

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Jim Kennedy to Reed and Chuck Ruff re: Racial Profiling (1 page)	ca 1999	P5

COLLECTION:

Clinton Presidential records
 Domestic Policy Council
 Bruce Reed (Crime)
 OA/Box Number: 21553

FOLDER TITLE:

Racial Profiling

rs29

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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Crime -
Racial Profiling

MEMORANDUM

To: Participants in DOJ Task Force on the Use of Race and Ethnicity in Law Enforcement

From: Anthony S. Murry
Associate Deputy Attorney General

Subject: Recap of First Meeting and Timetable for Action Items

Thank you all for your participation in the February 10th meeting of the Task Force. Set forth below is a brief recap of the action items, a timetable for completion, and a schedule of our future meetings. I have also attached a list of Task Force participants.

Action Items

1. Develop a legal position regarding the use of race and ethnicity in law enforcement activities, including the conduct of traffic stops and pedestrian stops;

Civil Rights Division will produce a draft legal position paper, including a survey of existing case law, by March 15th. The Solicitor General's office is encouraged to provide as much assistance and guidance as possible.

2. Develop and disseminate Department-wide policies on the use of race and ethnicity in law enforcement;

ODAG will take the lead on dissemination of the policies that emerge from the discussion prompted by the policy statement required by Item No. 1.

3. Work with component agencies to develop training programs and materials consistent with these policies to be used when training federal, state, and local law enforcement officials;

ODAG will take the lead on this item, which requires the development of the policies described in Item No. 1.

4. Oversee development and implementation of the interim policies outlined in the Department's response to the [President's] Executive Memorandum;

Those interim policies are as follows:

- A) The INS will issue interim policy guidance that clarifies that ethnicity cannot be the sole or determinative factor in the decision to conduct any encounter -- including those not requiring "reasonable suspicion" under the Fourth Amendment. This will result in a consistent agency policy with regard to all encounters.

INS will issue this guidance to the field no later than March 15, 2000.

- B) Each agency will review its training materials to ensure that all new, incumbent, line, and supervisory agents and analysts receive training on the agency's policies with regard to the use of race and/or ethnicity in all law enforcement activities. This will include a review of the training provided to state and local law enforcement to better ensure that officers trained by federal agencies are not basing their law enforcement activities on race or ethnicity.

Each component will report back on this item no later than March 1, 2000. FBI's review will focus on the training given at Quantico.

- C) The Department of Justice will explore ways to promote data collection on race, ethnicity, and gender of people stopped or searched by state and local law enforcement officers trained by Department agencies. This data collection will assist state and local law enforcement officers in complying with principles of non-discrimination.

DEA will draft a memorandum for the Deputy Attorney General by March 1, 2000 that will explore ways to promote data collection with the appropriate supervisors of officers trained by DEA. It is understood that DEA will also articulate any drawbacks to promoting data collection in this manner.

- 5) Monitor and analyze data collected pursuant to the President's Executive Memorandum on Fairness in Law Enforcement.

The Task Force will review the data we have obtained by May 1, 2000 and assess whether it is sufficient to draw any preliminary conclusions. We will review and discuss the data collection effort on an ongoing basis.

We agreed to meet twice a month to review our progress and to discuss drafts or other pertinent matters on **Thursdays at 2:30pm**. DEA's representatives will not be available on February 24th, so we agreed to move that meeting to the following **Monday, February 28th at 2:30pm in Rm. 4260, Main Justice**.

Since we have set June 1, 2000 as our target date for completion of the Task Force's recommendation, our meeting schedule after the 28th will be as follows:

March 9th
March 23rd
April 6th
April 20th
May 4th
May 18th
June 1st

OPD has agreed to allow us to use their conference room located in Room 4260, Main Justice.

Thank you again for your service on the Task Force, and I look forward to working with you all. Please feel free to call me with any questions, comments or concerns at (202) 305-1283.

'DWB' Deal, With Cards

Calif. Drive Against Racial Profiling Takes a New Turn

By RENE SANCHEZ
Washington Post Staff Writer

LOS ANGELES—Driving a sports car through Beverly Hills one night three years ago, Kevin Murray caught the eye of police officers who pulled him over. He was not cited for any violation and says he had done nothing to cause suspicion—except for the matter of his skin color. He is African American.

Murray, a state senator from Los Angeles, has been campaigning ever since to turn his rage over racial profiling into a law that bans law enforcement agencies from ever using the tactic. Twice in the past two years, bills of his on the issue passed the state legislature with fervent support from civil rights groups, only to be vetoed by two successive governors, first Republican Pete Wilson, then Democrat Gray Davis.

But now, in a sign of how elected officials across California and in many other states are worrying more about racial profiling, Murray's third attempt this spring may be charmed. He is proposing an unusual new approach to fighting the problem, and at last he seems to have all the political support he needs.

Instead of ordering police departments in the state to gather racial data on everyone they stop, an idea that is dividing legislatures across the country, Murray wants to require officers to get new training on racial sensitivity. And perhaps most important, any officer would be required to give a business card bearing his or her name to anyone they stop but do not arrest.

"Everybody is stuck on data collection, but I'm past the point of just asking, 'Does this happen?' We know it happens," Murray said. "It's a constant refrain coming out of my community. This will help us get to a solution right away. A police officer who gets more training in diversity and who by law has to give his name to a motorist is much less likely to stop someone unless they have done something wrong."

Davis is now on his side. Last week, the governor announced that he would sign Murray's new proposal into law when it reaches his desk, and that may happen by the end of the month. Davis has refused to call racial profiling preva-

lent in the state—he contends the "vast majority" of officers stop motorists only for good reason—but nevertheless said the time has come to make sure the practice is stopped.

Such a step would make California one of only a few states to take formal action against racial profiling. Nearly two dozen other state legislatures are embroiled in debates over bills that would either investigate or crack down on the practice. Civil rights groups contend that it has become pervasive in many minority communities, but some law enforcement officials call their accusations exaggerated.

Last month, Maryland lawmakers shelved a proposal to require officers in the state to document the race of drivers they pull over and cite a justification for making the stop. A similar rule is already in place in Montgomery County. In Virginia, a legislative panel is studying profiling while some counties, such as Fairfax, are experimenting with other forms of action, such as installing cameras atop patrol cars to record any roadside stops. Police officials say they hope it deters racial profiling.

Stoking the debate are a variety of recent studies showing that blacks and Hispanics are being pulled over in disproportionate numbers. One report from New Jersey concluded that nearly 80 percent of motorists stopped by police were minorities. That prompted a Justice Department investigation. Last year, President Clinton ordered federal law officers to gather data on police roadside stops nationally.

In California, the nation's most ethnically diverse state, racial profiling is becoming the subject of raucous town meetings and community rallies. In Fresno last month, dozens of minority leaders gathered in a public forum to share tales of how they had been stopped unjustifiably by police over the years. And outside the state Capitol in Sacramento, nearly 1,000 demonstrators chanting "Racist cops got to go" recently protested Davis's veto of Murray's profiling bill last year and demanded new action.

Their cause gained political momentum last month when the U.S. 9th Circuit Court of Appeals in San Francisco ruled that federal Border Patrol agents could not stop or

search someone in a car or on foot simply because of appearance.

"Stops based on race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone," the court majority concluded. "Such steps also send a clear message that those who are not white enjoy a lesser degree of constitutional protection—that they are in effect assumed to be potential criminals first and individuals second."

Murray is promising that his new proposal, which also explicitly outlaws racial profiling, will have swift and meaningful consequences: Because police officers would be required to give their name to anyone they stop but do not cite—even if a motorist does not ask for their name—citizens would know precisely against whom to file complaints of racial discrimination.

And police departments would know precisely who in their ranks uses racial profiling most.

"It would change the power structure of a police stop," Murray said.

But in crafting a compromise with Davis, Murray also has drawn the wrath of some ardent foes of racial profiling, including the American Civil Liberties Union. It strongly prefers his earlier measure, which would have required law enforcement agencies to collect racial data on roadside stops, and it contends that is the only way to convince some police officials a problem exists. The ACLU is calling Murray's new plan preposterous.

"This is the worst kind of compromise," said Catherine Lhamon, staff attorney of the ACLU of Southern California. "It's just a way to say we're doing something about this serious issue, but it is really just a waste of everyone's time. It's asking police departments to police themselves. If officers do not give out their names when they make a profiling stop, how is anyone going to figure out who they are?"

Davis blocked the legislative drive last year to collect racial data on motorist stops by police on the grounds that doing so would be too costly a response to a problem that he did not consider significant "except in a few specific areas." Police leaders in the state also fought vigorously against the proposal.

"We thought it was overkill to require it for everyone," said Leslie McGill, a director of the California Peace Officers' Association.

Nevertheless, the California Highway Patrol, after prodding from Davis, last year began voluntarily collecting demographic information for the first time on everyone it stops to question or give assistance. That step is an attempt to get a better grasp on racial profiling—which it denies that it uses. The first batch of those statistics is scheduled to be made public this summer. More than 50 other police

departments around the state, including San Diego and San Francisco, also recently have started to collect racial information from traffic stops that do not result in an arrest or citation.

