THE PERSISTENCE OF RACIAL PROFILING

IN RHODE ISLAND:

A CALL FOR ACTION

**A REPORT PREPARED BY THE RHODE ISLAND AFFILIATE,
AMERICAN CIVIL LIBERTIES UNION**

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Executive Summary

Every police department in Rhode Island has a wealth of data – three years of independently-analyzed information – that, in most cases, documents statistically significant racial disparities in their stops and searches of motorists. The data were collected in two separate studies, and make Rhode Island more informed than any other state on the extent and prevalence of racial profiling on its roadways.

This is the fourth report that the Rhode Island ACLU ("ACLU") has issued since data became available from the second traffic stop study, back in March 2005. Unfortunately, with rare exceptions, very little has changed since the ACLU's first report in May of that year or, in some police departments, even since the initiation of the first round of data collection six years ago.

Even though the most recent study showed only modest general decreases in racial disparities across police departments, there appears to have been very little substantive change in agency policies and practices that may be promoting racial profiling on the highways. Rather, this report shows:

* Even as the R.I. Police Chiefs Association calls for the collection of more data as its legislative response to the problem, few police departments are thoroughly analyzing the vast amount of data they already have in order to help them determine how these racial disparities are occurring.

* Despite the continued prevalence of racial disparities over the course of the two studies, most police departments have failed to seek out new strategies in an effort to address those disparities. Some have issued minimal annual "reports" on their racial profiling work that are word-for-word copies of previous submissions.

* At least six police departments that searched minority drivers at more than twice the rate of whites submitted annual reports publicly proclaiming that racial profiling does not exist in their community.

* The year 2006 witnessed some highly publicized incidents of racial profiling that only confirm the deep-seated nature of the problem – rooted at least in part in law enforcement practices that, however unintended, promote disparate treatment – and the need for legislative initiatives to address it.

Among the recommendations for legislative action that this report proposes:

- Police officers should be required to document in writing their "probable cause" or "reasonable suspicion" grounds for conducting a search.
- So-called "pretext" stops by police should be banned.
- Victims of racial profiling should be allowed to make use of collected traffic stop and search data in court to raise a "rebuttable inference of discrimination" where the statistics so suggest.
- Police should be barred, except under limited circumstances, from inquiring about a person's immigration status or asking motor vehicle passengers for identification.
- Certain uniform standards should be adopted for the use of, and access to, police cruiser camera videotapes.
- All law enforcement agencies should be required to formally submit a report on a regular basis specifying whether their review of data has found any patterns relating to officers, locations or practices that may be responsible for racial disparities in their stop or search activities.

1. Introduction

In 2003, the thoroughly documented results of a two-year study of traffic stops and searches in Rhode Island confirmed what many members of the minority community had long believed: minority drivers were far more likely than white drivers to be pulled over by police. In the same vein, the study, conducted by Northeastern University, also found that blacks and Hispanics, once pulled over, were searched at a much higher rate than whites even though white drivers who were searched were more likely to be found carrying contraband.[1]

The Rhode Island General Assembly responded in 2004 by enacting a comprehensive law to formally ban racial profiling in the state. The Racial Profiling Prevention Act of 2004 made it illegal for law enforcement officers to target individuals on the basis of race or ethnicity; prohibited so-called "consent searches" without probable cause; and created civil remedies for violations. The law also included two provisions to allow for continued monitoring and analysis: it authorized another one-year traffic stop data study (again to be conducted by Northeastern University), and it renewed a requirement that each police department submit an annual report detailing any actions taken to address and prevent racial profiling.[2]

In May 2005, after Northeastern University's release of the first quarter of traffic stop data for the 2004-2005 study, the ACLU issued the first in a series of reports analyzing the continued racial disparities reflected in the statistics and offering recommendations for reducing them. Additional reports analyzing the second

[1] Northeastern University's executive summary of the report can be accessed on-line at http://www.racialprofilinganalysis.neu.edu/IRJ_docs/RIFinalReportExecSummary.pdf. See fn. 11, *infra*, for a citation to the summary of its report on the second round of data collection.

[2] P.L. 04-331.

and third quarter statistics, and reaffirming the persistence of the problem, followed. Although there was, generally, a slight decrease in disparities from 2001-2002, the overall results were depressingly clear: blacks and Hispanics continued to be disproportionately stopped by police, and also searched more than twice as often as white drivers even though they were less likely to be found with contraband. [3]

In releasing an analysis of the first quarter of statistics in May 2005, the ACLU also reviewed copies of the year 2004 annual reports filed by departments. The review was an effort to learn what steps police departments were taking to combat racial profiling, and to gauge their seriousness in approaching the problem. The ACLU's review found wide variation from one department to the next, both in the thoroughness with which they fulfilled the reporting requirement (submissions ranged from one-paragraph letters to formal twenty-page reports), and in the level and comprehensiveness of the anti-racial profiling measures reportedly taken.

In this latest report, we examine the annual reports submitted for 2005 by police departments, briefly review the statistical data from the 2004-2005 traffic stop study, and consider some recent publicized police actions in the state that have raised concerns about the continued prevalence of racial profiling in Rhode Island. All three of these examinations point in the same direction: strong legislative action – action that goes beyond the mere continuation of data collection – is absolutely essential in order to minimize the continued impact of racial profiling in the state. We are hopeful that this report will serve as a call to action – from the community and from public officials – to more aggressively address this persistent problem.

[3] "The Persistence of Racial Profiling in Rhode Island: An Analysis and Recommendations," May, 2005, was the first ACLU report and is available online, along with the two follow-up reports issued in response to release of second quarter and third quarter data, at http://www.riaclu.org/publications.html.

2. 2005 Annual Reports

In early 2006, in accordance with the Racial Profiling Prevention Act, police departments submitted their 2005 annual reports, providing an opportunity to evaluate the departments' current reported activities and to gauge whether efforts to address racial disparities in traffic enforcement had evolved or changed.[4] The existence of another year's worth of traffic stop data also provided the opportunity to investigate how departments' self-reported progress corresponded with the statistics. With this background in mind, the ACLU reviewed the departments' 2005 submissions.[5] The findings are hardly cause for celebration. Among those findings:

- Few departments reported taking steps in 2005 that were substantially different from those reported in 2004. In other words, most departments did not report seeking out new strategies to address racial profiling in 2005 even though only a minor overall drop in racially disparate searches was documented by the latest statistics.[6]
- Some departments submitted perfunctory "reports" that were not only just a paragraph or two long, but were taken virtually word-for-word from their 2004 annual report submissions. These reports came from departments like Bristol, Burrillville and North Kingstown, whose search disparity ratios in the 2004-2005 study were, respectively, 2.0, 2.7, and 2.1.

