look at Vogel's police work, the judges denounced it as illegal, unconstitutional, and possibly un-American. You mean you pulled over someone because you thought he *looked* like a drug dealer? the judges gaped. What was your probable cause?

"That trooper Vogel's 'hunch' about the appellants proved correct is perhaps a tribute to his policeman's intuition, but it is not sufficient to justify, ex post facto, a seizure," the judges wrote in a 1986 opinion. To condone Vogel's methods, they wrote, would mean that every car on the road could be pulled over and

searched, which "would run counter to our Constitution's promise against unreasonable searches and seizures."

Undeterred by the stinging judicial rebuke and the queasiness of some of his hosses, Vogel plowed ahead. "No one else was doing this but me, and there were some people who were nervous about it, but there always has to be someone to test the waters," Vogel says quietly. "I've never been a quitter."

He looked over the legal opinions and slightly changed his approach. Instead of pulling over a driver merely for looking suspicious, he would find other reasons to stop the shifty-looking ones. He found them by the hundreds in the thick volumes of the Florida vehicle code: rarely enforced laws against driving with burned-out license-plate lights, out-of-kilter headlights, obscured tags, and windshield cracks. State codes bulge with such niggling prohibitions, some dating from the days of the horseless carriage.

"The vehicle code gives me fifteen hundred reasons to pull you over," one CHP officer told me.

For Vogel, it was the perfect solution to his problem. Since it's nearly impossible for drivers to go ten feet without violating some obscure ordinance, Vogel would simply tag along and wait for it to happen. Then he would pounce. Nobody could complain about that; he was duly enforcing the traffic laws of the State of Florida. And with that one refinement, Operation Pipeline was up and running.

After Vogel pulled a car over, he would search it, and, sure enough, sometimes he would find drugs. Once in a while, he would find a lot of drugs. Newspaper reporters started writing stories about him, marveling at the way he was able to turn a routine traffic stop into a major drug bust.

Within a year of being publicly flayed by the highest federal appeals court in the Southeast, Bob Vogel was honored four times with law-enforcement awards. *60 Minutes* sent down a camera crew and produced a flattering profile depicting a dedicated, hardworking policeman trying his best to fight the drug war. Vogel became a local hero. In 1988, he was elected sheriff of Volusia County, and one of his first official acts was to set up a special

antidrug unit in his image: the oddly named Selective Enforcement Team, handpicked deputies who had Vogel's training methods instilled by the master himself.

Vogel had his admirers in Washington as well. By 1987, the DEA had formally adopted his highway drug-interdiction system and begun funding a training program to preach Vogel's gospel around the country. (Though Vogel did not invent the notion of using profiles to spot potential drug couriers, he pioneered their adaptation to highway travelers, and my CHP instructors credited him as Pipeline's creator. Previous police use of drug-courier profiles had been largely confined to airports.)

With DEA financing, training courses were set up, and they began churning out thousands of Pipeline graduates a year, officers who would return home and train thousands more.

It spread like a virus.

IF YOU COME INTO CONTACT WITH ONE OF THE ESTIMATED TWENTY-SEVEN THOUSAND Operation Pipeline grads currently cruising the highways, chances are you'll never know it. The officer who pulls you over will look the same as any other traffic cop. Same hat. Same badge. Same car. He will not tell you he is a narcotics officer, and you will never suspect it, because, after all, who ever heard of drug agents passing out tickets for broken taillights?

The mechanics of a Pipeline stop are much like a minuet, except the trooper is the only one who hears the music or knows

the steps—all of which lead inexorably to a thorough search of your car.

"I'm looking for anything that will get me in that car or get him out of the car," Utah trooper Mangelson explained in his 1997 deposition.

Because of various court rulings and constitutional impediments, things must be done delicately and in the proper order, so as not to overtly violate your rights.

It will begin like any traffic stop. You'll be asked for your license and registration, and while looking over your papers, the officer will ask you a series of questions about your travel plans. He'll be friendly and polite: Where are you heading? How long will you be there? He'll ask what you do for a living, or something equally innocuous.

"And when I'm doing this, you know, I'm not sitting there grilling you," Mangelson said. "I'm doing it in a way that you probably don't even realize what I'm doing."