But two large law enforcement agencies that many civil rights leaders in the state most want to collect racial data during stops of motorists—the Los Angeles Police Department and the Los Angeles County Sheriff's Office—have refused. Los Angeles Police Chief Bernard C. Parks has criticized Murray's legislative proposals as

unnecessary. The ACLU recently filed lawsuits against both the LAPD and the California Highway Patrol alleging that their officers regularly use racial profiling.

Other civil rights groups are instead pinning their hopes of ending an offense they commonly deride as "DWB"—driving while black or brown—on Murray's compromise with the governor. Alice Huffman, the president of the NAACP in California, praised the new proposals as "the beginning of a strong and unprecedented effort to stop harassment."

The Washington Post

TUESDAY, MAY 9, 2000

Crime -
Racial Profiling

WORLD

In Brief

EUROPE

Russian Touts Computer Virus as Weapon

MOSCOW—Ultrationalist Vladimir Zhirinovskiy has suggested that the computer virus could be a useful tool for Russian foreign policy.

"The era of detective stories and James Bond has long been over," Zhirinovskiy said, according to a weekend report in the newspaper Kommersant. "Now there is a different era—the era of computers and the Internet. And we can bring the entire West to its knees with our Russian computer specialists. Let us put viruses into their secret programs like we did recently, and they will not be able to do anything."

"It is time to put an end to the news focusing on Chechnya," he added. "It must be closed down as a combat spot, and we must track computer viruses more. Thanks to us, the West will soon suffer enormous losses."

(David Hoffman)



Thousands protest in Madrid's Puerta del Sol against Basque guerrilla group ETA over the killing of journalist Jose Luis Lopez de la Calle.

Spaniards Protest Columnist's Slaying

MADRID—Spaniards mounted a wave of protests against the Basque guerrilla group ETA over the killing Sunday of a newspaper columnist known for his fierce opposition to the separatist movement.

Thousands of people, including members of the Spanish royal family, gathered in silent vigils across the country one day after Jose Luis Lopez de la Calle, 63, a political commentator for the pro-government daily El Mundo, was gunned down outside his Basque home.

The killing was the fourth blamed on ETA since it ended a 14-month cease-fire late last year and the first since March 12, when center-right Prime Minister Jose Maria Aznar won a resounding re-election victory.

(Reuters)

THE MIDDLE EAST

Two More Iranian Jews Confess in Court

SHIRAZ, Iran—Two more Iranian Jews confessed to spying for Israel, officials said, while the lawyers for all of the 13 defendants were shown the state's evidence for the first time in the closed-door proceedings.

The new confessions raise to five the number of defendants who have reportedly admitted to espionage. Defense lawyers have questioned the admissions before the Iranian Revolutionary Court, where there is no jury and the judge also serves as the prosecutor.

Western countries have also expressed concern about the fairness of the proceedings, while Israel has denied the spying charges.

(Associated Press)

Israeli President Waiting for Report

JERUSALEM—Israeli President Ezer Weizman said he is waiting for the attorney general's report on his alleged financial wrongdoing before resigning.

Weizman said last month that he had decided to step down on Independence Day, which begins Tuesday night, due to ill health, but a police investigation into hundreds of thousands of dollars in gifts from a French millionaire delayed him. Weizman's second five-year term does not expire until 2003.

Police recommended that Weizman not be indicted, but Weizman said he was waiting for the attorney general's report, expected next week.

"When it appears, I'll consult the prime minister and I'll consult my family on when the date of my retirement should be," the 76-year-old former air force commander told reporters.

Weizman has admitted accepting cash gifts from French textiles magnate Edouard Sarousi, but says he has done nothing wrong. Police said that Weizman's failure to report the gifts constituted fraud and breach of public trust, but that the statute of limitations had run out.

Attorney General Elyakim Rubinstein is likely to accept their recommendation to close the case. However, he announced that he would publish his own report—an unusual decision when police recommend ending an investigation and one that suggests that he could have harsh things to say about the president.

(Associated Press)

FOR THE RECORD

Estranged allies Rwanda and Uganda agreed to withdraw from the rebel-held Congolese city of Kisangani where their forces clashed Friday. . . . Vladimir Putin honored Russian World War II veterans at Kursk, the site of history's largest tank battle, promising on his first full day as president to revive national pride and aid the poor. . . . Sri Lanka's Tamil Tiger rebels said they were willing to declare a temporary cease-fire if the government agrees to withdraw troops from the northern Jaffna peninsula, a move they said could pave the way for peace talks. The government rejected the offer and declared it would never withdraw troops.

QUOTE OF THE DAY

"I don't think they ever expected it to spiral out of control like it did."

— A source close to the investigation of a man, his girlfriend and her younger sister, who are suspected of creating and spreading the "Love Bug" computer virus—Page A1

Compiled by Patricia E. Gaston

The Washington Post

TUESDAY, MAY 9, 2000

Racial Profiling Policy Options

A. Existing DOJ Efforts

1. Conference on race and law enforcement stops and searches (Dec. 1998)
Transcript of proceedings to be available in Feb. 1999
2. Development of training for local law enforcement agencies
Curriculum conference hosted by FLETC/COPS office
Videotapes/training modules for academy/in service training
3. Civil Rights Division Enforcement efforts
Pattern and practice investigations (highway patrol; county sheriff; suburban "out of place" stops)
Title VI administrative investigations

B. Potential DOJ Efforts, Without Legislation

1. Regional conferences to follow up on Dec. conference
2. Development of model code of behavior for traffic stop encounters (with IACP, other law enforcement groups, civil rights advocates)
3. FY 2000 Budget increase for pattern and practice investigations in CRT Special Lit. budget
4. Data collection -- survey of local agencies: how many agencies now collect data on race in traffic stops, what data is being collected, and how is it used?
5. Review of Federal Agency Policy
Administration policy statement/executive order (with delineation of special INS policy)
Review of Customs/Treasury policy and practice
Data collection for federal agencies
Increased training for federal agents

C. Legislative Options Being Considered by CBC members

1. Grant program/earmark for pilot project to encourage local agencies to move to data collection
2. BJA/COPS funds for continued development of training curricula; distribution of curricula; regional training conferences
2. Grant program/earmark for training at local level

4. Additional funds for pattern and practice investigations, focused on discriminatory stops
5. AG study of race and traffic stops (Conyers/Hyde substitute bill, 104th Congress)
6. AG required to collect available data nationwide, with annual report to Congress (Conyers bill as originally introduced in 104th Congress)
7. Condition federal funding (COPS grants, BJA/OJP grants) on collection of racial data from stops by local agencies
8. Blanket mandate on local law enforcement agencies to collect racial data on stops

THE WHITE HOUSE
WASHINGTON

6-8-99

June 7, 1999

*John
Minyon Moore to
DPC - Civil Rights
Policy
1/2*

MR. PRESIDENT:

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

Maria asked me to convey her thoughts; she thinks:

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

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

Sean Maloney *SM*

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

6-8-99
THE WHITE HOUSE
WASHINGTON

June 4, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed

SUBJECT: Executive Order on Racial Profiling

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

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

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

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

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

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

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

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

Let's discuss.

THE WHITE HOUSE
WASHINGTON

6-8-99

880045-12130

June 6, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Charles Ruff 

SUBJECT: Executive Order on Racial Profiling

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

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

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

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

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

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

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HBR**HISPANIC
BUSINESS
ROUNDTABLE****PRESS RELEASE****FOR IMMEDIATE RELEASE
June 10, 1999****CONTACT: ROBERT G. DEPOSADA
202-546-1284****CLINTON LACKS THE MORAL AUTHORITY
TO LEAD FIGHT AGAINST RACIAL PROFILING**

Washington, D.C. -- The Board of Directors of the Hispanic Business Roundtable (HBR) strongly supports the statement made by President Clinton seeking the end to racial profiling. However, the fact is that Mr. Clinton has been a strong supporter of racial profiling against Hispanics in the past.

"While we agree with President Clinton that this practice is morally indefensible and deeply corrosive, we want to remind him of his record in support of racial profiling in the past. As Governor of Arkansas, Mr. Clinton publicly defended a police program that used racial profiling against Hispanics," said HBR Executive Director Robert G. Deposada. "Therefore, he does not have the moral authority to lead a national campaign on this issue. If President Clinton truly meant what he said yesterday, he should apologize to all those Hispanics who suffered this 'morally indefensible' practice which he publicly supported."

In the late 1980s, then Governor Bill Clinton gave Arkansas state troopers the authority to stop and search, without probable cause, the vehicles of individuals fitting a Hispanic profile. It took a lawsuit and a federal consent decree to stop this program in 1988. According to the Arkansas State Attorney General Steve Clark, who signed the consent decree on behalf of the state and after the court decision, "the police could still stop cars on the highway but could not use the Hispanic profile as a basis for the stops".

"Even then Clinton publicly criticized the court's decision to end racial profiling and vowed to reinstate the state program," Deposada said.