[4] Under the law, the reports were to be submitted to the state's Select Commission on Race and Police Community Relations. R.I.G.L. §42-137-5(g). With the demise of that Commission, reports were instead submitted to the R.I. Justice Commission. The R.I. ACLU also filed an open records request for the reports. However, we were unable to obtain any report from two police departments – Foster and Providence.

[5] A detailed synopsis of the submitted reports appears as an appendix to this report.

[6] One example of a department that did adopt more formalized procedures for conducting motor vehicle searches – and that clearly benefited from them – was Narragansett. This is discussed in more detail *infra*.

- Some departments continue to be in denial about both the presence and prevalence of the problem. For example, *seven of the twenty-two police departments* that conducted a statistically significant number of searches during the 2004-2005 study stated unequivocally that racial profiling did not occur within their jurisdictions. Yet, six of those departments had search disparity rates in excess of 2.0 – that is, they searched minority drivers more than twice as often as white drivers, and at a ratio greater than the statewide average.[7] In only two of the seven departments was the search disparity ratio lower than it had been in the 2001-2002 study. (See chart, next page.)
- Despite repeated recommendations from the Northeastern University researchers and the civil rights community, as well as an explicit statutory requirement in the Racial Profiling Prevention Act that departments "review the data on a regular basis in an effort to determine whether any racial disparities in the agency's traffic stops enforcement exists,"[8] few departments appeared to analyze the collected traffic stop data in a meaningful way.[9]

While some departments that submitted thorough reports in 2005 showed improvement in their statistics, others – such as Cranston and the R.I. State Police --

[7] So-called disparity "ratios" indicate the proportion of minority drivers subjected to discretionary searches after being stopped, compared to stopped white drivers subjected to those searches. Thus, a ratio figure of 2.1 means that minority drivers were, once stopped, 2.1 times more likely (i.e., a little more than twice as likely) to be searched than white drivers who were stopped. It is worth noting that in many legal contexts, such as employment or school segregation, a ratio of more than 1.1 or 1.2 (that is, a 10% or 20% differential) is deemed sufficient to raise an inference of possible discrimination.

[8] R.I.G.L. §31-21.2-6(k).

[9] Only a handful of departments, such as Warwick, specifically reported on efforts to use the data to pinpoint specific beats or shifts with problematic disparity rates.

POLICE DEPARTMENTS CLAIMING THE NON-EXISTENCE OF RACIAL PROFILING, WITH THEIR MINORITY:WHITE SEARCH RATIOS

Burrillville
"…an on-going review of Burrillville Police Department traffic stops indicate that racial profiling is not occurring..."
Search Ratio 2001-2002: 2.5 **Search Ratio Oct. 2004-Sept. 2005: 2.7**

Central Falls
"…our records indicate having no issues concerning racial profiling."
Search Ratio 2001-2002: 1.0 **Search Ratio Oct. 2004-Sept. 2005: 1.3**

Charlestown
"I have reviewed the statistics for 2005 … All of the numbers appear to be consistent with our minority population as a whole."
Search Ratio 2001-2002: 3.3 **Search Ratio Oct. 2004-Sept. 2005: 3.3**

Hopkinton
"All officers only stop vehicles based on probable cause. They would not stop vehicles based on a person's race, gender or ethnic background."
Search Ratio 2001-2002: 1.4 **Search Ratio Oct. 2004-Sept. 2005: 2.6**

Jamestown
"There have been no racial disparities in traffic stops and/or searches documented for the year 2005."
Search Ratio 2001-2002: 5.3 **Search Ratio Oct. 2004-Sept. 2005: 2.2**

Newport
"The data does not suggest a disparity in race pertaining to traffic stops in Newport."
Search Ratio 2001-2002: 2.6 **Search Ratio Oct. 2004-Sept. 2005: 2.4**

North Kingstown
"The North Kingstown Police Department does not feel that it has any racial disparities in traffic stops conducted by its officers."
Search Ratio 2001-2002: 2.1 **Search Ratio Oct. 2004-Sept. 2005: 2.1**

had disparity rates that remained more or less unchanged. In all likelihood, a department's successes or setbacks in addressing racial profiling are partly contingent upon factors that cannot be easily quantified or captured on paper, such as departmental attitudes, culture and policies, be they formal or informal. It is possible, however, to point to a handful of departments whose efforts, as reflected in their annual reports, appear to have correlated with reduced search disparity rates. Two such examples are Tiverton and Narragansett.

The Narragansett Police Department submitted a thorough report documenting actions taken to address the possibility of racial profiling in the community, and showed significant improvement in its disparity statistics in the second Northeastern study. In 2005, a general order was issued to police officers, requiring that they document in writing the "probable cause" relied upon for each search, and that they seek supervisory approval before conducting the search. The department's search disparity ratio fell dramatically from 3.0 in the first study to 1.1 in the 2004-2005 analysis. As an additional potential benefit of its new search policy, the department's search productivity rate of 50% in 2004-2005 was one of the highest in the state.[10]

Tiverton also showed a significant turnaround. Northeastern reported the Tiverton Police Department's 2001-2002 search disparity ratio to be a staggering 6.3; that is, minority drivers were subjected to discretionary searches over six times

[10] Not all police departments reporting on the adoption of similar search procedures experienced similar positive results. Both the Cumberland Police Department and the R.I. State Police indicated that they adopted search documentation and approval policies, but their search disparity ratios slightly *increased* in the 2004-2005 study. Exactly whether these search oversight mechanisms were implemented in a meaningful way is open to question, since the productivity rate of their searches was only 21.1% and 27.1%, respectively. In addition, as will be discussed in the following section, the R.I. State Police appears to have given approval for its officers to engage in aggressive questioning of motorists and passengers about their immigration status, a practice inherently bound to encourage racial disparities.

more often than whites. In 2004 the department submitted a terse report that vaguely referred to traffic stop data cards and offered no specific examples of steps being taken to address profiling.[11]

A year later, however, the department's 2005 report frankly acknowledged a problem based on the study results. Citing a previous lack of training and insufficient oversight of the data collection process, Tiverton's 2005 report stands in contrast to its sparse submission in 2004 and outlines a variety of steps subsequently taken to address the deficiencies.