What he's doing is called an interrogation, and your responses are being watched very closely. Did you have to think before answering? Did you repeat his questions? Are you being too helpful, too cooperative, or too talkative? Those are all bad signs, as bad as monosyllabic answers. If you have a passenger, the passenger will be taken off to the side and interrogated separately. The officer will check to see if your stories match.

"Criminals on the road are—how can I put it? I've always used this theory. If a guy can convince me of his legitimacy of being where he is or where he's going, then there's probably not much criminal activity going on," Mangelson said. "But by the same token, if he tells me he's going to Salt Lake, and I say, 'What takes you to Salt Lake?' and he goes, 'I'm going to see a friend.' If I say, 'What's your friend's name?' and he doesn't know the friend's name or he rattles some name off the wall, [I ask] 'What's his address?' He's now becoming extremely nervous, and he can't tell me the friend's address, doesn't know the phone number. 'How are you going to visit your friend if you don't know his address or phone number?' By now, he's trembling. The veins are poking out on the side of the neck and you can see his heart beating there and his hands are shaking and his mouth is so dry, he can't even talk to you. You know he's dirty. And he knows I'm on to him."

The indicators are tallied up. No indicators, no problem. Unless you've got a gun or a kilo of cocaine lying on the front seat, you'll be kicked loose. You may not even get a ticket. Many Pipeline officers don't write them or write only enough of them to maintain the facade that they are traffic policemen.

If your indicators are on the high side, however, this is what will happen. You'll be given your papers back, and then the officer will hang around and strike up a conversation. What most drivers don't realize is that at this point, they have magically crossed into a whole new legal universe. At the moment your license and registration are returned, you are technically free to leave. In the eyes of the law, the traffic stop is over. Now you and Officer Friendly are just having a "consensual" chat. And your new friend is free to ask you anything.

From here, it's almost a script.

You'll be told that the local police have been having a problem with people ferrying guns and drugs along this part of the highway, but they're doing their best to stop it. Good, you may say. Glad to hear it. The officer will nod and say he's happy you see it that way. By the way, you wouldn't happen to have any guns or drugs in your car, would you?

Me? you will ask. Oh, no. Of course not.

Then the officer will look at you and say, Then you don't mind if I take a look-see, do you?

If you're like nine out of ten people who get asked this question, you'll gulp and say, No, no, officer, go right ahead.

You'll be asked to consent—orally or on paper—to a search, but don't think too hard or hesitate to comply, because those are more indicators of drug trafficking, as is refusing to allow the search. (And here's where things can get dangerous, where the psychopath who won't be taken might pull his gun. A 1992 Pipeline stop in South Carolina resulted in a shoot-out that killed the officer and wounded his suspect. And this past January, a veteran Pipeline officer in Georgia was murdered during a stop.)

"If they refuse, the stuff's in the trunk," our CHP instructor tells us matter-of-factly. A refusal justifies calling out the dogs and letting a drug-sniffing canine take a walk around your car. If Fido gets a whiff of something, the cop doesn't need your permission anymore.

Most drivers consent. This can authorize a complete search of everything, including your luggage and your person. It allows the officer literally to take your car apart with an air hammer, which has happened. One of the CHP's first Pipeline officers, Richard Himbarger, was legendary for carrying an electric screwdriver in his patrol car and removing heater ducts, fenders, trunk lids, and interior body panels, right by the side of the road.

"Once they've given consent," our CHP instructor tells us, "they've dug their own grave."

DEPUTY LOU GARCIA WAS ASSIGNED TO SHERIFF VOGEL'S SELECTIVE ENFORCEMENT Team in 1989. A canine-unit officer, Garcia would be summoned at all hours to walk his drug dog, Condor, near the cars the SET squad had pulled over on I-95. Lots of times, he'd be out on the highway at 3:00 A.M., splashing through swamps with Condor, chasing down panic-stricken motorists who'd bolted into the darkness. He didn't mind. Garcia was thrilled to have been chosen to work with Vogel's crew. The sheriff took good care of his boys: overtime, fancy Stetson hats, rapid promotions. By all accounts, Vogel was equally thrilled to have Lou Garcia on his team, and he commended the officer repeatedly.

"Thanks to you, our drug- and money-interdiction program is working," Vogel wrote in one enthusiastic letter.

The son of a New Mexico coal miner, Garcia had come to the Volusia County Sheriff's Office after fifteen years in the U. S. Army as a paratrooper, a military policeman, and a drill instructor. He hired on at the sheriff's office in 1985 at \$10.50 an hour and was in paradise. "When I finally got to be a deputy, I felt I had achieved my goal in life."