President Clinton's public support for racial profiling led him to compare this program to airport metal detectors, and stated that he wished a way could be found to expand these searches. "The problem is that airport metal detectors are for everyone. Airport security officials do not use racial profiling to determine who goes through the metal detector."

Page 2
HBR Press Release on Clinton & Racial Profiling
June 10, 1999

"U.S. District Judge G. Thomas Eisele made it clear he considered the searches unconstitutional because they focused on drivers meeting a certain profile -- basically Hispanics with Texas license plates."

The Arkansas Gazette, 8/19/89

"The Criminal Apprehension Program was discontinued in March 1988 as a result of a lawsuit that alleged that the program discriminated against Hispanic people, who fit a drug courier profile used by the police to determine whom to stop."

The Arkansas Gazette, 10/20/90

"Clinton was critical of a federal consent decree that prohibited state police troopers from stopping drivers on interstate highways just because they match a certain profile which usually meant they were Hispanic and from Texas, according to the lawsuit filed to stop it."

The Arkansas Gazette, 10/20/89

"Clinton said he considered the searches the same as airport metal detectors and said that drugs were a bigger security problem than airplane safety. He said he wished a way could be found to expand the searches again."

The Arkansas Gazette, 8/19/89

"The State's position was to give away a ... program that we're now trying to get back," Clinton said.

The Arkansas Gazette, 10/20/89

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8TH STORY of Level 1 printed in FULL format.

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Arkansas Democrat-Gazette

February 9, 1988, Tuesday

LENGTH: 591 words

BYLINE: PEGGY HARRIS

BODY:

Federal Judge G. Thomas Eisele signed a consent decree Monday that requires the State Police to use a more detailed form to search vehicles after a traffic stop.

Judge Eisele signed the decree in a class action lawsuit after objections raised last week were withdrawn. The judge found the decree didn't preclude a person's right to damages for illegal search or seizure.

He also said it wouldn't preclude a judgment concerning the constitutionality of the State Police Criminal Apprehension Program, which seeks to intercept vehicles carrying drugs through the state and is at issue in another lawsuit pending before federal Judge Henry Woods.

A consent to search form has been used by the State Police when an officer has "reasonable suspicion" of criminal activity, but it doesn't include an explanation of the motorists' rights, Bill Luppen, an attorney for the State Police, said.

The new form will tell motorists that they have a right to refuse to give an officer permission for a search, that they can stop the search at any time, that they will be permitted to leave if they refuse to give permission for the search and that refusal to permit a search can't be used against them.

A search and arrest still can be made if the officer has "probable cause" for either one or a warrant, Luppen said.

Bilingual form

Under the decree, the form will be in Spanish and English, as will a standard rights form for stops that result in arrests. The decree gives the State Police 30 days to adopt a policy that provides for the new form and requires officers to learn the provisions of the decree.

The decree settled a suit filed in April 1987 by Mark Mc Elrath of Delta, O., who was arrested near Little Rock as he was driving to Austin, Tex. Mc Elrath contended the Criminal Apprehension Program was used as a ruse to stop people who fit a "drug courier profile." <He said he was stopped without cause, his car was impounded and \$ 16,600 he had in the car was confiscated. Mc Elrath later was acquitted of a drug charge that resulted from the stop.

Arkansas Democrat-Gazette February 9, 1988

Under the decree, Mc Elrath will get his money back plus interest if no claims are filed against it after the United States attorney's office asks for the money in a forfeiture lawsuit. The money is being held by the United States marshal in an interest-bearing account. The decree also says the State Police can't stop motorists "on less than probable cause or by pretext," and reasonable suspicion of criminal activity can't be used to detain a person more than 15 minutes.

Col. Tommy Goodwin, the State Police director, reiterated Monday that the decree "just merely says that we'll comply with the rules or the law which we contend we have."

"I think the State Police are very sincere that they do want to remedy any problem" John Hall, an attorney for Mc Elrath, said.

Wayne Davis, who represents a group that objected to the decree, said he was concerned that the decree didn't "go far enough." <Davis represented a group of 15 people, who were part of the plaintiff class in the Mc Elrath case, and six plaintiffs in the suit before Judge Woods.

He said his clients wanted the program declared unconstitutional, but he withdrew his objections after Judge Eisele explained that the decree wouldn't prejudice his clients.

"Based on what the judge was saying, we feel a lot better about it now that this consent decree does not prevent us from going forward and getting additional relief," Davis said. The Arkansas Gazette 261088 Decree signed to set changes in State Police search process

LANGUAGE: ENGLISH

LOAD-DATE: August 28, 1996

6TH STORY of Level 1 printed in FULL format.

Copyright 1989 Little Rock Newspapers, Inc.
Arkansas Democrat-Gazette

March 05, 1989, Sunday

LENGTH: 768 words

HEADLINE: COL.

BODY:

The Arkansas State Police says it didn't realize a federal court decree it signed last year would hamstring highway patrol troopers and wants the order changed.

The restrictions of the consent decree on search and seizure powers have "shut down totally" the apprehension of people carrying marijuana and other drugs on the state's roadways, Col. Tommy Goodwin, State Police director, said in an interview last week.

The state attorney general's office filed a motion in January arguing that the consent decree, which was signed Feb. 8, 1988, by U. S. District Judge G. Thomas Eisele, prohibits highway patrol troopers from enforcing state law and performing their legal duties as prescribed by the state constitution.

Eisele has not set a hearing date to consider the motion.

The suit was filed in 1987 by people who had been arrested on drug charges after being questioned at traffic stops.

In 1986, 21 troopers were trained as part of a Criminal Apprehension Program to look for criminal activity on the highways, especially after stopping motorists for traffic violations. In its first year of operation from September 1986 to September 1987 more than 1,000 arrests were made.

Some of those arrested on drug charges filed a class-action suit against the State Police, alleging they had been illegally questioned and arrested after being pulled over for traffic violations. Most of the people arrested were of Hispanic descent and drove cars with Texas licenses.

The plaintiffs charged that troopers stopped only Texas cars driven by long-haired men who appeared to be Mexicans. They said they were stopped because they fit a "drug courier profile" that discriminated against people of Hispanic descent.

The consent decree, which took effect in March 1988, prohibits troopers from using a traffic stop "to question or detain the driver and occupants of a vehicle without reasonable suspicion of criminality." <It also requires a suspect's signature on a consent to search form that explains their rights before any search is made.

The State Police contends that troopers should be allowed to talk with occupants of a vehicle during a traffic stop and be authorized to search a vehicle if verbal permission is given but a suspect refuses to sign a consent form.

A trooper's conversation with occupants could uncover information about criminal activity involving the vehicle or people in the vehicle, the agency says. And, if a suspect agrees to a search but doesn't sign the consent form, the suspect can claim in court later that permission was not granted.

Laws remain, Clark says

State laws and the constitution allow questioning of occupants after vehicles are detained for traffic offenses and vehicle searches after verbal permission is given, the attorney general's brief said. Those rights can't be aborted by a consent decree, it said.

" The intent of the defendants entering into the consent decree was to simply set forth that they were prepared to and would ensure that they, as well as their agents, would abide by the United States Constitution and its interpretation by the United States Supreme Court as to the issues addressed in the consent decree," the brief said. " At no time did the defendants intend to restrict their law enforcement operations. At no time did they intend to make their law enforcement operations more restrictive or limited than the parameters of the United States Constitution.

" The interpretations placed upon this consent decree by the plaintiffs is not what the defendants agreed to . . . "

Troopers say the effect of the decree has been that they only search a vehicle after seeing an illegal drug and confine their search to the specific area where the drug was spotted. Without the visual sighting or a signature on the consent-to-search form, the trooper's hands are tied, they say.

John W. Hall Jr. of Little Rock, the plaintiffs' lawyer, answered the State Police's request for an amended decree this way:

" In essence, defendants are seeking modification of the decree based primarily upon their unilateral mistake as to the reach of the consent decree. Under Arkansas law, an order reforming a written instrument cannot be based upon a mistake unless there has also been fraud or inequitable conduct. Plaintiffs are not guilty of such conduct, nor has any such conduct been alleged.

" The terms of the consent decree are clear and easy to understand and the interpretation given them by this court is not one that the office of the attorney general of the state of Arkansas can claim in good faith is unreasonable, strained or unexpected in any way."

LANGUAGE: ENGLISH

LOAD-DATE: August 28, 1996

1ST STORY of Level 1 printed in FULL format.

Copyright 1989 Little Rock Newspapers, Inc.
Arkansas Democrat-Gazette

August 19, 1989, Saturday

LENGTH: 774 words

HEADLINE: Robinson and Clinton at it again //Debate drug issues

BYLINE: News Gov. Bill Clinton, disputing U. S. Rep. Tommy Robinson's charge that Clinton lied about drug statistics, made the same accusation about Robinson on Friday. "You know what a lie is," Clinton said. "A lie is either an intentional misstatement or reckless disregard for truth. He is an expert on that subject." He said Robinson didn't know what he was talking about and told reporters, "Go ask him why he makes things up and gets away with it while everybody else is held to a higher standard of truth." Clinton also seemed to take a swipe at another potential political challenger, Attorney General Steve Clark, over Clark's legal advice to the state police over car searches for drugs.