It is a well-worn cliché that the first step in resolving an issue is "admitting that you have a problem." Tiverton appears to have done so, and the statistics bear out the department's progress: for the 2004-2005 study, Tiverton's search disparity rate, though admittedly based on numbers too small to be statistically significant, was .9, meaning there was no evidence of any racial disparity in its search practices.

The results in departments like these suggest that a comprehensive self-examination, followed by the adoption and vigorous implementation of concrete steps, some of which are contained in this report's legislative recommendations, can indeed have an impact on racial profiling in a community.

[11] Tiverton's 2005 report suggests that the troubling statistics from the 2001-2002 study may have been the result of errors by police officers in filling out the traffic stop cards.

3. The 2004-2005 Statistics

As previously noted, in a series of reports beginning in May of 2005, the ACLU analyzed in some depth on a quarterly basis, for the first nine months of the study, the statistics emanating from Northeastern University in this latest one-year collection of traffic stop statistics. The final results mirrored the ACLU's findings during the first nine months of the study, so there is little need to review in detail those findings. (See chart, following page, for a breakdown of each department's search disparity ratio and search productivity.) Readers are instead referred to our earlier reports for a detailed examination of the findings.

However, because some background is helpful and necessary to understand this report's "call to action," it is worth at least briefly summarizing a few results:[12]

- In 37 of 39 jurisdictions, police stopped non-whites more often than what would seem likely according to the driving population.
- In thirteen of those jurisdictions, the disparities in how non-whites were treated increased, "some quite substantially," from 2001-2002.
- Nine departments stopped non-whites more than twice as often as they appear in the estimated driving population.
- As in the 2001-2002 study, nonwhite drivers remained more than twice as likely as white drivers to be searched.
- Notwithstanding the disproportionate searches of minorities, white drivers who were stopped were actually *more likely* to be found with contraband. This again mirrors the results of the 2001-2002 study.

[12] The statistical data that follow are taken from Northeastern University's final report of the 2004-2005 study, which is available online at http://www.rijustice.state.ri.us/sac/Final%20Report%202004-2005.pdf.

Jurisdiction	Ratio of Non-White To White Searches	Ratio of Contraband Found: White to Non-White	Percent of Searches Resulting in Contraband Found
Full State	2.0*	1.2	25.1
SP – All Barracks	1.8*	1.4	27.1
SP – Chepachet	4.5*	2.3	25.2
SP – Hope Valley	1.8*	1.3	31.0
SP – Lincoln Woods	1.6*	1.2	20.4
SP – Wickford	2.6*	0.8	17.6
SP – Portsmouth	0.6*	5.6	40.4
Barrington	0.0	0.0	50.0
Bristol	2.0*	1.3	14.1
Burrillville	2.7*	2.9	30.7
Central Falls	1.3*	0.1	16.3
Charlestown	3.3*	4.1	42.5
Coventry	1.5	0.6	16.8
Cranston	1.3*	1.2	22.4
Cumberland	1.8*	0.4	21.1
East Greenwich	1.5*	0.0	8.7
East Providence	1.5*	1.1	38.0
Foster	0.0	0.0	72.7
Glocester	0.0	0.0	56.3
Hopkinton	2.6*	1.2	26.0
Jamestown	2.2*	1.7	52.4
Johnston	1.9	1.5	12.4
Lincoln	1.3	1.6	20.4
Little Compton	0.0	0.0	80.0
Middletown	1.2	2.9	27.2
Narragansett	1.1	1.8	50.0
New Shoreham	3.5	0.3	42.9
Newport	2.4*	0.9	20.5
North Kingstown	2.1*	1.0	17.1
North Providence	2.1*	2.0	30.1
North Smithfield	1.8*	0.9	4.2
Pawtucket	2.4*	0.7	26.9
Portsmouth	1.3	0.0	18.3
Providence	1.5*	1.4	28.0
Richmond	1.4	0.5	37.3
Scituate	2.3	0.0	0.0
Smithfield	1.5	1.4	26.3
South Kingstown	2.2*	1.3	49.0
Tiverton	0.9	1.3	35.0
Warren	3.4*	1.9	15.1
Warwick	1.7*	1.2	14.3
West Greenwich	1.6	0.8	51.0
West Warwick	1.7*	0.6	19.8
Westerly	1.2	1.5	40.3
Woonsocket	1.6*	1.2	21.5

* Indicates statistical significance at .05 level.

- 34 of 35 police departments that searched any vehicles with black or Hispanic drivers searched them more often than vehicles of white drivers. In 22 of these jurisdictions, the number of searches conducted was sufficient enough for the disparities to be deemed statistically significant by Northeastern University.
- Searches were extremely unproductive. Though supposedly based on reasonable suspicion or probable cause of criminal activity, three out of four searches turned up no contraband whatsoever. This not only raises troubling questions about the reasonableness and legitimacy of many searches, but should be of alarm to police departments themselves, whose officers' limited time and resources are regularly being wasted on the side of the road.

4. Recent Incidents

This past year has documented what can only be considered a series of classic incidents of racial profiling, both on and off the highways. Unfortunately, there has been little acknowledgement of their impact from the police departments themselves. These incidents, and the departmental responses to them, only lend additional credence to the view that legislative restrictions on law enforcement practices are essential if the problem of racial profiling is to be alleviated.

Perhaps the most well-known incident involved actions by the R.I. State Police in July in detaining and transporting to immigration officials fourteen people, all Guatemalans, who were stopped in a van after the driver failed to use a turn signal. The lengthy detention of these travelers occurred even though the driver's license and registration were in order, and there was never any allegation whatsoever that either he or any of the passengers were suspected of criminal activity.

Responding to a formal complaint that the ACLU filed on behalf of the driver and ten of the passengers, State Police Superintendent Steven Pare nonetheless concluded that the trooper involved in the stop "acted professionally and appropriately." However, the response failed to adequately address a number of basic questions raised by the stop and detention. For example:

- Even though the investigation rejected out-of-hand any allegations of racial profiling, the State Police response did not explain at all why the trooper, who was on speed radar patrol, chose to leave his post to pull over the driver of this particular vehicle, whose only infraction was failing to use a turn signal, not speeding.