But his wife, Angie, began noticing that her husband was increasingly moody after his shift. "He'd get home sometimes after being out on that highway," she says, "and he'd just be shaking his head, and I'd ask him what was wrong, and he'd say, 'You won't believe what they're doing out there.'"

Garcia says he soon discovered the secret of Vogel's highly touted highway interdiction program: The cops concentrated on minority drivers, narrowing the universe of motorists to those they thought most likely to have drugs or guns, even though, in reality, drugs and guns turn up in searches of their vehicles with the same frequency as in those of white drivers. Garcia says he was present at a gathering of deputies on the median of I-95 when Vogel instructed them to focus their attention on black and Hispanic drivers. Vogel denies that happened, but another deputy, Frank Josenhans, corroborates Garcia's story.

Still, it wasn't as if Garcia needed to hear it from the sheriff's mouth. "I knew who they were stopping. I saw the people. It was blacks, mostly, and they were all being pulled over for weaving. The black race was the only race I knew of that wasn't able to stay in a lane. Black people just couldn't seem to do it."

What Garcia was witnessing in Volusia County was not an aberration. As more and more police departments signed up for Operation Pipeline, it began happening in other places, too. Sometimes the police didn't even bother to hide it. Georgia state troopers told an Atlanta reporter in 1987 that they watched for rented cars from south Florida driven by blacks or Latinos.

Officer Richard Curtis of the Lexington, Kentucky, police department admitted under oath in a drug-interdiction case that race was one of the indicators looked at, as were out-of-state license plates. In another case, Alabama state trooper John Guthrie testified that his indicators included "Texas plates" and "Mexicans."

The "cocaine-courier profile" used by the New Mexico State Police along I-40 surfaced in court in the late 1980s. The very first indicator: "The vehicle occupants are usually resident aliens from Colombia." This profile, it turned out, had been sent to police departments nationwide by the DEA's El Paso Intelligence Center, the department that manages the Pipeline program and provides its annual funding of roughly \$800,000.

Ironically, that's the same amount of money the taxpayers of Eagle County, Colorado—which encompasses the ski resort of Vail—forked over to settle a class-action suit filed on behalf of 402 black and Hispanic drivers who had been stopped and searched by the High Country Drug Task Force, a Pipeline unit funded directly by the DEA. The task force "systematically violated the constitutionally protected rights of blacks and Hispanics to travel and be free from unreasonable seizures," U. S. district judge James Carrigan wrote in a blistering criticism of the program in 1990. The evidence that race was used as an indicator, Carrigan ruled, was "undeniable," and such practice amounted to "a racist assumption."

Federal public defender Bryan Lessley obtained internal Oregon State Police records showing that the number of Hispanics being stopped on the highways near Grants Pass by a Pipeline unit was "grossly out of proportion" to the number of Hispanics on the road. He uncovered state-police training manuals that told Pipeline students a "high percentage" of narcotics traffickers were Hispanic.

In New Jersey, state-police Pipeline units assigned to the southern end of the New Jersey Turnpike were found by a superior-court judge to have had "at least a de facto policy . . . of targeting blacks for investigation and arrest," which resulted in the dismissal of six hundred cases. A former New Jersey state trooper, Kenneth Wilson, admitted in a sworn statement that he was trained to target blacks and Hispanics. A statistical analysis by John Lamberth of Temple University backed up Wilson's claims. Lamberth found that though blacks made up only 13 percent of the drivers on the turnpike, they accounted for nearly half the stops made by drug-seeking troopers.

The Maryland State Police made perhaps the biggest tactical blunder in the program's history in 1992, when a Pipeline unit pulled over a black family in a rental car outside Washington, D. C., ordered them out into the rain, and then ran a drug-sniffing dog in and out of their car, over their repeated objections. The driver turned out to be a Harvard Law graduate, Robert Wilkins, a public defender who was on his way home from a family funeral in Chicago. Wilkins slapped the Maryland State Police with a civil-rights suit and accepted a settlement that forced the cops to keep detailed records of their Pipeline stops for the next three years. The results were more proof of Pipeline's unique affinity for minorities: Of the 732 people who were detained and searched during 1995 and 1996, 75 percent were black and 5 percent Hispanic. The Maryland ACLU has filed another civil-rights suit based on those figures.