BODY:

Gov. Bill Clinton, disputing U. S. Rep. Tommy Robinson's charge that Clinton lied about drug statistics, made the same accusation about Robinson on Friday.

"You know what a lie is," Clinton said. "A lie is either an intentional misstatement or reckless disregard for truth. He is an expert on that subject."

He said Robinson didn't know what he was talking about and told reporters, "Go ask him why he makes things up and gets away with it while everybody else is held to a higher standard of truth."

Clinton also seemed to take a swipe at another potential political challenger, Attorney General Steve Clark, over Clark's legal advice to the state police over car searches for drugs. Clark responded that Clinton was "six months behind" in his knowledge of the situation.

Clinton, in a day of drug talk, also announced that all state police applicants now will undergo drug testing and troopers will be tested on an "as needed" basis.

In a speech Thursday, Robinson had said Clinton "told the biggest lie I ever heard in my life" when he said in a May radio address that Arkansas led the nation in the dollar value of confiscated drugs.

Clinton shot back Friday that the state's record in confiscating drugs and drug money "is inconvenient if you want to talk tough and run for governor."

"That's why he squealed like a stuck hog," Clinton said. Robinson couldn't be reached for comment.

Arkansas Democrat-Gazette August 19, 1989

Clinton said the "underlying truth" of the situation is that the state police have done a great job of taking drugs off the streets and "out of the veins of our people" without "any involvement from Tommy Robinson."

Robinson is expected to run for governor as a Republican. Clinton, a Democrat, has not yet announced whether he will seek re-election.

Clinton's May comment was not absolutely accurate, but neither was Robinson's characterization of what Clinton said.

Clinton said in May that Arkansas "ranked first in the nation in the dollar value of currency seized in drug trafficking," not in the dollar value of confiscated drugs, as Robinson had alleged.

But Clinton admitted Friday that Arkansas was number one in currency seized only for one quarter of 1987. He said he had asked for information from the state police and hadn't realized the information was only for one quarter.

The federal Drug Enforcement Administration's figures for the entire year of 1987 rank Arkansas fifth in drug currency seized "in transport."

Col. Tommy Goodwin, the state police director, told The Associated Press, "We submitted an activity report to the governor's office. He thought it was an annual report. It was a quarterly report."

Goodwin also said that when broadened to include seizures other than those in transport, the statistics change.

Robinson had characterized Clinton's drug statistics as "hogwash" and said Arkansas couldn't be ranked above states like Florida, Texas and New York. The DEA statistics show that of those states, only Texas ranks above Arkansas in drug currency seized in transport.

The DEA statistics also show Arkansas second in marijuana seized in transport, fourth in cocaine seized in transport and first in heroin seized in transport. Clinton said that overall, the full year figures are better than those he referred to in the May address.

He said Robinson "didn't cite what the accurate figures were, he did no research, he knew nothing, he just spoke off the top of his head."

Clinton dragged Clark into the drug debate by saying in a speech to county officials Friday morning that the state police have been hampered in stopping cars for drug searches because the state police signed a federal court consent decree on Clark's advice after a lawsuit challenging the searches was filed. Clinton said the order "basically shuts this program down."

Clinton said he considered the searches the same as airport metal detectors and that drugs were a bigger security problem than airplane safety. He said he wished a way could be found to expand the searches again.

"If they want to stop me tomorrow on the highway and check my car, it's fine with me," he said.

Asked about Clinton's comments, Clark said, "He's about six months behind

Arkansas Democrat-Gazette August 19, 1989

the times." <He said U. S. District Judge G. Thomas Eisele made it clear he considered the searches unconstitutional because they focused on drivers meeting a certain profile basically Hispanics with Texas license plates.

Clark said Eisele has agreed to reconsider and that he and U. S. attorneys in the state are working on making a new proposal to the judge. The police can still stop cars on the highway, but can't use the Hispanic profile as a basis for the stops, Clark said.

LANGUAGE: ENGLISH

LOAD-DATE: August 28, 1996

1ST STORY of Level 1 printed in FULL format.

Copyright **YEAR** Little Rock Newspapers, Inc.
Arkansas Democrat-Gazette

LENGTH: 683 words

BYLINE: JAMES MERRIWEATHER

BODY:

The legislative drug subcommittee ended its work Monday by shelving the bulk of Attorney General Steve Clark's proposal for a sweeping state anti-racketeering law.

Later, Clark said the action smacked of politics and suggested that Gov. Bill Clinton had a hand in it.

" To be honest with you, I'm totally bumfuzzled and confused," Clark said, noting that the Legislative Council subcommittee asked him to prepare the proposal and had endorsed most of it at previous meetings.

Clark was testifying in a federal court trial as Sen. Joe Yates of Bentonville moved to refer the proposal for study by an interim committee. Clark had staff members present who passed along word that Clinton and Yates huddled about 10 minutes before Monday's subcommittee meeting.

" I don't know what happened," Clark said. " Maybe they think the governor's not getting enough political credit for it. If that's true, they can take credit for it all. I'm not running against him. I'm running for the office."

Clark is a candidate for the Democratic nomination for governor; Clinton, also a Democrat, hasn't announced whether he'll seek re-election.

Yates, a Republican, said later that Clark was off base. He said his only motivation was to keep anti-drug proposals down to a number that could be managed in a two-week special legislative session.

" I don't care what the attorney general said," Yates said. " I've never discussed that with Bill Clinton."

The subcommittee did embrace a section of Clark's proposal that would strengthen the state's hand in seizing the assets of drug dealers. The study committee voted, however, for a closer inspection of provisions dealing with immunity, witnesses, extortion and loansharking, wiretaps, dealing in stolen property and granting the state the right of appeal in criminal cases.

A key feature of the proposal would allow the seating of statewide grand juries to facilitate investigations of drug trafficking that crosses county lines. The attorney general would be authorized to prosecute indictments returned by such grand juries.

Yates and Rep. John Lipton of Warren, the subcommittee chairman, noted that

nothing barred individual legislators from sponsoring parts of Clark's proposal without a subcommittee recommendation. Lipton said he and others might sponsor the wiretap provision if the asset forfeiture measure met success.

" Hopefully there's no political animosity there on behalf of the governor or the attorney general," Lipton said. " I just don't detect that it's there."

Clark also took offense at remarks by Clinton in a speech to a joint session of the legislature. Clinton was critical of a federal consent decree that prohibited state police troopers from stopping drivers on interstate highways just because they match a certain profile which usually meant they were Hispanic and from Texas, according to a lawsuit filed to stop it.

Col. Tommy Goodwin, the state police director, has complained that the decree prevents officers from asking questions to establish probable cause for searching a vehicle even after a stop for legitimate reasons. Clinton said Monday that Arkansas had the strongest enforcement program in the country until Clark entered the consent decree on behalf of the state in March 1988.

" The state's position was to give away a ... program that we're now trying to get back," Clinton said.

Clark has promised to go to the U. S. Supreme Court, if necessary, to modify the decree, which he says U. S. District Judge G. Thomas Eisele of Little Rock has interpreted more strictly than he had anticipated. Clark said Monday that the U. S. Justice Department had agreed to join his office in asking Eisele to modify the decree.

" I doubt that that was in his prepared remarks," Clark said of Clinton's speech. " I think he probably made that addition when he saw me walk into the chamber. He knows it's not true, but if he wants to make that kind of political comment, it's his business."

Clinton could not be reached for a response to Clark's remarks. THE ARKANSAS GAZETTE 10/24/89 335394 Most of proposal shelved; Clark suspicious

LANGUAGE: ENGLISH

LOAD-DATE: August 28, 1996

3RD STORY of Level 1 printed in FULL format.

Copyright **YEAR** Little Rock Newspapers, Inc.
Arkansas Democrat-Gazette

LENGTH: 592 words

BODY:

A controversial but successful drug interdiction program will be returning to Arkansas's interstate highways after an absence of almost three years, Gov. Bill Clinton announced Friday.

The program, stopped by a federal court decree in March 1988, allowed state troopers to question people during traffic stops and, with permission, search their cars for drugs.

"What it does is give us back the ability to work again," Col. Tommy Goodwin, the state police director, said in an interview.

The Criminal Apprehension Program was discontinued in March 1988 as a result of a lawsuit that alleged that the program discriminated against Hispanic people who fit a drug courier profile used by the police to determine whom to stop. John Wesley Hall, the lawyer who filed the lawsuit, agreed Thursday night to allow a modified version of the program to resume, Goodwin said.

Under the agreement, filed in federal court Friday, the state police will install video cameras in 15 patrol cars to record traffic stops. Officers will be able to question the driver and passengers to develop probable cause to search the vehicle.

State police may question people only about the traffic violation for which they were stopped under terms of the original consent decree that ended the lawsuit.

