REPORT OF
THE CITIZEN COMPLAINT REVIEW BOARD

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To Mayor Anthony A. Williams, the Council of the District of Columbia and the Metropolitan Police Department

RACIAL PROFILING IN WASHINGTON, DC

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Table of Contents

I.   INTRODUCTION

In March 2001, the Metropolitan Police Department (MPD) made public that its officers had exchanged emails about one another and citizens containing racist, sexist and homophobic language.[1] The announcement raised concerns about police bias and racial profiling. Local leaders have called for an end to the practice, and in late March 2001, MPD Chief Charles H. Ramsey pledged that his department would collect information on traffic stops.

Almost ten months after the MPD announced that it would take steps to limit racial profiling, no operating data collection system has been developed and complaints of police bias continue to reach the Citizen Complaint Review Board (CCRB), which began receiving complaints through the agency overseen by it, the Office of Citizen Complaint Review (OCCR), in January 2001. People from a wide range of racial and ethnic backgrounds have reported incidents where MPD officers allegedly have stopped or searched individuals based on their race. Many of these accounts of racial profiling have been filed with the OCCR.

In establishing the CCRB in 1999, the District Council and the Mayor charged the Board and the OCCR with resolving complaints by citizens against MPD officers on a number of forms of misconduct, including discrimination. As of September 30, 2001, the end of the District Government's fiscal year, the OCCR had been contacted by 477 citizens alleging police misconduct. Out of the 308 formal signed complaints of misconduct, 28 included allegations of racial profiling. The OCCR currently is investigating a number of complaints alleging racial profiling and has interviewed individuals who have identified themselves as victims. Biased assumptions and motivations, however, are difficult to prove short of an admission by the offending officer.

The CCRB, entitled by law to make recommendations about MPD operations, including recruitment, training, evaluation, discipline and supervision, has explored ways to identify and end racial profiling. Under the guidance of the Board, the OCCR staff has collected documents, studies and reports on racially biased policing and has interviewed officials in the District as well as local leaders in jurisdictions that have implemented data collection systems. The CCRB has looked to law enforcement labor organizations, civil rights groups, police departments and citizens for insight into ways to monitor bias by officers and allow them to patrol the District successfully. These efforts have resulted in the attached set of recommendations for Washington, DC.[2]

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[1] *Hundreds of Police E-Mails Show Vulgar, Racist Remarks,* Washington Post, Mar. 28, 2001, at A1.

[2] The Citizen Complaint Review Board would like to acknowledge the assistance of the staff of the Office of Citizen Complaint Review (OCCR) in preparing this report and the accompanying recommendations. The OCCR's executive director, Philip Eure, and investigators Edward Daniels and Natasha Bryan worked on this project, as did summer law clerks Demetrious Efstratiou and Roberto Carrillo, who are enrolled at Georgetown University Law Center. We are also very grateful to the members of the law enforcement and citizen oversight agencies who shared their time and knowledge with us.

Simple procedures can be put in place to identify and combat the racial biases held by some law enforcement officers in confronting drivers. High-level direction from the MPD can influence and significantly limit the practices of racial profiling, and gathering basic statistics can reinforce that commitment and monitor whether members of different racial groups are treated equally.

The assumptions and more subtle forms of bias that underlie racial profiling are observed best through motor vehicle stops. A 1999 survey, sponsored by the U.S. Department of Justice (DOJ), found that motorists accounted for more than half of all citizen contact with police. [3] According to the report, an estimated ten percent of all licensed drivers were stopped at least once during the year. Moreover, police often have little or no direct or sustained contact with a driver before pulling over a vehicle, making traffic stops a relatively accurate means of comparing how racial groups are treated.

Police departments have collected information on traffic stops from southern California to the Washington suburbs. Accurate, easy and informative data collection can be implemented quickly and at very little cost to the department and the District as a whole. With the right mix of communication and cooperation, the MPD can curtail allegedly discriminatory tactics by its officers and build public trust by diminishing both the perception and practice of racial profiling in the District.

Although this report and the accompanying recommendations address racial profiling, the CCRB also urges the MPD to eliminate profiling based on gender, sexual orientation, economic status and all other illegitimate factors.

II.   DEFINITIONS

There is widespread agreement among police officials and civil rights leaders that racial profiling has harmed relationships between police officers and the communities they serve. There is little accord, however, on what racial profiling actually is.