- Even though passengers in a motor vehicle have no obligation to carry or present identification to the police when stopped, and there was no suspicion of criminal activity, the state trooper demanded identification from them at least three times, and then took action against them when they failed to provide "adequate" documentation.
- The passengers were detained for an hour or so, even though the trooper had observed no illegal conduct among the passengers, and the driver had presented a valid driver's license and registration. The detention thus appeared to be in direct conflict with the state's Racial Profiling Prevention Act, which explicitly provides that "[u]nless there exists reasonable suspicion or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation." R.I.G.L. §31-21.2-5(a). No explanation for this apparent violation was provided.
- Even though the superintendent of the State Police claimed that the passengers were never asked for immigration documents, the report submitted by the trooper himself specifically states that he demanded immigration credentials proving their U.S. citizenship.
- The state police agency's support of the trooper's allegedly "appropriate" actions in calling immigration officials to check on the passengers' immigration status came less than a month after a state police representative misleadingly told a large community forum that the State Police do not seek to enforce immigration laws.[13]

[13] "Traffic Stops Debated at Forum," by Andrea L. Stape, *Providence Journal*, August 29, 2006.

- The police cruiser's videotape of the stop ran out after only the first five minutes of the lengthy stop, even though R.I. State Police policy governing cruiser video recordings requires that tapes be replaced when only fifteen minutes of tape is left for recording. No explanation for this apparent policy violation was provided.
- Although a few selected individuals have been allowed to view it, State Police officials refused to provide to the ACLU or to the community a copy of the videotape made by the trooper of the first five minutes of the traffic stop. The State Police also refused to release copies of the agency's general traffic stop enforcement policies in order to allow for an independent evaluation as to whether the trooper in fact acted "appropriately" and in accordance with State Police protocols. The ACLU has been forced to file an open records lawsuit to obtain these materials.[14]

Since the driver's license and registration papers were valid and the police officer made no claims of suspicion of criminal activity, the trooper's actions in detaining the van were clearly were based on one element: the ethnic appearance of the driver and passengers. This is the essence of racial profiling. That State Police officials have unequivocally supported the trooper's actions, notwithstanding the many disturbing questions and issues cited above, only serves to reaffirm this report's consistent message about the need for legislative action to address law enforcement practices that encourage the significant racial disparities that have been documented beyond dispute over the course of three years.

[14] Release of the videotape would also answer another issue in dispute about the stop. Even though the police response to the ACLU complaint states that it was "undisputed" that the trooper advised the driver of the reason for the traffic stop, one outside party who has viewed the videotape claims that the tape provides no support for this assertion.

Some local groups have since complained that approval from the R.I. State Police superintendent of the troopers' actions has encouraged a "chill" in the Latino community, where residents are fearful of contacting the police to report crimes lest their own immigration status be investigated. By deeming the police trooper's actions "appropriate," R.I. State Police officials have signaled their acquiescence towards racial profiling efforts undertaken in the guise of enforcing federal immigration law – a role that is inappropriate for any number of reasons.[15] That is why dozens of police chiefs across the country have publicly stated that they will not take any actions to enforce immigration laws.[16]

Another State Police incident is also worth mentioning. Although it occurred well before passage of the Racial Profiling Prevention Act, a R.I. Supreme Court ruling issued in 2006 is notable for demonstrating the problematic nature of another law enforcement practice that encourages racial profiling – the use of so-called "pretext stops."

The term "pretext stops" refers to the practice of police using a minor traffic violation as a pretext for pulling over a car for investigation when police do not otherwise have sufficient legal grounds to justify the stop. This past June, the R.I. Supreme Court, in a rare rebuke to the police, ruled that a criminal defendant's constitutional rights were violated when he was unlawfully detained by R.I. State Police troopers after they engaged in what they acknowledged to be a pretext stop of

[15] Contrary to many people's perceptions, it is worth emphasizing that being in the country illegally is a civil, not criminal, matter, and deportation proceedings take place in an administrative (civil) context.
[16] Some policies and resolutions adopted across the country limiting local law enforcement of immigration laws can be found at: http://www.nilc.org/immlawpolicy/LocalLaw/tbl_local_enfrcmnt_0704.pdf.

his car. It is perhaps not coincidental that the stop involved a Hispanic defendant suspected of criminal drug activity. *State v. Casas*, 900 A.2d 1120 (2006).[17]

Finally, it is worth making note of two other high-profile incidents of racial profiling this year that occurred outside the highway context:

● In Charlestown, responding to a complaint of loud music, police entered the backyard of a local residence where seven people, all Mexicans, were sitting. Even though, according to the police report, the officers acknowledged that the music was not loud, they demanded identification from the individuals. Deeming the identification provided inadequate, the officers arrested the individuals for "disorderly conduct" and then contacted immigration officials to determine their immigration status.[18]

● In a highly-publicized incident in Coventry, the mostly-Hispanic members of the Central Falls high school soccer team were searched by police after Coventry football players accused them of stealing items from the locker room. No contraband was found.[19]

All of these incidents highlight the need for the passage of strong legislation to address these serious discrimination issues.

[17] For a brief but excellent discussion of the racial impact of "pretext stops," see *No Equal Justice*, by David Cole, pp.33-41, The New Press, 1999.
[18] "Federal Agency Checking Status of 7 Immigrants," by Maria Armental, *Providence Journal*, September 21, 2006.
[19] See, e.g., "Sports Takes a Hit," by Robert Lee, *Providence Journal*, October 6, 2006.

5. The Diversion of More Data Collection

Recent reports have indicated that the state Department of Transportation, with support from the R.I. Police Chiefs Association, has applied for and conditionally received federal funding to continue traffic stop data collection.[20] The funding will allow police departments to purchase laptop computers for police cruisers, a technology they will be able to use for many law enforcement purposes, only one of which will be the electronic recording of traffic stop data.[21]

But, as positive a step as it may be to continue to collect data, it is woefully insufficient by itself. Every police department in Rhode Island already has an enormous amount of statistical data that it can use, if it so desires, to analyze why racial disparities are present in the department's stop and search activities. However, as our review of the annual reports submitted by departments has now twice shown, few police agencies are making meaningful use of the data they have now. Merely collecting more data does nothing to address the policies and practices that are helping to contribute to racial profiling. Indeed, as the previous section of this report noted, questionable incidents of racial profiling have persisted, with little acknowledgment of impropriety by the relevant departments. The problem is bound to continue unless clear standards are placed in statute.