Drug couriers are instructed not to sign anything, but often verbally consent to a search then later deny they consented, Goodwin said. The video cameras, which will be activated as soon as the officer turns on his blue lights, will resolve that problem, he said.

Under the original consent decree, troopers had to get the driver's written agreement to conduct a search. The video cameras, which will also make audio recordings, will allow troopers to search the car based on a verbal agreement.

The cameras will "eliminate the swearing match" over the searches between the arresting officer and defendant, Friday's amended consent decree said.

Officers won't be required to tell drivers they're being filmed, and profiles alone won't be enough to stop a driver.

"The bottom line, I guess, is that citizens will be protected from the police overstepping their bounds because there will be an objective record of the stop," Hall said in a separate interview.

The tapes will be stored at state police headquarters in Little Rock. Hall

will have access to the tapes in order to monitor the agreement.

Clinton announced the agreement, which still must be approved by U. S. District Judge G. Thomas Eisele, at a meeting of the State Police Commission.

The state police have complained that the original consent decree effectively shut down the Criminal Apprehension Program, which intercepted millions of dollars worth of drugs in 1986 and 1987.

Clinton has agreed to give the state police \$30,000 to equip five three-member teams. The teams will have staggered schedules so that at least one is on the road at all times, Goodwin said. Photo on Page 1 B. <THE ARKANSAS GAZETTE10/20/90 Scott Morris381157 Videos allow drug stops, protect citizens and police SCOTT MORRISNEWS A controversial but successful drug interdiction program will be returning to Arkansas's interstate highways after an absence of almost three years, Gov. Bill Clinton announced Friday. The program, stopped by a federal court decree in March 1988, allowed state troopers to question people during traffic stops and, with permission, search their cars for drugs. "What it does is give us back the ability to work again," Col. Tommy Goodwin, the state police director, said in an interview.

LANGUAGE: ENGLISH

LOAD-DATE: August 28, 1996

or all transplant procedures, as for any other service, the state must formulate standards which insure that the coverage will be rational, and consistent among members of the covered group.

It is therefore ORDERED that plaintiff's motion for a temporary restraining order, a preliminary injunction, and a permanent injunction be, and it is hereby, dismissed.



Mark William McELRATH, on behalf of himself and all others similarly situated, Plaintiffs,

v.

Col. Tommy GOODWIN et al., Defendants.

No. LR-C-87-255.

United States District Court, E.D. Arkansas, W.D.

Aug. 24, 1988.

Class members filed motion to show cause for contempt, alleging violation of consent decree entered in civil rights action regarding procedures utilized in vehicular stops and searches by Arkansas state police. The District Court, Eisele, Chief Judge, held that: (1) consent decree was violated by failure of director of state police to distribute relevant materials to troopers in timely fashion; (2) trooper violated consent decree by questioning occupant of stopped vehicles as to matters unrelated to offense at issue; (3) appropriate sanction for violating consent decree was fines against violating parties, rather than suppression of evidence obtained in violation of decree; and (4) neutral person would conduct training program as to use and meaning of consent decree by state troopers, as training given to state troopers was inadequate.

Motion granted.

1. Federal Civil Procedure ⇨2397.6

Director of Arkansas state police violated consent decree regarding procedures utilized in vehicular stops and searches, which was entered in civil rights case, by failing to distribute consent to search forms, Spanish language *Miranda* forms, copies of state police policy and copies of consent decree, in timely fashion, despite director's allegation that attempt to distribute documents was made in good faith.

2. Federal Civil Procedure ⇨2397.6

Arkansas trooper violated consent decree entered in civil rights action, which limited intrusion which may accompany traffic stops, by questioning occupants of stopped vehicles as to matters unrelated to offense at issue.

3. Aliens ⇨53.8

Failure of person, who officer believes is of foreign descent, to produce "green card," does not provide reasonable cause to believe that person is illegal alien, and justify investigatory detention.

4. Federal Civil Procedure ⇨2397.6

Arkansas state trooper's act of questioning passengers of stopped vehicle, who had committed no observed offense, and keeping their identification after examination, violated consent decree entered in civil rights action, which prohibited state police from committing intrusion beyond that necessary for traffic stop of driver.

5. Searches and Seizures ⇨18

When car is lawfully stopped for traffic violation, mere viewing of interior does not even constitute a "search." U.S.C.A. Const.Amend. 4.

See publication Words and Phrases for other judicial constructions and definitions.

6. Searches and Seizures ⇨47

Plain view doctrine applies to all sensory impressions gained by officer who is legally present in position from which he gains them. U.S.C.A. Const.Amend. 4.

7. Searches and Seizures ⇨47

Fourth Amendment is only implicated in plain view searches which require offi-

cers to go to great lengths. U.S.C.A. Const.Amend. 4.

8. Searches and Seizures ⇐62

If, through use of legitimate investigatory means, officer develops probable cause, he may conduct warrantless search of automobile he has stopped. U.S.C.A. Const.Amend. 4.

9. Searches and Seizures ⇐65

Warrantless search of stopped automobile must be properly limited in scope and intensity to correspond with probable cause obtained by officer. U.S.C.A. Const. Amend. 4.

10. Federal Civil Procedure ⇐2397.5

Pursuant to consent decree entered in civil rights action regarding procedures utilized by Arkansas state police in vehicular stops and searches, all searches for which officer had not obtained signature on consent form were prohibited, even if owner had given oral consent.

11. Federal Civil Procedure ⇐2397.6

Appropriate sanction for violation by Arkansas state police of consent decree entered in civil rights action regarding procedures utilized in vehicular stops and searches was imposition of fine against violating party, rather than suppression of evidence obtained in violation of decree.

12. Federal Civil Procedure ⇐2397.6

Neutral person would conduct training program as to use and meaning of consent decree entered in civil rights action regarding procedures utilized by Arkansas state police in vehicular stops and searches, due to Arkansas state police's failure to provide adequate training to state troopers.

John Wesley Hall, Hall & Vaught, A. Wayne Davis, Arthur L. Allen, Little Rock, Ark., for plaintiffs.

Jim Reiersen, Asst. Atty. Gen., Little Rock, Ark., for Tommy Goodwin, Frank Tappin, Keith Eremea and Ken McFerrin.

Bill Luppen, Little Rock, Ark., for Tommy Goodwin.

ORDER

EISELE, Chief Judge.

Before the court is a motion to show cause filed by several class members in this case. On February 8, 1988, the parties to this action entered into a Consent Decree in settlement of this matter. This case involves various alleged practices of the Arkansas State Police, particularly officers assigned to the Criminal Apprehension Program ("CAPS officers"), which the plaintiffs claim violate the Fourth Amendment. The Consent Decree was designed to remedy the alleged violations. However, the parties interpret the decree differently, and the plaintiffs allege that the State Police have merely continued those practices challenged in the law suit despite the existence of the Consent Decree.

The Consent Decree states in relevant part:

The parties to this case enter into the following Consent Decree:

1. The Arkansas State Police will adopt a policy within 30 days that specifically addresses the following issues:

(a) Vehicles or drivers or passengers shall not be stopped or detained on less than probable cause or by pretext.

(b) A traffic stop cannot be used to question or detain the driver and occupants of a vehicle without reasonable suspicion of criminality.

(c) Reasonable suspicion cannot be used to detain a person longer than fifteen minutes. A.R.Crim.P. 3.1.

(d) Officers shall be advised of and ordered to comply with the Arkansas "stop and detain" law. Ark.Code Ann. s.s. 16-81-201; 16-81-209; A.R.Crim.P. 3.1-3.2.

(e) Evidence or property cannot be seized from a vehicle or person without probable cause to believe that the evidence is contraband or evidence of a crime.

(f) A vehicle consent search form will be adopted in both English and Spanish in substantially the form appended to this order, providing at least:

(1) The driver or person in apparent control shall be told of the right to refuse, limit, or revoke consent.

(2) The driver or person in apparent control shall be told that they will be allowed to go on their way if consent is denied.

(g) No coercion, express or implied, will be used to gain consent. (For example, motorists shall not be told they should cooperate with officers, that things will go or be easier if they consent, that a warrant will be obtained if they do not consent (unless there actually is probable cause), that they will be detained or will be taken elsewhere if they do not agree to a search, etc.)

(h) A general consent to search a car does not grant an officer consent to search all places or containers in the vehicle.... Consent to search all of a vehicle and all its contents must be specific or it is not voluntary.

(i) The Arkansas State Police will also distribute *Miranda* warning cards and forms in English and Spanish to all officers.

2. The policy will include a statement that any officer violating the policy is subject to personal civil liability (e.g., Ark.Code Ann. s. 16-81-208) and professional discipline.

3. Supervisory personnel of the Arkansas State Police are responsible for line officers knowing about and following the policy.