The following are three of the most current definitions cited and represent a varied sample of the opinions of government officials, scholars and community leaders.

The U.S. Department of Justice (DOJ) Definition

On January 14, 2000, DOJ set forth guidelines for vehicle stops in its Memorandum of Agreement (MOA) with the Montgomery County Department of Police (MCPD) and the Montgomery County Fraternal Order of Police (FOP). [4] Consistent with

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[3] Patrick Langan, Lawrence Greenfeld, Steven Smith, Matthew Durose and David Levin, *Contacts between Police and the Public, Findings from the 1999 National Survey,* U.S. Department of Justice, Mar. 2001, (available at http://www.ojp.usdoj.gov/bjs/abstract/cpp99.htm).

[4] *Memorandum of Agreement Between the United States Department of Justice;, Montgomery County, Maryland; the Montgomery County Department of Police; and the Fraternal Order of Police, Montgomery County Lodge 35, Inc.;* Jan 14, 2000, Part III, Section A, ¶ 1[*Montgomery County MOA*].

a consent decree entered last year with the state of New Jersey, the MOA defined racial profiling as any attempt to link an individual's race or ethnicity with criminal activity in the absence of other factors.[5] The DOJ definition stated that race could not be considered "in deciding upon the scope or substance of any action in connection with a traffic stop."[6] DOJ required that the MPD adopt a colorblind standard in policing motorists. Under the DOJ standard, any stop, search, physical effort to restrain, or, in extreme circumstances, arrest, could not be justified on the basis of knowledge about a racial group. The MOA contained only one exception: "[w]here MPD officers are on the lookout for, or are seeking to stop, detain, or apprehend, one or more specific persons who are identified in part by race or national or ethnic origin, MPD officers may rely in part on race or national or ethnic origin in taking appropriate action."[7] Under this definition, race could be considered only when it is one of many characteristics of a suspect's physical description.

The Police Executive Research Forum (PERF) Definition

Racially Biased Policing: A Principled Response, a study by the law enforcement think thank *PERF*, was released in July 2001 to guide police departments in responding to perceptions of racial profiling. Like the DOJ definition, PERF's model policy directs officers to "not consider race/ethnicity in establishing either reasonable suspicion or probable cause."[8] PERF's guidelines make clear that race and ethnicity should not be considered even when deciding to initiate contacts that do not amount to legal detentions.[9] The PERF policy, however, contains a major exception: officers should consider "the reported race or ethnicity of a specific suspect or suspects based on [relevant and trustworthy information] that links a person or persons of a specific race/ethnicity to a particular unlawful incident."[10] If, for example, students have reported seeing a Latino man selling weapons near a school, an officer could consider race in stopping citizens in the area.[11] Though PERF asserts that racial factors never should be used as the sole basis for approaching an individual, the exception allows police great latitude to consider a person's race during a stop.

The Northeastern University Definition

In November 2000, a group of scholars at Northeastern University in Boston made public a study of methods to collect data and combat bias in policing. The report, *A Resource Guide on Racial Profiling Data Collection Systems, Promising Practices and*

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[5]*See generally,* U.S. v New Jersey Joint Application for Entry of Consent Decree and Consent Decree, (filed Dec. 30, 1999)<http://usdoj.gov/crt/split/documents/jerseysa.htm>. This decree was entered into by the DOJ and the State of New Jersey on May 24, 2001.

[6] *See id.*

[7] *See id*.

[8] Lorie Fridell, Robert Lunney, Drew Diamond & Bruce Kubu with Michael Scott and Colleen Laing, *Racially Biased Policing: A Principled Response*, Police Executive Research Forum, at 52 (Jul. 16, 2001) <http://www.policeforum.org/racial.html>.

[9] *Id. at 52.*

[10] *Id*.

[11] *Id. at 57-58.*

Lessons Learned, defined racial profiling as "any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity."[12] According to the Northeastern University study, racial profiling may exist whenever race is a factor in identifying suspects. Like the DOJ definition and the PERF guidelines, the study made clear that police could use race as a factor to identify an individual suspected of having committed a crime.

<p align="center">*Workable Definitions for Washington, DC*</p>

Definitions adopted by DOJ, PERF and the Northeastern University scholars have provided a basis for a workable standard for defining racial profiling in the District. All three guidelines discourage the consideration of race in most situations. Moreover, all three address the necessity of using race in physical descriptions of wanted individuals. The central issue raised by these definitions is whether police should be allowed to consider race when there is little evidence to link a specific individual to a criminal act.