Any notion that the racial profiling that has been documented by three years of statistics will simply go away on its own – or by the mere collection of more data –

[20] "DOT Targets Profiling in Bid to Upgrade Seat Belt Law," by Bruce Landis, *Providence Journal*, December 24, 2006.

[21] Of course, like virtually any technology, the laptop computers can be used to exacerbate, as much as reduce, the problem of racial profiling. That is, the computers can make it easier for police officers to single out particular cars for special scrutiny – by running license plate checks for any outstanding traffic tickets, for example – based on the race of the car's driver or passengers.

is also belied by the struggle in the community, dating back to 1999, to address this problem in a meaningful fashion.

In 1999, when a bill was first introduced to require the collection of traffic stops data, police officials uniformly opposed the legislation, calling racial profiling a mere "perception" of the minority community. After Northeastern University released its first report in 2003, analyzing two years of traffic stops data that documented beyond dispute the prevalence of racial profiling in virtually every community in the state, some departments continued to disavow the clear results of the study. Based on the annual reports submitted as the result of that study, many others appeared to acknowledge the need for taking action, but followed through in half-hearted ways.

With the release of a third year of data, once again indisputably showing the prevalence of racial profiling, we have continued to see lukewarm efforts by a number of departments to get to the bottom of the problem, not to mention a continued state of denial among others. Incidents such as the summer I-95 stop of the van with Guatemalans provide concrete examples of the continued pervasiveness of racial profiling, even as the police strenuously deny any wrongdoing.

As a recent letter from representatives of the R.I. Minority Legislator/ Leadership Caucus stated:

> "We do not believe that data collection can be separated from the crucial need to address *law enforcement practices* that have an impact on racial profiling. . . . We look forward to working with police chiefs in addressing this issue, but we want to clearly state that *additional data collection is simply no substitute for taking firm and concrete steps to address this issue*. It has been almost seven years since the first data collection law was passed in Rhode Island. The issue in our community is no longer about counting numbers – it's about reducing racial profiling. We know beyond a shadow of a doubt that racial profiling is occurring – the question for us all is whether we are prepared to do something about it."

It is worth emphasizing that the benefits of pro-active legislation accrue to both the community *and* the police. Obviously, statutory standards that help to mitigate racial profiling are inherently positive in promoting the basic principle underlying our Constitution's guarantee of "equal protection of the laws." Law enforcement practices that have, whether intentional or not, a clearly disproportionate racial impact are unacceptable in a society valuing equal justice.

Questionable policies and practices further encourage inappropriate stereotypes that fly in the face of the facts by suggesting, for example, that blacks or Hispanics are stopped and searched more often because they are more likely to be carrying drugs or other contraband. Just as importantly, they can create a self-fulfilling prophecy that has consequences that ripple throughout the criminal justice system: if racial minorities are disproportionately stopped and searched, any arrests that result are likely to be disproportionate as well, leading to misconceptions, such as the one just noted, that racial minorities are more likely to be engaged in criminal behavior when stopped by police.

But legislative action addressing problematic law enforcement practices redounds to the benefit of the police as well. Good community relations – including a belief among community members that they are being treated fairly – are critical for strong law enforcement. As has already been noted, efforts by police to act as immigration agents create a climate of fear and mistrust in immigrant communities, making people much less likely to come forward to police as victims of, or witnesses to, criminal conduct.

In addition, purely from the point of view of good policing, the incredible non-productivity of vehicle searches should be cause for alarm in police departments. Legislative efforts that seek to address this state of affairs should be welcomed.

The recommendations that follow are an attempt to address these issues in a reasonable and balanced fashion: to allow police to go about their important business in a manner that promotes good law enforcement without undermining their role in the community or the fundamental principle of equal justice for all.

6. Recommendations

This report reiterates and expands upon some recommendations that the Rhode Island ACLU has made in the three reports that the Affiliate has released since May 2005. Nothing that has occurred since then suggests that these recommendations are any less relevant or urgent. Our recommendations include the following:

- Police officers should be required to document in writing their "probable cause" or "reasonable suspicion" grounds for conducting a search.
- So-called "pretext" stops by police should be banned.
- Police officers should be provided appropriate training that addresses the legal standards for conducting a "reasonable suspicion" or "probable cause" search.
- Victims of racial profiling should be allowed to make use of collected traffic stop and search data in court to raise a "rebuttable inference of discrimination" where the statistics so suggest.
- Police should be barred, except under limited circumstances, from asking about a person's immigration status.
- Police officers should be barred from asking motor vehicle passengers for identification, in the absence of a suspicion of criminal activity.
- Certain uniform standards should be adopted for the use of, and access to, police cruiser camera videotapes.
- Data collection should be reinstated, and every law enforcement agency should be required to formally submit a report on a regular basis confirming

that the data have been reviewed for disparities, and indicating whether that review has found any patterns relating to officers, locations or practices that may be responsible for the disparity.

If the state is to seriously address this problem, now is the time for enactment of comprehensive legislation to do so. We encourage all people, organizations and public officials concerned about this issue to work together for implementation of such legislation.[22]

[22] Former RI ACLU assistant to the director Jessica Spiegel provided much assistance in a first draft of this report.

APPENDIX

SUMMARY AND SYNOPSIS OF POLICE DEPARTMENT ANNUAL REPORTS

What follows is a brief comparison and analysis of the departments' 2004 and 2005 reports in the context of the available search disparity data. It is important to emphasize that the information contained in this review is based upon the police departments' self-reported statements, and we have not sought to verify whether the reports accurately reflect individual police departments' operations.

Comparison of 2004 and 2005 Reports

The ACLU obtained the 2005 annual reports through an open records request to each police department. As in 2004, the reports submitted for 2005 varied considerably from one department to the next. Most reports consisted of one- or two-page letters, sometimes accompanied by copies of departmental policies or complaint forms. A few of the larger departments submitted formal reports; on the other end of the spectrum were statements of just a few sentences. Two departments – Foster and Providence – did not provide reports.