On May 25, 1988, this court conducted a show-cause hearing at which various officials of the Arkansas State Police testified. The defendants admitted that consent to search forms were not distributed in compliance with the Consent Decree. It appeared that on the date of the hearing, almost three months after the date specified in the decree, the forms had not yet reached all of the officers in the State Police. The defendants offered little by way of justification for this failure to comply. They stated "The failure to comply has not in any way been intentional, wilful or wanton but occurred as a result of internal miscommunications and new staff as-

signments." They urged the court to allow them more time and stated that distribution was progressing. Moreover, all line officers had not yet received training as to the meaning and ramifications of the decree. The training sessions given to some officers, principally the CAPS officers, appear to the court to have been cursory in nature. Apparently, the officers were given the decree and read it with little or no discussion as to its effect, if any, on existing policy. As of the date of the hearing, the defendants stated that they planned, within the following 30 days, to conduct training sessions for all line officers in the state.

Of more concern to the plaintiff class members was the apparent continuation of the policies initially challenged by this law suit. The plaintiffs alleged that State Police officers were using a form of the "drug courier profile" to detain and search out-of-state drivers without probable cause or reasonable suspicion. The class members alleged that in violation of the Consent Decree and of the Fourth Amendment the State Police continued such practices after March 8, 1988.

After hearing the evidence, the court concludes that officers of the State Police have violated the decree. At the hearing, several Plaintiffs testified as to their experiences. Each of these Plaintiffs had been stopped by Trooper John Scarberough, a CAPS officer. It was conceded that Trooper Scarberough knew of, and had read the Consent Decree at the time he made the stops in question. Trooper Scarberough testified as to the circumstances of each stop.

The plaintiffs allege that Trooper Scarberough violated the Consent Decree in several respects. First, they allege that Trooper Scarberough stopped their vehicles on less than probable cause in violation of paragraph 1(a). Second, they claim that the stops in question were pretextual in violation of paragraph 1(a). Third, they claim that after the reason for the traffic stop had ended, i.e. a ticket or a warning had been given, Trooper Scarberough interrogated them as to matters unrelated to the traffic stop. They contend that this tactic

was employed to generate probable cause or reasonable suspicion upon which to base a search. Fourth, they allege that the detentions in question were of an unreasonable length, in excess of 15 minutes, in violation of paragraph 1(c).

[1] Initially, the court holds that the defendants violated the Consent Decree by failing to distribute all relevant materials in a timely fashion. Testimony at the hearing indicated that new consent to search forms and Spanish language *Miranda* forms were not distributed until April 19, 1988, approximately one month late. Copies of the new Arkansas State Police Policy and of the Consent Decree were not distributed until May 24, 1988, one day before the hearing and approximately two months late. Moreover all the officers had not been trained as of the date of the hearing; therefore State Police will be at least two months late in training line officers. Colonel Goodwin, the director of the State Police, admitted "we goofed". The court holds that the State Police have violated the decree despite their allegations of good faith. Colonel Goodwin testified that due to numerous retirements, a staff shortage occurred at the State police, causing delays in implementation of the decree. The court notes that the State Police could have moved the court for an extension of time in which to comply. Given that they did not do so, the court must find at least a technical lack of compliance. Any other finding would condone the apparent view of State Police officials that compliance with the decree was not a priority matter.

After considering the evidence from the May 25th hearing, the court concludes that

1. The court need not define precisely what kinds of questions would be related to a traffic stop. In the cases described by the class members, it is clear that the questioning was not related to the traffic offense. For example, Trooper Scarberough inquired as to the plans of drivers and passengers upon reaching their destinations. The court cannot conceive of the relationship that such questions would bear upon a stop for speeding or erratic driving. Moreover, Trooper Scarberough apparently conceded that the questions bore little, or no relation to the stop. Indeed, his only suggested justification was that he asked such questions out of courtesy.

Trooper Scarberough did not stop the class members in question without probable cause. In each case discussed at the hearing, the class member had committed some traffic offense which would justify a limited-purpose traffic stop. However, the court concludes that Trooper Scarberough proceeded beyond the bounds of the limited intrusion which may, under the consent decree, accompany such a traffic stop.

[2] First, Trooper Scarberough questioned occupants of vehicles he had stopped as to matters unrelated¹ to the offense at issue. For example, he asked both drivers and passengers where they were going. Trooper Scarberough admitted that he did not always question individuals he had stopped as to such unrelated matters. He was unable to explain why he sometimes asked such questions and why he sometimes did not. Defendants argued that such questions only arose out of courtesy, but the plaintiffs contended that inconsistencies or irregularities in the answers to such questions were routinely used to generate reasonable suspicion resulting in further detention and questioning.²

The court concludes that the questioning of drivers and passengers as to matters completely unrelated to the reason for the traffic stop (e.g. destination of trip) violated paragraph 1(b). Trooper Scarberough used the occasion of the traffic stop to question the occupants of these vehicles without reasonable suspicion; it does not matter that the questioning appeared to be innocuous. Given the fact that the answers to such questions were admittedly used in an investigatory manner to pursue

2. The court observes that inconsistent answers to such questions would not necessarily give rise to reasonable suspicion of criminal activity. In one case discussed at the hearing, one occupant stated that he was going to visit friends, while the other said that he was going to see his daughter. Nothing about these answers suggests any involvement in criminal activity. The unreliability of comparing these types of answers and the non-uniformity of the use of such questions suggest that using a traffic stop as a means to ask them would violate paragraph 1(b) of the Consent Decree.

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other possible criminal activities, it is difficult to see how they differ from any other investigatory question. In addition, paragraph 1(b) refers to "questioning" with no distinction between questions that are innocuous and those that are not.

Second, it appears to the court that Trooper Scarberough may have made pretextual stops in violation of paragraph 1(a). The fact that such questioning was admittedly used in only some cases suggests that the stops of at least some of the class members may have been pretextual. In other words, circumstantial evidence suggested that Trooper Scarberough may have made the traffic stop for the purpose of investigating the occupants of vehicles as to possible crimes other than traffic offenses. This conclusion is supported by the fact that in some cases Scarberough asked his questions for reasons that even he could not explain. In other cases, he claimed to have discovered evidence of criminal activity, e.g., he stated that he smelled marijuana. In the latter situation, the problem of pretext does not arise because the stated circumstance tends to negate the inference that Trooper Scarberough made the traffic stop with an investigatory purpose in mind.

[3, 4] The court also notes that no probable cause existed as to passengers in the vehicles in question. Unlike the drivers, the passengers had committed no observed offense,³ and the questioning of them would therefore violate paragraph 1(a) because the police committed an intrusion, albeit a limited one, beyond that necessary for a traffic stop of the driver. It is true that a traffic stop of a vehicle containing passengers entails a detention of the passengers with out probable cause to believe

3. Trooper Scarberough appeared to believe that the foreign appearance of some drivers and passengers gave him reasonable cause to believe that they were illegal aliens. In one case, a suspect showed Scarberough a valid New York drivers license and stated that he was a United States citizen. Nevertheless, Scarberough claimed that his failure to produce a green card provided reasonable suspicion. The court would caution the State Police against reliance on "foreign appearance" alone to justify investigatory detentions. See *United States v. Brigno-*

ni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) (mexican appearance even in close proximity to the border was not sufficient to justify reasonable suspicion of illegal status). If Trooper Scarberough's notion that failure of a person, who appeared to be of foreign descent, to produce a green card constitutes reasonable cause, were credited, it is difficult to imagine how United States citizens fitting this description could enjoy their civil rights to the same extent as other citizens.

that they have committed any crime. Cf. *Michigan v. Summers*, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981) (upholding the detention of occupants in a home during the execution of a search warrant). However, the further intrusion of questioning passengers, and keeping their identification after examination of it, constitutes further intrusion without probable cause in violation of paragraph 1(a) of the Consent Decree. See *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (holding by drug enforcement agents of a suspect's drivers license and airline tickets held to be a seizure for Fourth Amendment purposes because the suspect would not believe that he was free to leave before his papers had been returned to him). Therefore, the court concludes that violations of paragraphs 1(a) & (b) of the Consent Decree have occurred. In addition, the detentions and interrogations discussed above appeared to have resulted in detentions in excess of 15 minutes in violation of paragraph 1(c).

The defendants argue that a strict interpretation of the Consent Decree would severely limit their ability to investigate criminal activity in Arkansas. At the outset, the court would remind the defendants that the parties themselves agreed to the Consent Decree and should not now complain about their own language. Moreover, "there is nothing new in the realization that the Constitution sometimes insulates the criminality of a few in order to protect the privacy of us all." *Arizona v. Hicks*, 480 U.S. 321, 107 S.Ct. 1149, 1155, 94 L.Ed.2d 347 (1987).

[6-7] The court notes that State Police officers may use several investigatory techniques and still comply with this Consent

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Decree. First, officers may rely upon evidence which is in plain view. When a car is lawfully stopped for a traffic violation, a mere viewing of the interior does not even constitute a search. *New York v. Class*, 475 U.S. 106, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986); See also *Texas v. Brown*, 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d 502. A similar analysis applies to an officer's detection of odors such as the odor of marijuana; the plain view doctrine applies to all sensory impressions gained by an officer who is legally present in the position from which he gains them. The Fourth Amendment is only implicated in plain view searches which require officers to go to great lengths, e.g., peering through a penny sized crack with a flash light. 1 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, s. 2.5(c) (2nd Ed.1987).