A GRANDMOTHERLY WOMAN IN A SLAB-SIDED PLYMOUTH FURY III ZIPS BY. NOT A chance, I think. Next is a man in a suit, driving a gigantic white Lincoln Navigator, cell phone pressed to his ear. Mr. Business. With my luck, he'd turn out to be a lawyer. Pass. A teenage girl in her mom's station wagon. Ditto. Then comes the carload of Mexicans.

They look as though they're having one hell of a time, laughing, arms hanging out the window. Then they spot the CHP cruiser I'm sitting in, and the party is over. They look around furtively, sit up straight, won't meet my steely gaze. The driver begins practicing the ten-and-two hand position on the steering wheel that he probably hasn't used since driver's ed. Bingo. A whole bunch of indicators right there. These guys are mine.

That is the result of my first drill using the lessons I gained from Pipeline school. I am sitting in the front seat of the head instructor's patrol car, shaded by a giant oak. We are parked perpendicular to a bucolic two-lane highway in the hills beyond Susanville, California, checking out the sparse midmorning traffic. It is day two of my Pipeline training class, and I am putting my newly acquired observational skills to the test.

No one has instructed me to look for Mexicans; in fact, we were informed that racial profiling is illegal and frowned upon. But we were also taught that it is the Colombians and the Mexicans whose cartels are bringing most of the dope in and that a lot of drug mules are hired off the streets of Tijuana for \$500 in cash. Not many gringos I've seen fit that description.

Plus, the Mexicans just *look* shifty to me. What are they doing, I wonder, driving around, yukking it up at 10:30 in the morning in the middle of the week? I am at work. Why aren't they? And if they are unemployed, where'd they get the money for that nice Mercury?

**ROBERT WILKINS,
LAWYER, WASHINGTON, D. C.**

On his way back from a family funeral in Chicago on May 8, 1992, was pulled over by Maryland State Police. He and his family were made to stand in the rain while troopers used a dog to search their car.



And then I realize the problem with Operation Pipeline.

If I were looking for unsafe drivers, as most patrolmen do, it wouldn't make any difference to me what the driver looked like or how he acted when he drove by or whether I thought he could afford his car. All I would care about would be how he was driving.

But that's not my job as a Pipeline officer. My job is to get drugs and guns off the highway, so I look for people who look like they might have them. And since I have only a limited time out on the highway each day, I'm not going to waste it pulling over people who look like upstanding citizens—people who look like me and my friends, for instance.

I remember what my instructors told me repeatedly. If something appears "abnormal," investigate. Always ask yourself whether this is something that you would do or say. If not, be suspicious. And suddenly, the baseline for determining who gets pulled over and searched is a forty-three-year-old white suburbanite's vision of normalcy. Most of the white people I have seen driving by, I have to admit, look pretty normal to me. But the Mexicans don't. Plus, there are all those indicators: their nervousness upon seeing a police car, the air freshener dangling from the mirror, their goddamn refusal to look at me.

It's no wonder, I realize, that 90 percent of the people arrested by the CHP's Pipeline units during the last two years have been minorities. They never stood a chance.

If I were empowered to do so, I could pull them over on some pretext to satisfy my curiosity. Maybe I would find something—drug-tainted money, a loaded gun, a kilo or two of cocaine or methamphetamine. Or maybe just a peaceable carload of people going from here to there, not owing me or anyone else an explanation. But if I do this long enough and use the indicators I've learned to pull over a volume of people, I will invariably find criminals. That was a big bag of dope in the Screamer's trunk, after all. But does that justify scaring the bejesus out of the thousands of other motorists—the honest ones whose taxes pay my salary and pave these roads—whom I will misjudge? Will they think being interrogated and searched was a fair trade?

And what of the enormous waste of police manpower that goes into stopping and searching thousands of cars in which nothing more incriminating than old gum wrappers is found? Even the cops admit that highway seizures don't make a dent in the quarter-trillion-dollar-a-year American narcotics industry. So, in the end, one is left to wonder: What is the point of all this harassment, this inefficiency, this futility? Is it really a way of finding contraband? Or is it, perhaps, a way of acclimating us to a future in which we will be routinely shadowed, stopped, and risked by the police—a nation of suspects?