Existing MPD policy makes clear that the department is committed to treating individuals in a fair and non-discriminatory manner. General Order 201.26, Part I, Section A (1) requires, in part, that officers enforce all laws and ordinances of the District of Columbia and the United States in a fair and impartial manner. Arbitrarily subjecting people of one race or ethnicity to more scrutiny than people of another is unreasonable. General Order 201.26, Part I, Section A (2), further states:

> "[M]embers shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, size, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business, except as required by specific statute."

The CCRB believes that the District's definition of racial profiling should, like DOJ's definition, encompass considerations of race, ethnicity, or nationality that inform, motivate, or influence police action, except in those instances where race is only considered as one of many descriptive physical characteristics pertaining to an individual sought by the police.

III. THE FEDERAL PICTURE

Federal courts have begun to address racial profiling. The U.S. Court of Appeals for the Sixth Circuit, which covers Kentucky, Ohio, Michigan and Tennessee, ruled in 1997, "[I]f law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more, then a violation of the Equal Protection Clause has occurred."[13] In

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[12] Deborah Ramirez, Jack McDevitt, & Amy Farrell, *A Resource Guide on Racial Profiling Data Collection Systems,* Northeastern University, at 3 (November 2000) [*Resource Guide*].
[13] United States v. Avery, 137 F.3d 343, 355 (6th Cir. 1997).

addition, a 2000 decision from the Ninth Circuit, based in San Francisco, reaffirmed that "reasonable suspicion cannot be based 'on broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped.'"[14] The courts continue to remain silent on when and to what extent race can be used as a factor to justify a stop.

While the Constitution does not address racial profiling, the practice has become part of the national agenda. When asked about the issue of racial profiling during his presidential campaign, then Texas Governor George W. Bush, remarked that "the federal government should not be in the business of 'second guessing' local police departments with reports or investigations."[15] One month after taking office, however, President Bush vowed to eradicate racial profiling and charged Attorney General John Ashcroft with the task of developing "specific recommendations to end racial profiling."[16]

Federal legislators themselves have taken steps to ban the practice. Del. Eleanor Holmes Norton, D-DC, in May 2001, proposed legislation to withhold portions of federal highway money to states that do not adopt policies and standards that prohibit racial profiling.[17] The following month, Rep. John Conyers, D-Mich., and Sen. Russell Feingold, D-Wis., put forward the "End Racial Profiling Act of 2001," which would prohibit any law enforcement agent or agency from engaging in discriminatory police tactics.[18] As of now, however, none of the bills have made it out of committee. Despite congressional efforts, the prospects of federal legislation are uncertain.

IV.   STATE AND LOCAL PERSPECTIVES

State and local governments have taken the lead in addressing racial profiling. As of September 2001, at least 14 states had passed legislation addressing racial profiling. Many of these states are making the practice unlawful and requiring the use of data collection systems.[19] The precise mechanisms for dealing with biased policing vary by state. In Connecticut, police are required to record data during traffic stops, while in California, officers will be required to undertake additional training developed by a number of civil rights organizations.[20] Jurisdictions near the District of Columbia also have tackled racial profiling. Montgomery County, Md., has a nationally recognized data collection program that is discussed later in this report, and the police department in Arlington County, Va., has adopted a "Racial Profiling Statement," rejecting "any [police] tactics even partly based on assumptions about race or ethnicity."[21] In Fairfax County, Va., officers are required to complete field contact cards for every vehicle stop.

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[14] United States v. Montero-Camargo, 208 F.3d 1122, 1132-33 (9th Cir. 2000) (quoting United States v. Rodriguez-Sanchez, 23 F.3d 1488, 1492 (9th Cir. 1994)).

[15] *Ashcroft Pushes Legislation to Combat Racial Profiling*, Associated Press, March 2, 2001.

[16] *Id*.

[17] H.R. 1907, 107th Cong. (2001).

[18] H.R. 2074, 107th Cong. (2001). S. 989, 107th Cong. (2001).

[19] Lori Montgomery, *Racial Profiling in Maryland Defies Definition – or Solution*, WASH. POST, May 16, 2001, at A1.

[20] CONN. GEN. STAT. § 54-1m (1999). CAL. PENAL CODE § 13519.4 (West 2000).

[21] ARLINGTON COUNTY POLICE DEP'T, *Racial Profiling Statement*.