[8,9] If, through the use of legitimate investigatory means, an officer develops probable cause, he may conduct a warrantless search of an automobile he has stopped. A search must be properly limited in scope and intensity to correspond with the probable cause obtained by the officer. See *Burkett v. State*, 271 Ark. 150, 607 S.W.2d 399 (1980) (roach clip and marijuana cigarette butt in ashtray "did not supply the probable cause required for a warrantless search of the contents of the locked trunk of the car"); *Scisney v. State*, 270 Ark. 610, 605 S.W.2d 451 (1980) (Several marijuana cigarettes found in the passenger compartment of the vehicle do not supply the probable cause required for a search of two sealed suit cases in the locked trunk of the car.).

[10] Finally, officers may search vehicles they have stopped if they properly obtain consent. They must, however, follow the provisions of the Consent Decree using the new consent to search form specified therein. The court notes that the decree would appear to prohibit searches for which the officer has not obtained a

4. The court does not wish to imply that violations of any particular paragraphs of the Consent Decree may not also be Fourth Amendment violations. However, it has noted the difference

signature on the consent form. In one case discussed at the hearing, Trooper Scarberough stated that one of the plaintiff class members had given oral consent but had refused to sign the consent form. The court concludes that the intent of this decree was to eliminate the inevitable swearing contests which will result if officers are not required invariably to use the consent to search forms. The court has discussed the devices available to the State Police in an effort to demonstrate that compliance with the decree voluntarily entered into by the State Police will not bring legitimate law enforcement efforts to an end. Rather, compliance should encourage legitimate police investigation and reduce the number of questionable searches and seizures. However, if the defendants, upon mature reflection, conclude that the Consent Decree to which they agreed inhibits legitimate police work, they are free to petition the court for a modification thereof. However, unless and until modified, the Consent Decree must be obeyed.

[11] Having concluded that the Consent Decree has been violated, the court must fashion an appropriate sanction. First, as was noted at the hearing, the court believes that suppression by it of evidence obtained in violation of the decree would be improper. If this court were to undertake independent consideration of every seizure by the Arkansas State Police, it would unjustifiably encroach upon the autonomy of both state and federal judges. In making this ruling, this court does not express an opinion as to whether violation of the Consent Decree (as opposed to Constitutional violations⁴) should invoke the Exclusionary Rule. Class members are free to argue this point in their individual suppression hearings.

Second, the court believes that fines are appropriate in this case. It will therefore impose a fine of \$500.00 on Colonel Tommy Goodwin for violation of paragraph 3 of the Consent Decree which states that "Supervi-

between the two in an effort to clarify its position that it should not order the suppression of evidence offered before other state and federal judges.

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sory personnel of the Arkansas State Police are responsible for line officers knowing about and following the policy." Further, the court will impose a fine of \$100.00 on Trooper John Scarberough for failure to follow the decree, the contents of which were known to him. These modest fines are deemed appropriate in the first test of the effect of the Consent Decree. Such leniency, of course, could not be expected for future violations.

[12] Finally, the court adopts the suggestion of the plaintiffs that a neutral person should conduct a training program as to the use of and the meaning of the Consent Decree. It does not appear to the court that the training given to the CAPS Officers was adequate. Had it been so, the need for these contempt proceedings might never have arisen. It is possible that someone from the Attorney General's Office might be willing to accept this responsibility. In any event the parties should attempt to agree on a nominee and failing agreement each party should submit its own nominee and the court will thereupon decide the issue. The court holds that the plaintiffs, as prevailing parties, are entitled to an award of attorney's fees. The parties should attempt to settle upon a reasonable fee.

IT IS THEREFORE ORDERED that the individual class members' motion to show cause for contempt be, and it is hereby, granted. It is further ordered that Colonel Tommy Goodwin pay a fine in the amount of \$500.00. It is further ordered that Defendant Scarberough pay a fine in the amount of \$100.00. It is further ordered that the parties confer as to an appropriate neutral instructor upon the meaning of the Consent Decree and submit the name upon which they have agreed, or suggestions in the absence of agreement, within 5 days of the date of this order.



Eugene G. COURTNEY, Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY and Missouri Pacific Railroad Company, Defendants.

No. LR-C-88-342.

United States District Court,
E.D. Arkansas, W.D.

April 11, 1989.

Retired railroad employee brought suit under the Federal Employers' Liability Act, seeking damages for a loss of hearing. Railroads moved for summary judgment on limitations grounds. The District Court, Eisele, Chief Judge, held that: (1) the employee's cause of action accrued when he was aware of his hearing loss and a physician informed him that his hearing loss was work-related, even though the employee claimed that he could not "remember" the conversation with the physician, and (2) the statute of limitations was not tolled by the employee's continued exposure to noisy work conditions, even after he was aware of his cause of action.

Motion for summary judgment granted in part.

1. Limitation of Actions \S 95(14)

Railroad employee's cause of action under Federal Employers' Liability Act accrued when he sought medical help for his hearing loss and physician told him that his injury was probably work-related, even if employee claimed that he could not "remember" conversation with physician. Federal Employers' Liability Act, \S 6, 45 U.S.C.A. \S 156.

2. Limitation of Actions \S 55(6)

Statute of limitations on railroad employee's claim under Federal Employers' Liability Act was never tolled by employee's continued exposure to noise, even after he became aware that hearing loss was work-related, and he continued to work under allegedly injurious conditions without

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Criminal
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Police not guilty of racial profiling

By Robert T. Scully

The National Association of Police Organizations (NAPO), representing more than 220,000 sworn law enforcement officers from across the nation, is strongly opposed to racial discrimination of any kind. This includes pulling over an automobile, searching personal property or detaining an individual based solely on the individual's race or ethnicity and not on probable cause. The recent media frenzy attacking America's law enforcement officers for alleged practices of racial profiling while patrolling our nation's highways is excessive and not based on facts.

But even worse than the media attacks are attacks against the police by members of Congress. Earlier this month, Rep. John Conyers, Michigan Democrat, introduced the Traffic Stops Statistics Study Act of 1999 — legislation meant to handcuff our nation's police and prevent them from doing their jobs.

The bill would require the attorney general to conduct a study of stops for routine traffic violations, forcing police officers to record data such as: the number of individuals stopped for routine traffic violations; the identifying characteristics of each individual stopped, including race and/or ethnicity, approximate age and gender — as well as other requirements.

What needs to be made clear to the American public is that there is no need for new legislation on this issue. The attorney general already has the power to investigate allegations (including through the collection of data from traffic stops) of police misconduct in any area of the country where she sees a problem. This includes allegations of racial profiling by police officers during traffic stops.

Mr. Conyers is reintroducing a bill that died in the Senate during the last Congress — thanks in part to the lobbying efforts of NAPO. The new version is essentially the same as last year's with one major exception. Last year's legislation

limited the use of the data obtained from the study; it was to be used only for research or statistical purposes and it could not have been used selectively in any legal or administrative proceeding to establish inferences of racial discrimination. In other words, the data could not be used to go after certain police departments or individual police officers in an unreasonable or unfair way. The newly-proposed bill, however, would make the data readily available to the cottage industry of lawyers who make their living suing police officers across the country.

There is one essential safeguard against racial profiling during traffic stops already in place. It is called *probable cause*. If an individual, whether that person be African-American, Caucasian, Latino — or a member of any other racial or ethnic group — has been pulled over by an officer with probable cause to make that traffic stop and it turns out that individual has done nothing wrong, then that person is free to go. As a society, sometimes law-abiding citizens will be inconvenienced when police aggressively enforce laws and investigate crimes. Just being stopped by the police when they have good reason to do so should not cause those stopped to

believe that their rights were violated.

As the nation's violent crime rate continues to drop, is it an acceptable time to change police practices that have contributed to the reductions in crime we're all enjoying?

The Conyers bill is based on two assumptions. First, that law enforcement officers routinely stop racial and ethnic minorities for traffic violations purposely to discriminate against such individuals. Second, that the number of citations issued are disproportionate as compared to numbers of citations issued to whites. This is not the case. Often police officers do not know the race or ethnic background of an individual when they see a traffic offense being committed.

Officers are trained to immediately pursue a vehicle for a traffic infraction irrespective of the driver's appearance. If passed into law, the Conyers bill would place a burden on the police and lengthen traf-

fic stops. To obtain the information required by the bill, the police officer would have to ask about race or ethnicity and age. Also, for each stop the officer would also have to develop a record as to whether a search was instituted, how it was conducted, the rationale for the search and the nature of any contraband — as well as other items.

Many individuals would likely consider being questioned about personal characteristics by a law enforcement officer highly offensive. If an officer is uncertain of someone's ethnic background, the officer would have to ask for this information and can be expected to meet resistance and hostility to such

questions. The time necessary to fill out these forms would take away from law enforcement efforts.