In our earlier review of departments' reports for 2004, we found that most of the steps taken generally fell within the following categories:

- Policy Revisions and Procedural Changes
- Training
- Data Analysis
- Community Involvement
- Minority Recruitment
- Complaint Procedures

Not surprisingly, these same actions – the first three in particular – also comprised the bulk of the 2005 reports. Most policy revisions necessary to conform to the 2004 Act were issued shortly after the law's passage. In some cases, however, even this most basic provision may not have been met. At least one department in 2005 submitted a "Biased Based Policing" policy that did not reflect the law's ban on consent searches.

Between 2004 and 2005, a few departments appear to have adopted more formalized procedures for conducting motor vehicle searches. As noted in the body of the report, Narragansett, to give one example, indicated that in 2005 it began requiring the probable cause relied upon for each search to be documented in writing, and requiring officers to obtain supervisory approval before conducting the search.

Departments in 2005 continued to report on a variety of cultural diversity, racial profiling and data collection seminars and trainings. In-service and roll-call meetings appeared to be the most common vehicles for training officers on matters

related to racial profiling, with the trainings frequently led by department supervisors who had themselves attended an outside "train-the-trainer" seminar.

On the whole, most 2005 reports were no more thorough (and sometimes less thorough) than those submitted by the same departments in 2004, and most did not describe taking actions not attempted the previous year. The few exceptions are mentioned below.

Electronic Data Collection

As enacted in 2004, R.I.G.L. §31-21.2 called for continued data collection for a period of one year, ending in October 2005. Three months after the end of the mandated data collection period, approximately one-fourth of the departments reported that data collection was continuing or that plans were under consideration to institute ongoing data collection. By and large, this was or would be accomplished by modification to departments' existing computer systems to capture data similar to that which was manually recorded on data cards in the most recent study. A number of the departments made reference to using systems by IMC (Information Management Corporation), a developer of public safety software that has recently come out with software upgrades that apparently allow for electronic collection of data relevant to racial profiling.

A few departments acknowledged that data collection had ended with the culmination of the study. The majority, however, made no reference in their reports to whether data collection would continue.

Data Analysis

A key recommendation in Northeastern's 2003 report, and one which was echoed by the civil rights community, was that individual police departments should conduct detailed analyses of their local traffic stop data to ascertain whether disparities were disproportionately attributable to specific officers, places or times of day. The 2004 racial profiling law added weight to the recommendation, providing that police department officials "shall review the data on a regular basis in an effort to determine whether any racial disparities in the agency's traffic stops enforcement exists, and to appropriately respond to any such disparities." Yet, a major finding of the ACLU's 2005 report was that police departments had largely failed to comply with this aspect of the law or heed Northeastern's recommendation.

The information supplied in the most recent reports offers little indication that this deficiency changed significantly in 2005. While many of the reports made mention of "monitoring" and "review" of the data, few departments appeared to be analyzing the numbers with the level of specificity called for to yield useful results.

One outcome reported by Northeastern after the first quarter of the 2004-2005 study was the unacceptably high error rate, which referred to the high number of traffic stop data cards that contained missing or incomplete information. A few of

the departments reportedly responded to this problem by revamping their procedures for supervisory review of the completed data cards. But while ensuring the completeness and accuracy of the collected information is an important step, it is only a small part of the equation.

A notable exception to the general lack of in-depth analysis was Warwick; the department reported that it had requested supplemental information and data from the Northeastern researchers specifically for the purpose of pinpointing any specific beats or shifts that seemed particularly problematic.

Results

Some departments that submitted thorough reports in 2005 showed improvement. As noted in the body of the report, others had disparity rates that remained more or less unchanged or that increased. Examples of a few departments, such as Tiverton and Narragansett, whose efforts, as reflected in their annual reports, appear to have correlated with reduced search disparity rates are mentioned in the report.

It is worth repeating here that while there were a few departmental reports that exhibited candor in grappling with the issue, a number of reports flatly denied that racial profiling was a problem within their departments, notwithstanding overwhelming documentary evidence to the contrary. This apparent failure by the departments to fully grasp the meaning of the data underscores the need not just for continued data collection and outside statistical monitoring, but for restrictions on law enforcement practices or policies that may be promoting these racial disparities.

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What follows is a bulleted synopsis of the reports submitted by police departments in January 2005. Like the summary above, this list represents the police department's own descriptions of their activities and progress, and has not been independently evaluated.

Synopses of Police Departments' 2004 and 2005 Reports

Barrington

- 2004: The 2004 report cited officer training and revision of the department's racial profiling policy. Departmental analysis of traffic stop data had so far yielded "excellent results."
- 2005: The department concluded that, based on existing traffic stop statistics, racial profiling was not a problem in Barrington. The report stated that diversity training would nevertheless continue, and noted the Chief's plans to address public perception of racially disparate traffic enforcement with community officials.

Bristol

- 2004: Bristol reported that a new racial profiling policy was promulgated and discussed, and that two in-service trainings were held to address racial profiling and the requirements of the new law.
- 2005: The actions taken in 2004 were reiterated in Bristol's 2005 report. (It is not clear whether the trainings mentioned referred to the previous 2004 sessions, or to additional trainings held in 2005.)

Burrillville

- 2004: Burrillville's 2004 report stated that racial profiling was not occurring within the town. The report made reference to revision of a "Biased Policing" policy and to ongoing sensitivity and diversity trainings.
- 2005: The department's second report was nearly identical to the report submitted in 2004. [It should be noted that General Order #1 addressing "Biased Policing," which was enclosed with the department's 2004 and 2005 reports, does not reflect the consent search prohibition contained in the Racial Profiling Prevention Act of 2004, R.I.G.L §31-21.2.]

Central Falls

- 2004: Central Falls reported that data collection trainings were conducted, and that the most recent months' data reflected no instances of racial profiling. The report noted that 18 of 50 department employees were minorities.
- 2005: The 2005 report asserted that racial profiling was not occurring in the city; therefore, no action was taken to address the issue that year.

Charlestown

- 2004: Charlestown's report stated that the town's traffic stop statistics are consistent with the community's ethnic composition.
- 2005: The report reiterated the previous year's statement that no racial profiling was occurring. One complaint was investigated and not substantiated.