The command staff in the Alexandria, Va., police department currently is considering whether to adopt a policy against racial profiling. At present, Prince George's County, Md., is one of the few jurisdictions in the immediate area that has not developed a written policy on the practice. The county also does not collect data on traffic stops. To date, approximately 400 law enforcement agencies in the United States collect information on stops.[22]

V.   THE DISTRICT OF COLUMBIA AND THE MPD

The citizens of Washington, DC are diverse. With African-Americans comprising 66 percent of the overall population, and Latinos comprising eight percent, Washington is one of the nation's most prominent "majority-minority" cities.[23] The District's unique characteristics give the city personality, charm, and grace, but in certain contexts this uniqueness may create special challenges.

In order to satisfy the police department's weighty responsibilities, the MPD is comprised of more than 3,600 sworn police officers and 600 non-sworn personnel, assigned across seven police districts and 83 Police Service Areas (PSAs).[24] MPD officers are required to take a number of training courses on diversity. More than 2,000 officers have visited the U.S. Holocaust Memorial and Museum and learned about police abuses and power. In addition, the department offers a diversity awareness and sensitivity training program.[25] However, none of these courses directly address racial profiling. The MPD keeps no statistics on the number of racial profiling complaints it has received.[26]

VI.   DATA COLLECTION: BEST PRACTICES

Data collection has emerged front and center in an effort to end racial profiling in the District. In a request for bids, the MPD itself has proposed for a contractor to design a system to collect data on police contacts with citizens. The department has announced few guidelines for such a system. It has, however, stated that data collection would not begin until September 2002.[27]

Whether fact or fantasy, bias in policing is regularly acknowledged, and the effects of that common understanding are real. The most productive way to shift the discussion of racial profiling from accusations and distrust to a more rational footing is to

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[22] *A NOBLE Perspective: Racial Profiling – A Symptom of Bias-Based* Policing, NAT'L. ORG. OF BLACK LAW ENFORCEMENT EXECUTIVES, May 3, 2001, at 30.

[23] *See generally*, U.S. Census Bureau, *United States Census 2000*, (Dec. 20, 2001) <http://www.census.gov/dmd/www/2khome.htm>.

[24] 1999 MPD Ann. Rep. 5.

[25] Letter from Charles Ramsey, Chief of Police, *District of Columbia MPD,* to Kathy Patterson, Chairperson of the Committee on the Judiciary, *Council of the District of Columbia* (June 1, 2000). The number of sworn and civilian employees attending this training are through May 23, 2001.

[26] Letter from Brian Jordan, Assistant Chief of Police, *Office of Professional Responsibility,* to Philip Eure, Executive Director, *Office of Citizen Complaint Review* (Sept. 20, 2001).

[27] *See generally*, Metropolitan Police Department, *Biased Policing Project*, (undated).

collect information on when, where and how police stop motorists. Such practices allay community concerns and provide invaluable information to target specific practices where racial profiling exists. A system to track motorist stops gives the community a clear indication that the officers have nothing to hide and sends officers the message that racial profiling will not be tolerated.[28]

The District of Columbia can learn a lot from jurisdictions that collect demographic data from vehicle stops. Three data collection systems emerged at the outset of preparation for this report as possible case studies for the District – San Jose, Calif., San Diego, Calif. and Montgomery County, Md. San Jose and San Diego, both large and diverse cities, have gained national recognition for their innovative and successful approaches.[29] Because San Jose and San Diego were among the first cities in the United States to collect traffic stop data, the experiences of the two can serve as examples of the data collection process from the early phases of adoption to the later stages of analysis. Montgomery County, which began keeping statistics on traffic stops in 2000, offers a sophisticated alternative and a local perspective on data collection. If the District collects data on traffic stops, a collection process can be implemented as soon as officers are trained and basic materials are developed.

San Jose

With a population of almost one million, San Jose is the eleventh largest city in the United States.[30] San Jose is also one of the most diverse cities in America. Approximately 56 percent of its residents identify themselves as being of non-white ethnic and racial groups.[31] Latinos, comprising approximately 31 percent of the population, constitute the largest minority group. In a city consisting primarily of non-white residents, allegations of racial profiling have been frequent.