IN 1996, THE U. S. SUPREME COURT UNANIMOUSLY ENDORSED BOB VOGEL'S method of stopping people for minor traffic violations in order to search their cars for drugs. An officer's real reason for pulling over a car didn't matter a whit, the justices said, so long as some type of traffic offense—no matter how trivial—occurred first. It made no difference that the motor-vehicle codes gave the cops a license to single out almost whomever they wish for a stop," Justice Antonin Scalia wrote. It was not the role of the Supreme Court to decide whether there were too many traffic laws or which ones should no longer be enforced.

Since that ruling, known as the Whren decision, state and local police participation in Operation Pipeline has soared. Enrollments in DEA training schools are way up. "After Whren," one of my CHP instructors told me, "the game was over. We won."

Last fall, another Supreme Court decision, rejecting the search of an Iowa motorist's car without probable cause, was widely

hailed in the media as reinforcing the privacy rights of drivers. But since Pipeline officers are trained to legally justify a "reasonable suspicion," or, of course, get the driver's permission, before searching a car, this court decision may actually boost the popularity of Operation Pipeline.

That's why it's so ironic that Bob Vogel is no longer on the front lines of this particular war. Though his methods have received the stamp of unanimous approval from the highest court in the land, he's quit teaching and has mothballed his drug-interdiction program. After a while, he said, it just wasn't worth it.

In 1992, *The Orlando Sentinel* began printing stories that essentially accused Vogel's SET unit of being racist thugs who were stealing money from innocent travelers. The newspaper said it found nearly two hundred cases in which deputies had taken a driver's cash but made no arrests, and 90 percent of those cases involved minority drivers.

And then the tapes came out. It seemed Vogel's boys had been videotaping their stops for posterity, and 148 hours of them were turned over to the newspaper. Example: a May 16, 1990, stop of a white driver. SET sergeant Dale Anderson strolls up to the car and asks the man how he's doing.

"Not very good," the driver replies.

"Could be worse," Anderson reminds him. "Could be black."

The civil-rights suits flew fast and furious after that. The U. S. Justice Department announced an investigation, and FBI agents started snooping around. A federal grand jury was empaneled.

The *Sentinel* won a Pulitzer prize for its exposé, a fact that grates on Vogel to this day. "Anybody who saw those stories would have thought I was some racist, tobacco-chewing, Billy Bob, redneck southern sheriff," he complains. He leans forward slightly and asks me, mistakenly, if I was aware that the editor who oversaw the *Sentinel's* coverage was an African-American.

"I'll bet they didn't tell you that part," he says.

Eventually, the hubbub subsided. The discrimination suits were dismissed after federal judges declared that they had not seen convincing evidence of racial injustice. And the Justice Department, while muttering darkly about Vogel's methods, declined to prosecute him on civil-rights charges, reportedly because it didn't think a jury would convict him.

Critics called the investigation a whitewash, but there was more involved than that. History, for one thing. For more than a decade, Bob Vogel's controversial system has been officially endorsed, financed, and espoused by the DEA—an arm of the Justice Department. Having Operation Pipeline's creator brought up on federal civil-rights charges would have put the Justice Department and every other police agency involved in a rather awkward spot, especially when so many civil-rights suits were pending.

Vogel sees this as total vindication. "I've been investigated by just about everyone—the FBI, the Justice Department, the NAACP, the ACLU—and they haven't been able to win a solitary case," he says. "This whole thing is something that drug lawyers grabbed ahold of to try to beat some arrests by dragging race into it."

If that's true, he is asked, then why has this program had such lopsided racial results in state after state? Why are the statistics so one-sided?

Vogel stiffens. "Let me have my assistant, Lenny Davis, come in and answer that question for you. He might have an explanation for it." A few minutes later, Chief Deputy Davis, a large, friendly black man, sits down and solemnly assures me that the reason so many blacks and Hispanics are being pulled over is because so many of them are involved in the drug business.

Vogel sits next to his chief deputy, nodding. But he doesn't say a word. ■

Crime - racial profiling



"Christopher F. Edley, Jr." <edley @ law.harvard.edu >
03/12/99 05:28:11 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc: Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP, Jose_Cerda_III @ Ingate2.eop.gov, Robert B. Johnson/WHO/EOP

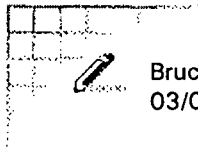
Subject: Re: racial profiling

Note: Some recipients have been dropped due to syntax errors.
Please refer to the "\$AdditionalHeaders" item for the complete headers.