Coventry

- 2004: The department reportedly revised its "Racial Profiling and Traffic Stop Statistics" policy, and held ongoing in-service trainings to reinforce all department policies, including the racial profiling policy.
- 2005: Coventry's 2005 report outlined the department's complaint procedures and noted its recruitment and use-of-firearms policies. It also noted that the policy titled "Racial Profiling and Traffic Stop Statistics" was revised on October 1, 2005. (The policy, which was attached, was modified to repeal the department's traffic stop data collection procedures at the end of the mandated study period.)

Cranston

- 2004: Actions cited in the report included minority recruitment in late 2003, cultural diversity and hate crime trainings, and re-issuance of the department's Racial Profiling policy.
- 2005: Cranston reported increased monitoring of data cards by department supervisors in an effort to decrease data error rates. A "Biased Based Policing" policy was issued. The report attributed the department's improved disparity statistics to training and policy changes during 2005, including the addition of new categories in its data management system to reflect traffic stops that resulted in searches.

Cumberland

- 2004: Officers reportedly attended cultural diversity and "biased based policing" trainings. The department's "impartial policing" policy was revised, and supervisor approval and written documentation were mandated for all vehicle searches; three lieutenants were assigned to monitor traffic stop data.
- 2005: The report stated that two lieutenants were certified as Biased Based policing instructors. The department also reported on plans to configure its computer system to "capture much of the data that was being collected from the traffic stop statistic data cards" and use this data for ongoing analysis.

East Greenwich

- 2004: In its report, East Greenwich stated that officers were continually monitored through statistics, and that officers were sent to training seminars.
- 2005: The department stated that one complaint was made during 2005 (not a racial profiling complaint) and that it was not substantiated.

East Providence

- 2004: The department reported that its racial profiling policy was revised, and a policy was issued to establish documentation and supervision of motor vehicle searches. Officers were trained in search procedures, and a procedure was developed on the collection and review of data cards.
- 2005: In addition to reiterating the search policies developed in 2004, the department's 2005 report noted that a Cultural Awareness training was administered to every member of the department.

Foster

- 2004: Foster's 2004 report stated that the department would work with staff to ensure that all were familiar with racial profiling and the applicable laws. A revised policy was enclosed.
- 2005: No report was received from Foster in 2005.

Glocester

- 2004: Glocester reported that supervisors and staff underwent trainings on racial profiling and data collection, and that the Northeastern study results were incorporated into the trainings.

- 2005: In 2005, Glocester reported that a lieutenant had been charged with ensuring compliance with the laws prohibiting racial profiling. The Racial Profiling Prevention Act of 2004 was distributed to all officers, and racial profiling was discussed at roll-call trainings. The department's "Biased Based Profiling" policy was revised. Data collection ceased on September 30, 2005.

Hopkinton

- 2004: Hopkinton's 2004 submission consisted of a copy of its "Racial Profiling and Traffic Stops Statistics" policy.
- 2005: The department's 2005 report stated that "officers only stop vehicles based on probable cause," and that the statistical data for 2005 supported this assertion.

Jamestown

- 2004: The department reported revision of its "Racial Profiling and Traffic Stop Statistics" policy and stated that two supervisors had attended a statistical collection training program and shared the material with the department.
- 2005: Jamestown's 2005 report stated that its own analysis of traffic stop data indicated no incidence of racial profiling. The department nevertheless intended to resume racial profiling data collection in 2006 using a computerized system.

Johnston

- 2004: In 2004 Johnston reported a variety of trainings for supervisors and staff, as well as revision and dissemination of a "Racial Profiling" policy. The department conducted its own analysis of traffic stop data cards, and limited traffic enforcement patrols to half-hour intervals distributed evenly throughout town.
- 2005: Trainings continued in 2005. The report noted that a computerized system was being implemented that would track traffic summonses and capture analyzable data about the summonsed driver's race.

Lincoln

- 2004: The department stated that a "Biased Based Policing" policy was issued, that officers were sent to diversity and cultural awareness trainings, and that the video "Shadows of Hate" was screened.
- 2005: Lincoln's 2005 report reiterated that the "Biased Based Policing" policy was distributed to offers, and that the "Shadows of Hate" video was shown.

Little Compton

- 2004: Little Compton's 2004 report stated that the department's racial profiling policy was last revised in 2003, and that the department was participating in data collection.

- 2005: The department's 2005 report restated that a racial profiling policy was issued in 2003, and indicated that the department would continue to collect traffic stop data.

Middletown

- 2004: The department indicated that traffic stop data cards were being submitted and monitored, and that officers were trained in a new racial profiling policy. A lieutenant attended a racial profiling seminar.
- 2005: Middletown's 2005 report cited continued training and participation in a "train the trainer" police bias certification course.

Narragansett

- 2004: Actions reported in 2004 included training, re-issuance of racial profiling and vehicle search policies, and development of procedures for collection and analysis of traffic stop data cards.
- 2005: The department stated that it took steps to reduce data card completion errors and reviewed quarterly data as it became available. A detailed procedure was established for the oversight and documentation of motor vehicle searches. A lieutenant periodically analyzed all search data and broke it down based on a number of factors, including frequency of searches by individual officers.

New Shoreham

- 2004: Actions reported in 2004 included policy revisions and officer trainings.
- 2005: Training continued in 2005.

Newport

- 2004: Newport's 2004 report cited issuance of racial profiling and data collection policies and plans to incorporate cultural diversity in the coming year's in-service program. Data was compiled on the age, sex and race of drivers issued citations.
- 2005: The department's 2005 report indicated that data collection would continue via a computerized system, with monthly reviews. Officials analyzed the October-December 2004 quarterly results and concluded that no racial disparity existed. Patrol officers were required to complete incident reports for all traffic stops, and trainings on "Biased Based Policing" were ongoing.

North Kingstown

- 2004: The department's 2004 report stated that racial profiling was not occurring in its jurisdiction. Roll-call trainings and literature concerning racial profiling were provided.
- 2005: The actions cited in 2004 were reiterated in North Kingstown's 2005 report.

North Providence

- 2004: The department reported on racial profiling trainings and policy revisions. Officers met with Northeastern University researchers to discuss the study results.
- 2005: The department once again cited meeting with one of the study authors, and indicated that steps were taken to reduce data card error rates. Trainings were held, and the department's recruitment effort actively sought minority applicants.

North Smithfield

- 2004: The department reported that officers were trained on the requirements of the new law, and that Internal Affairs annually reviewed all "Bias Based Profiling" complaints.
- 2005: North Smithfield's 2005 report stated that one of six complaints that year concerned racial profiling; it was unfounded.