Before San Jose launched a data collection program, the city's independent police auditor, Teresa Guerrero-Daley, received approximately 500 complaints of racial profiling every year.[32] Because of the difficulty of proving bias in law enforcement, few of these complaints were sustained. Community suspicions of profiling grew in March 1999 when a black youth minister announced that he had been stopped and assaulted because of his race.[33] The San Jose Police Department (SJPD) began to gather vehicle stop data just a few months later. The first report issued by the department showed that police were more likely to stop African-American and Latino drivers than whites. Since statistics were made public, the chief of police has been working with community leaders to improve his department's data collection system and reduce instances of racial profiling.

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[28] *Resource Guide,* at 13.

[29] *Id. at* 23.

[30] *See generally*, U.S. Census Bureau, *United States Census 2000*, (Dec. 20, 2001) <http://www.census.gov/dmd/www/2khome.htm>.

[31] *Id*.

[32] *Resource Guide*, at 17.

[33] *Id*.

San Diego

San Diego, the nation's seventh largest city and home to approximately 1.2 million residents, is diverse. Like San Jose, the largest minority is Latino, which comprises more than 23 percent of the total population. There are also sizable black (8.8 percent) and Asian (5 percent) populations.[34]

In February 1999, the San Diego Police Department (SDPD) voluntarily agreed to record data on traffic stops. The data collected included the race of the driver, whether a search was conducted and whether contraband was found. Officers are required to record the information on four-by-six inch cards that are easily carried and can be completed in less than 20 seconds. Initially, the data gathering was to last one year, from January to December 2000.[35] When preliminary results revealed that disproportionately large percentages of Latinos and African-Americans were subjected to traffic stops and subsequent vehicle searches, SDPD Chief David Bejarano committed the department to further study.

Montgomery County

Not all jurisdictions that record information on traffic stops have large minority populations. More than 75 percent of Montgomery County's 750,000 residents are white.[36]

DOJ requested the Montgomery County Police Department (MCPD) to collect data on all traffic stops, following allegations of racially discriminatory conduct from the county chapter of the NAACP. Under the Montgomery County MOA, the MCPD agreed to collect information from traffic stops including the driver's race, the duration of the stop and the reason for pulling over the vehicle. The county bought palm pilots for all 1200 of its officers, at a total cost of nearly $400,000. The information is easily extracted from the handheld devices and automatically compiled in a main database.

VII. DATA ON CITIZENS AND POLICE OFFICERS

Data Pertaining to Detained Citizens

San Jose, San Diego and Montgomery County offer clear examples of what facts must be known and retained if data collection is to provide insight into racial profiling. All three jurisdictions generally collect a consistent set of data.

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[34] *Id.* at 23.

[35] SAN DIEGO POLICE DEP'T., *Vehicle Stop Study Year End Report: 2000*, May 8, 2001, at i.

[36] *See generally,* U.S Census Bureau, *United States Census 2000*, (Dec. 20, 2001) < http://www.census.gov/dmd/www/2khome.htm>.

Race or Ethnicity

The race or ethnicity of the detained citizen is perhaps the most important detail to be collected. Most jurisdictions rely on the perceptions of the officer in identifying an individual's race, reasoning that the officer's belief about the person's racial or ethnic origin may guide his or her judgment in confronting the motorist.[37]

Gender and Age

The gender and age of individuals stopped are important to gather because perceptions of racial profiling are dependant on factors other than race. National studies have shown that a disproportionately high percentage of young African-American men, for example, believe that police engage in racial profiling.

Residency

Collecting data on the residency of detained individuals is a critical step to comparing the demographic data of drivers stopped to city census data. The District has more than 570,000 residents, according to the 2000 Census.[38] But the metropolitan area has a population of almost 7 million.[39] Moreover, an estimated 19 million tourists visit the nation's capital every year.[40] On any given day, the number of people actually walking or driving through the streets of the city may greatly exceed the number of District residents.

Data Pertaining to Police Officers

Group and Area

Officers and their labor representatives in a number of jurisdictions have resisted the collection of the identifying information such as names and badge numbers because they fear it could be used for disciplinary purposes. San Jose and San Diego, for example, do not collect officer identity data. The Montgomery County MOA provides a useful alternative. Under the agreement, the police department tracks subgroups composed of officers that work similar assignments at similar times of day.[41] While not tracking problem officers, the MCPD can identify problem subgroups, pinpointing areas that need to be addressed through proactive measures.

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[37] *Resource Guide*, at 47.

[38] U.S. Census Bureau, *United States Census 2000*, (Dec. 20, 2001) <http://www.census.gov/dmd/www/2khome.htm>.