A related issue is whether we already have statutory authority to do some or all of the data collection that Conyers has proposed directed, as I understand it, at state and local enforcement.

At 05:01 PM 3/12/99 -0500, Maria_Echaveste@who.eop.gov wrote:
> I understand that you had a followup meeting on racial profiling while I
> was away. I assume that you were having a staff level discussion to
> explore further the options for the crime section of the book, as we had
> discussed at the last meeting I hosted. From the readout I've received it
> appears that the agencies are in agreement to go forward with some type of
> data collection but not an executive order, primarily because of the
> difficulties presented by INS and customs enforcement needs. Did you
> discuss what an executive order would look like or did you all conclude
> that the difficulties presented by INS and customs forced the decision not
> to have an executive order? At this morning's radio address, both Wade and
> Raul raised the issue of the INS and I told them from what I knew there was
> some legal basis for stopping people based on ethnicity--they would like to
> talk about this in greater detail. Also, Mfume told me he thought we were
> vulnerable because in the 94 crime bill, DOJ was authorized to collect data
> on profiling/police abuse but congress had never appropriated money and we
> had never asked for money. do you know anything about this? What can you
> tell me about all of this and where we go from here?
>
>
>

Professor Christopher Edley, Jr.
Harvard Law School,
Cambridge MA 02138
(617)-495-4614; (f) 496-5156



Bruce N. Reed
03/09/99 05:51:45 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Jose Cerda III/OPD/EOP

cc:

Subject: holder

Justice Dept. Eyes Racial Profiling

By Laurence Arnold
Associated Press Writer
Tuesday, March 9, 1999; 5:44 p.m. EST

WASHINGTON (AP) -- The Justice Department's No. 2 official assured black and Hispanic leaders from New Jersey on Tuesday that his agency is serious about investigating whether state troopers stop motorists on the basis of skin color.

Emphasizing the importance he gives the issue, Deputy Attorney General Eric Holder told the group he believes New Jersey troopers stopped him two decades ago because he is black.

New Jersey is one of several states where police have been accused of using ``racial profiling'' to determine which cars to stop. Similar accusations have popped up in Florida, Maryland, Connecticut and elsewhere along the Interstate 95 corridor.

Holder spent more than an hour behind closed doors with members of the New Jersey congressional delegation, the Black Ministers Council of New Jersey and the state Legislature's Black and Latino Legislative Caucus.

The New Jersey officials praised Holder but said they believe the Justice Department is taking too long with its inquiry.

``The answers that we wanted are still somewhat begging, because too much time has elapsed,'' said Sen. Frank Lautenberg, D-N.J. ``The first time that the Department of Justice was aware of this, definitely aware, was way back in 1996. We are now in 1999 and we are still waiting for some action.''

The Rev. Reginald Jackson, director of the Black Ministers Council, said Holder promised at least a preliminary response ``in a matter of months, which is encouraging to us.''

``These things take time, and we want to make sure that we're being fair to both sides,'' Holder told reporters as he left the meeting. ``We go into this with an open mind. We don't presume there is in fact a problem. We're

going to look at the data we have, talk to people who are involved in this, and then try to come up with an appropriate course of action."

In the private meeting, Holder told of being pulled over by State Police in New Jersey when he was a Columbia University student in the 1970s, traveling between New York and Atlantic City and sporting an Afro hair style.

Police stopped him, he told reporters, even though "I didn't think I was doing anything wrong."

Later, Democratic Rep. Donald Payne, New Jersey's only black congressman, said he too has encountered racial profiling by his state's troopers.

"I fit the profile -- driving a new car, coming up from the South. I was stopped," he said.

Racial profiling is part of a larger question of how police treat minorities, Payne said, adding that it has become "the number one topic of discussion" among Congressional Black Caucus members.

State Police officials and Gov. Christie Whitman insist racial profiling is not an accepted practice among New Jersey troopers.

Still, Whitman fired State Police Superintendent Carl Williams on March 1 following published remarks in which he said minorities were responsible for most of the cocaine and marijuana traffic.

At a subcommittee hearing earlier Tuesday, Lautenberg urged Attorney General Janet Reno to appoint a task force on racial profiling.

Reno said her department "is actively pursuing a review of the New Jersey State Police and this issue. ... We want to do a thorough review and complete it as soon as possible."