Pawtucket

- 2004: Pawtucket indicated that various trainings were held, and the Racial Profiling Act of 2004 was distributed to officers. Procedures were adopted for data collection and review, and a revised search procedure called for written reports of all searches. Community programs were offered, and minority recruitment was expanded.
- 2005: The department's report indicated that racial profiling training, community outreach and minority recruitment continued. Data collection and review procedures remained in place through October, 2005.

Portsmouth

- 2004: The department reported that its racial profiling policy was revised, and that an effort was made to educate the public on citizen complaint procedures. Written reports were mandated for all consent searches, and supervisors viewed cruiser videos once per quarter to monitor officer conduct.
- 2005: Data collection continued beyond the study's completion via the IMC computer system, and data was being monitored. The department's search policy was revised to require full written reports, and video monitoring of traffic stops was ongoing. Cultural sensitivity trainings were held.

Providence

- 2004: Actions cited in 2004 included racial profiling trainings, community outreach, and formation of a committee to increase minority recruitment. Also noted was the issuance of new policies and participation in Mayor Cicilline's Committee on Racial Profiling.
- 2005: No report was received from Providence in 2005.

Rhode Island State Police

- 2004: The state police submitted a detailed report citing a variety of actions, including policy and procedural changes; minority recruitment; numerous trainings; and community involvement.
- 2005: Data collection was said to continue electronically, and the division had contracted with the University of Rhode Island to assist in analyzing the data. Search procedures were revised to require written documentation of probable cause and supervisory approval. Trainings, community involvement and minority recruitment reportedly continued.

Richmond

- 2004: Trainings were reportedly held concerning racial profiling, and an officer was designated to receive training and coordinate data collection.
- 2005: Richmond's 2005 submission consisted of copies of its 2001 racial profiling policy and police misconduct complaint guidelines.

Scituate

- 2004: The department stated that a policy was issued establishing data collection procedures and that training was provided.
- 2005: It was noted that the department participated in the mandated traffic stop study and was awaiting the study's final results. The Chief stated that he was a member of the Police Chief's Association, which is addressing racial profiling.

Smithfield

- 2004: Smithfield reported on policy revisions and trainings, and stated that eight senior officers had met with Northeastern researchers in late 2003 to discuss the study results. Search procedures were revised to require supervisory approval only for "reasonable and justifiable" requests; when possible, supervisors were to personally oversee the search. A sergeant was responsible for analyzing data cards and issuing monthly reports.
- 2005: The department's 2005 report noted that officers underwent a special training by Attorney Marc DeSisto, and reiterated the requirements of the department's search procedure. An officer was appointed as "Racial Profiling Coordinator," and continued with data analysis.

South Kingstown

- 2004: The department's report noted that the first Northeastern study ranked South Kingstown lowest in the state for traffic stop disparities. Actions reported included trainings and monitoring of data cards.
- 2005: The department again noted its low disparity as reflected in Northeastern's reports, but indicated that racial profiling and hate crimes training was ongoing.

Tiverton

- 2004: Tiverton's 2004 report stated that officers were directed by policy to assist citizens in filing complaints, and that the department was required to complete traffic stop data cards.
- 2005: The department acknowledged the existence of a problem in light of its 6.3 search disparity rate in 2002, and concluded that lack of training and insufficient supervision of data collection was to blame. A variety of steps were taken to address these issues, including trainings and establishment of a data collection protocol. The department intended to continue collection of traffic stop data via an electronic system.

Warren

- 2004: Warren's 2004 report stated that the department had reviewed and reissued its "Policy Regarding Racial Profiling and Traffic Stop Statistics."
- 2005: The department's 2005 report pledged to make a continued effort to prevent racial profiling.

Warwick

- 2004: Warwick reported on the formation of a Bias Policing Committee charged with addressing racial profiling and data collection. Supervisors reviewed traffic stop and search documentation daily and periodically checked for disparities. Officers attended various seminars and held trainings. Complaint procedures were amended to include reporting and investigation of biased policing allegations. A public perception study commissioned by the department reported public satisfaction in its handling of race relations.
- 2005: The department reported continued participation in various groups aiming to address racial profiling; the Chief noted that he was Chairperson of the RI Chiefs of Police Integrity and Ethics Committee and served as a spokesperson on police bias issues. Electronic data collection was reportedly under consideration, and trainings and seminar participation continued. The department indicated that it had requested supplemental information from Northeastern University to facilitate a detailed analysis of disparity data based on individual beats and shifts.

West Greenwich

- 2004: No report was received from West Greenwich in 2004.
- 2005: The department stated that vehicle stops were closely monitored by training officers and that analysis of Northeastern University's reports indicated that no additional actions were necessary to address racial profiling.

West Warwick

- 2004: The report stated that senior officers had met with Northeastern researchers in late 2003 and that the information learned was disseminated to officers. Trainings included a data collection conference at Roger Williams

University and roll-call and in-service trainings. Two officers were responsible for "spot-checking" data cards for completeness.

- 2005: Monthly spot-checking reportedly continued, with particular attention paid to reducing data error rates. It was determined that officers were not properly blackening in the data fields, and corrective action was taken. Quarterly information was reviewed by officers and was the subject of roll call trainings. Shift supervisors remained responsible for reviewing traffic stops at the conclusion of each shift.

Westerly

- 2004: In 2004 Westerly reported policy revisions and officer trainings on data card completion and probable cause for searches. A distinct "call type" was created in the department's records management system to clearly identify stops that resulted in searches. A lieutenant was assigned to ensure data collection compliance and address disparities.
- 2005: The department reiterated its use of distinct "call types" through its computer system, and noted that in-service trainings during the year included sessions on traffic stops and probable cause.

Woonsocket

- 2004: Woonsocket reported on increased minority recruitment efforts and weekly in-service trainings on topics including race relations, diversity and racial profiling. The department also cited increased police visibility in the community via a school resource officer, an officer assigned to the Woonsocket Housing Authority, and a full-time outreach officer on daily patrol.
- 2005: The department reported five in-service trainings since July 2003 and stated that each division supervisor was made accountable for accurate data collection, with steps taken to address error rates. The department hosted a meeting of the Civil Rights Roundtable and members of the Police Chiefs Association and indicates that further in-service trainings on racial profiling are in the works.