[39] U.S. Census Bureau, *United States Census 2000*, (Dec. 20, 2001) <http://www.census.gov/dmd/www/2khome.htm>. Statistics include Central and Outlying Counties as specified by the U.S. Census Bureau. <http://www.census.gov/population/estimates/metro-city/99mfips.txt>. (Dec. 20, 2001).

[40] Telephone Interview, D.C. Convention and Tourism Corporation help desk (July 16, 2001).

[41] *Montgomery County MOA*, at Part IV § B.

Date, Time, and Location of Traffic Stops

Vehicle stop rates and driving characteristics can vary greatly according to time of day, location and even month. Without this basic information, it can be difficult to determine whether fluctuations in stop rates are due to racial bias or more benign factors. San Jose's data collection experience illustrates this point. Every Friday night, largely Latino crowds flock to downtown San Jose to go "cruising." Since "cruising" is a violation of the San Jose vehicle code, the police stop a large percentage of Latino motorists during this time. Without an accurate record of the date, time, and location of a stop, events such as "cruising" could skew data analysis.

Virtually all the major jurisdictions engaging in data collection gather information about the date, time and location of stops. The question is less whether to capture this data than what degree of specificity should be required. Police can record the date and time with little effort. Recording the exact street address of a traffic stop, however, could be difficult and time consuming. In San Diego, advocacy groups were concerned that the first data collection report did not compare minority stop rates from different neighborhoods. In an effort to provide this information, the SDPD now tracks the location of stops according to police service areas that closely matched discrete and demographically homogeneous neighborhoods. Montgomery County takes a different approach. MCPD collects the location of traffic stops according to street intersections. The SJPD collects the location of stops by police district. This approach could permit the determination of statistically significant stop rates for minorities.

Justifications for Traffic Stops

Knowing the primary reason for a stop is useful in determining whether police enforce laws consistently across racial and ethnic lines. Although most vehicle stops are discretionary, police have more leeway in enforcing some laws as opposed to others. An equipment violation, such as a damaged license plate or an inoperable rear-end light, can be ignored, while an officer would almost certainly stop a vehicle driven at 100 miles per hour by a murder suspect.

Stop Disposition

Deciding how to terminate a traffic stop can involve as much discretion as deciding to initiate one. In Washington, D.C., police may end traffic stops by issuing verbal warnings, written warnings, tickets or Notices of Infraction (NOI).[42] Discrepancies in vehicle stop dispositions among similarly-situated racial and ethnic groups could be evidence of racial profiling.

Searches and Search Results

Most data collection systems capture search data. Although San Jose is the largest jurisdiction gathering data that does not presently collect information on whether a

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[42] *See*, *MPD General Order* 303.1, §§ B, C & D.

search was conducted, the SJPD is expected to begin incorporating such statistics in its system. This information is helpful because it reveals differences in the way police treat motorists after stopping them.

Police can execute two types of searches: consensual and non-consensual. Consensual searches occur when the motorist permits the police to search the vehicle. Non-consensual searches are conducted without the motorist's permission. In situations where non-consensual searches occur, the decision to search is rarely up to the officer. Montgomery County's data collection system records whether police actually search motorists, whether the search was consensual or non-consensual, whether officers asked permission to search and whether their search efforts discovered contraband. San Diego uses a similar data collection system, but includes information about whether police searched passengers.

DATA COLLECTION METHODS

While most jurisdictions generally agree on what to collect, there are numerous ideas on how to collect the data. Paper cards, mobile computer terminals, palm pilots and radio communication all have been used with relative success.

The Paper-Based System

One way that law enforcement agencies gather data on traffic stops is with preprinted forms that are returned at the end of an officer's shift. An officer records on the cards the relevant information, which later is entered into a computer database by data entry clerks and stored for subsequent analysis. San Diego's paper-based system for data collection was successfully implemented in a very short period of time with few start-up costs. Concerns about paper-based systems are frequently mentioned. Some officers feel that they are already bogged down with too much paperwork in the course of their official duties. Any paper-based system for data collection must therefore balance the need to collect adequate data, in order to allow for meaningful analysis, with the desire to address the officers' concerns about being overburdened with paperwork.

The Mobile Digital Terminal (MDT) System

Officers in San Jose have the option of using MDT's to input the requisite data. MDT systems rely on the computer terminals inside patrol cars to collect data. Pull down menus on the screen are often used for each category of data, which then can be transmitted electronically to a central database for later analysis. Statistics collected through computer systems have fewer possibilities for error than systems that require remote support, as only an officer records information. Under a paper-based system, for example, a second individual must enter the data, increasing the risk of compromising its accuracy. MDT capabilities vary throughout the country, and the specific details of how MDT data collection systems operate vary from agency to agency.

The Handheld Device System

After signing the MOA, Montgomery County bought palm pilots for all 1,200 of its officers. The information is extracted easily from the handheld devices and automatically compiled in a main database. Like MDT-based systems, handheld devices can increase data accuracy. The costs, however, are staggering. At a cost of approximately $300 per unit, Montgomery County is estimated to have spent almost $400,000 on hardware alone to implement the system.

The Dispatcher-Based System

Under this system, an officer relays information about the traffic stop to the dispatcher, who then can enter the data either electronically or record the data on paper for later data entry. Dispatcher-based systems free the officer from completing additional paperwork and require no more than the officer speaking into a transmitter. However, the extra communication required between dispatchers and officers in this system may tie up lines of communication to the dispatcher from other officers during emergencies. This concern applies to the MPD where officers keep contact with dispatchers to a minimum to allow other officers to call in on the radio if their safety is threatened. In addition, poor connections and the involvement of another individual in the data collection process may compromise the accuracy of the data.

IX.   DATA ANALYSIS

How the data regarding traffic stops are analyzed can be as important as how the information is gathered in reaching conclusions about the existence and nature of racial profiling. Two main issues in studying racial bias have confronted other jurisdictions: who should determine how the data collected from a vehicle stop are analyzed and what comparative benchmark should analysts use to interpret the data.

The Need for Independent Analysis

Police management, police labor associations, civil rights groups and citizens should determine who will analyze the data in a manner that builds trust among all parties. The problem of racial profiling is about perceptions as much as practice. It is essential that the method of data analysis be clear and agreed upon by interested parties.

In San Jose, the SJPD interpreted its data collected from vehicle stops and found that racial profiling was probably not a major problem. Not everyone agreed. A study issued by the SJPD on December 1, 2000 showed that police were more likely to stop Latinos and African-Americans than whites.[43] The SJPD concluded that this disparity was attributable to an uneven distribution of police officers throughout the city.[44] According to the SJPD, a high percentage of Latinos and African-Americans live in small

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[43] Northern California American Civil Liberties Union, *The San Jose Police Department's Voluntary Data Collection Program: Problems With Data and Analysis* (undated).
[44] *Id*.

police districts that have more police officers per capita than larger, more affluent districts that are predominantly white. As a result, according to the SJPD, Latinos and blacks are more likely to encounter police officers, and police officers are more likely to observe them violating vehicle codes. Civil rights groups, including local chapters of the NAACP and the ACLU, had a somewhat different perspective. The ACLU questioned the department's figures regarding the racial makeup of police districts.[45] While some disagreement was probably inevitable, the SJPD's alleged failure to involve all parties in the determination and analysis of related factors gave rise to questions about the validity of the SJPD's statistical conclusions.

In San Diego, the SDPD attempted to preempt any doubts about the legitimacy of data analysis by retaining a group of three independent academic consultants with expertise in statistical interpretation. When the department's first data collection study showed that police stopped Latinos and African-Americans at higher rates than whites, the SDPD's experts hypothesized that the discrepancy in stop rates may have resulted from underestimating the number of minority drivers.[46] San Diego's community and civil rights groups did not readily accept this explanation. One of their main criticisms was that they had little input in choosing the academic partners charged with analyzing the data collected.

The experiences in both San Jose and San Diego suggest that data analysis should proceed in a manner that all stakeholders perceive as impartial. Cooperation is the key to achieving this goal. Retaining an independent academic analyst, selected by all interested parties, is a positive step in preserving the legitimacy of data analysis.[47]

Comparative Benchmarks

The most controversial aspect of the data analysis phase involves the determination of appropriate comparative benchmarks to interpret data. A benchmark is a standard that approximately quantifies fair and unbiased police action. In other words, a benchmark reflects how one expects police to behave in the absence of racial discrimination. By comparing the makeup of stopped drivers to a corresponding benchmark, analysts may determine whether a police department truly acts in a racially unbiased manner.

External Benchmarks

Analysts derive external benchmarks from information that is not contained in the data set collected.[48] In racial profiling analysis, external benchmarks are most useful in determining whether police stop members of certain racial groups at higher rates than others. The ideal comparison group in racial profiling analysis is the percentage of drivers who commit vehicular infractions. This benchmark is generally referred to as the

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[45] *Id*.

[46] *See generally*, SAN DIEGO POLICE DEP'T., *Vehicle Stop Study Year End Report: 2000*, May 8, 2001.

[47] *Resource Guide,* at 47.

[48] *See id*, at 53.

"violator population." If, for example, Latinos make up 25 percent of motorists who violate traffic laws or are wanted by the law, then one would expect Latinos to make up 25 percent of all motorists stopped by police. Data showing that Latinos comprised more than 25 percent of stopped motorist might suggest that racial profiling is occurring.

The primary weakness of external benchmarks is that the violator rate is largely undiscoverable. Finding that baseline requires knowledge of the demographic makeup of all motorists who violate laws. The sheer number of motorists and the unpredictability of driving patterns make finding the "violator rate" nearly impossible. Some have tried to approximate the figure by observing the race of motorists who violate traffic laws at discrete locations. The technique has limited applicability in cities, where the location and context of vehicle stops vary widely and are hard to generalize.

A more useful way to approximate the rate at which motorists violate traffic laws is to employ population figures. If analysts assume that all racial and ethnic groups violate vehicle laws at roughly the same rate, then they may estimate the "violator rate" by determining the demographic makeup of the driving population. Population statistics, of course, have their own set of inherent difficulties. Determining the driving population's racial makeup is almost as difficult as finding the "violator rate." District of Columbia drivers' licenses do not list the holder's age, and residential population figures ignore the presence of non-resident motorists as well as potential differences in the extent to which ethnic groups own and operate vehicles. Residential data, however, are used by a number of police departments as a proxy, including the SDPD, and roughly reflect the demographic makeup of potential drivers residing in an area, making the data useful in studying the treatment of resident motorists stopped by police. Using population figures for a majority black area such as the District could have its own shortcomings in identifying racial profiling and could require further analysis based on ward, police district or patrol service area. But demographic statistics provide the most obvious measure in identifying bias in policing.

Internal Benchmarks

Internal benchmarks originate from within the data set collected.[49] In other words, internal benchmarks are comparison groups that an analyst can obtain from the available data. While internal baselines have limited applicability for discovering whether police stop members of a particular racial group at an excessive or unreasonable rate, the benchmark exposes discrepancies in how police treat minorities after the stop has been made.

Two internal benchmarks are particularly useful – searches and police actions. By dividing the number of searched motorists by the number of those who are stopped, analysts can create a search rate for every racial and ethnic group represented in the study. While factors contributing to the decision to search vary, the search rate gives some perspective on how police treat individuals of different races. It also can be productive to compare enforcement actions taken by police during vehicle stops.

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[49] *Id.*

Motorists stopped for similar infractions in similar situations generally should experience similar treatment. Analysts can assess whether bias informs this aspect of policing by determining the rates at which racial and ethnic groups are subjected to the different types of police action. If the data showed that officers give warnings for equipment violations more often to blacks than to other racial or ethnic groups, it would be reasonable to evaluate whether African-Americans are subjected to more pretextual stops than members of other races.

X.   CHALLENGES OF DATA COLLECTION

Disengagement

Perhaps the most often cited concern about gathering data is that it will result in officer disengagement. According to this view, the police will refrain from making traffic stops because requiring them to collect the necessary data will be too burdensome, given current paperwork requirements. While disengagement needs to be taken seriously, there are ways to counter the problem. First, strong leadership and a clear message about the importance of data collection from the highest ranks of a police department can be instrumental in combating fears about officer disengagement. In addition, minimizing the burden of gathering data can also have substantial effects on disengagement. Numerous jurisdictions, including both San Jose and San Diego, have successfully collected data.

Data Completeness and Quality

The accuracy of data can be compromised by anyone who processes the information. Both officers and data entry technicians may not record data accurately, either intentionally or not. While no system can assure total cooperation, measures can and should be taken to improve officer compliance to the greatest extent possible. Chief Bejarano of the SDPD addressed this concern at the start of the data collection program in San Diego by showing a videotape in which he described the importance of the project and the need for officer cooperation in order for it to be successful. Supervisors also can monitor traffic stops made by subordinates and demand that data collection cards are completed. In San Jose, officers making traffic stops must clear calls to the dispatchers by providing stop disposition information. These steps help to assure that officers understand the system and participate fully.