One of the most vulnerable moments for a law enforcement officer is when he or she pulls over a car for a traffic violation. The statistics on the number of officers killed or assaulted in the line of duty during traffic stops confirms this danger.

Since the advent of the automobile, approximately 300 law enforcement officers are known to have died during traffic stops and approximately 80 percent of those were shot to death. The proposed bill would make a dangerous situation worse and escalate bad tempers by bringing race into the discussion. An officer's life may be put further at risk, as well as the passenger's, if the officer has to act in self-defense.

It is also unclear what the statistics compiled under the rubric of this bill would prove. If the study focuses on inner-city police departments, it would indicate a greater number of minorities stopped as compared with suburban police departments — reflecting the population makeup of those communities. As proposed, the data would have a weak statistical basis. It is inconceivable that the data would be accurate unless an officer *does* verify racial and ethnic background and the violator responds cooperatively.

If some of the individuals stopped for a traffic offense do not want to cooperate and provide this personal information — which can be expected — the data will be skewed and inaccurate.

The bill threatens to produce reverse discrimination. Law enforcement officers across the country will find themselves even more threatened by lawsuits. Does the American public really want to see a lower standard of probable cause being applied to Caucasians and a higher standard being applied to African-Americans or Latinos? This will send the wrong message to criminals across the country.

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

To the majority of our nation's honest, hardworking law enforcement officers — who are true American heroes — keep up the good work.

Robert T. Scully is executive director of the National Association of Police Organizations (NAPO).

THOMAS SOWELL

Victory cum laude at Chicago campus

When the president of the University of Chicago recently resigned in the face of mounting criticism from the alumni, faculty and students, it was a rare victory for those who are opposed to the continued watering down of American higher education.

There are big-name colleges and universities where it is possible to get a degree without ever having taken a single course in history, mathematics, economics or science. The University of Chicago remains an exception in having a serious undergraduate curriculum, which every student has to take in order to graduate. But the university administration has been watering down that curriculum and planning to increase the number of students, threatening to erode or end the current practice of having professors teach small classes of undergraduates.

The University of Chicago is rare among big-name universities in having its undergraduates taught by professors in small classes. The more usual practice is to have lecture courses with hundreds of students and smaller classes taught by graduate students.

Its combination of a challenging curriculum and small classes taught by professors has enabled the University of Chicago to offer perhaps the finest undergraduate education at any major university in America. Its alumni and professors have won more Nobel Prizes than those of any other institution. Why then would the university administration tinker with success? If it ain't broke, why fix it?

Unfortunately, the academic world is not ruled by results, but by appearances, fashions and the personal careers of the people who run colleges and universities. The University of Chicago is out of step with the fashions of the times and its administration wants to bring it into line, making it a more hip and fun place.

A college guide described the university as a place where "lunch and dinner are your social life." Students there have been known to discuss Plato among themselves well into the night. At many other colleges, Plato is just another "dead white male," to be brushed aside by those preoccupied with more politically correct stuff.

Why the attempt to make Chicago more like other universities? Partly because the goal of expanding the student body will be easier to meet if the university can attract applications from a wider range of students, including many who are not as devoted to intellectual life as the kinds of students who have traditionally gone to the University of Chicago.

There may be another factor at work as well — and this has wider implications for American society. However successful and long-lasting an institutional achievement may be, it is an achievement already achieved.

A quarter of a century before the Gettysburg Address, Abraham Lincoln gave another important but lesser-known speech, pointing out that the basic free institutions of American society were already in place — and therefore would provide no glory to leaders who mere-

ly preserved them. Glory could be won only by changing these institutions, whether for the better or the worse.

Lincoln argued that the greatest threats to American institutions would come from within, from political leaders out to make a name

for themselves. For such leaders, merely occupying a governor's mansion or even the White House would never be enough. They had to leave their mark — and they could do so only by remaking fundamental institutions that had stood the test of time, thereby jeopardizing

the freedom that depended on those institutions.

On a smaller scale, the academic world reflects the same dangers resulting from similar personal ambitions. In an era when professors and administrators alike move readily from one institution to another, loyalty to any given institution is at best tenuous.

In this context, changes that make no sense to a given institution, such as the University of Chicago, make a lot of sense to those administrators who want to be accepted among their peers in academia and in the worlds of foundations and government, where so many academics move readily back and forth.

The only barrier to seeing sound institutions sacrificed to personal ambitions, as Lincoln pointed out, is a public that cherishes those institutions and fights to preserve them. The recent victory at the University of Chicago may encourage others in the larger society to fight back against those who would undermine the national institutions of this country for the sake of "change" and "making a difference."

Thomas Sowell is a nationally syndicated columnist.

THE WHITE HOUSE
WASHINGTON

June 8, 1999

**ROUNDTABLE DISCUSSION AT DEPARTMENT OF JUSTICE'S
CONFERENCE ON STRENGTHENING POLICE-COMMUNITY RELATIONS**

DATE: June 9, 1999
LOCATION: Marriott Wardman Park Hotel
BRIEFING TIME: 12:00pm – 12:25pm
EVENT TIME: 12:45pm – 2:05pm
FROM: Bruce Reed, Thurgood Marshall, Jr.

I. PURPOSE

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

II. BACKGROUND

The Department of Justice is hosting this conference to facilitate dialogue on police misconduct and other issues involving the relationship between law enforcement agencies and local communities. Participants at this conference include police executives, public officials, civil rights leaders, members of community-based groups, members of the academic community and others. The roundtable discussion you will moderate will set the tone for a one-and-a-half day conference that will focus on the following key issues: Hiring and Recruiting, Use of Force, Racial Profiling, Police Management Practices, and Community Relations. The purpose of this conference is to enhance ongoing efforts to identify and share best practices and recommended training programs, as well as to promote creative approaches to preventing police misconduct and building trust between law enforcement and the public. Charles Ogletree of Harvard Law School and Christopher Stone of the Vera Institute of Justice will facilitate the discussion.

This conference was organized as a result of your March 13, 1999 request to the Attorney General to convene a series of meetings with law enforcement and community leaders to work together to "ensure that our criminal justice system serves all Americans in a lawful, constitutional, sensitive way."

Prior to the roundtable discussion, you will make remarks to address the following issues:

Getting the Facts on Racial Profiling

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

- (1) begin collecting data on the race, ethnicity, and gender of individuals subject to traffic and pedestrian stops, inspections at entries into the U.S., and certain other searches and ^{federal} ~~state~~ by law enforcement agencies, ~~states~~ incl.
- (2) after one year, report on the findings of the new data collection system and make additional recommendations based on those findings on how to ensure greater fairness in federal law enforcement's procedures.

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

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

More Progressive Policing for the 21st Century

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

they stop; and (5) \$5 million to establish citizen police academies to engage community residents in the fight against crime.

III. PARTICIPANTS

Briefing Participants:

Bruce Reed/Elena Kagan
Thurgood Marshall, Jr.
Loretta Ucelli
Jose Cerda
Lowell Weiss

Event Participants:

Attorney General Janet Reno
Secretary Rodney Slater
Deputy Attorney General Eric Holder, Jr.
Associate Attorney General Raymond Fisher
Acting Assistant Attorney General Bill Lann Lee
Charles Ogletree, Harvard Law School, Discussion Facilitator
Christopher Stone, Vera Institute of Justice, Discussion Facilitator
Other Roundtable Participants (*see attached list*)

IV. PRESS PLAN

Remarks: Pool Press
Roundtable Discussion: Closed Press

V. SEQUENCE OF EVENTS

- **YOU** will be announced, accompanied by Attorney General Janet Reno, into the ballroom.
- Attorney General Janet Reno will make brief remarks and introduce **YOU**.
- **YOU** will make remarks and take your seat at the table.
- Charles Ogletree and Christopher Stone will facilitate the discussion by posing hypothetical situations.
- **YOU** will ask questions of the roundtable participants about each hypothetical.
- The Attorney General will make brief concluding remarks.
- **YOU** will make concluding remarks and depart.

VI. REMARKS

To be provided by speechwriting.

VII. ATTACHMENTS

- Suggested Sequence of Discussion
- Participants List
- Seating Chart

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

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

1. HYPOTHETICAL SITUATION

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

Suggested Questions for THE PRESIDENT:

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

2. HYPOTHETICAL SITUATION

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

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

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

Suggested Questions for THE PRESIDENT:

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

3. HYPOTHETICAL SITUATION

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

Suggested Question for THE PRESIDENT:

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

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

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

4. QUESTION

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

5. HYPOTHETICAL SITUATION

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

Suggested Questions for THE PRESIDENT:

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

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

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

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

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

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

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

**CONFERENCE ON STRENGTHENING POLICE-COMMUNITY RELATIONS
PARTICIPANTS FOR THE ROUNDTABLE DISCUSSION**

CHAIR

President William J. Clinton

PARTICIPANTS

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

**CONFERENCE ON STRENGTHENING POLICE-COMMUNITY RELATIONS
ROUNDTABLE DISCUSSION
SEATING CHART**

Wade Henderson	Ron Daniels	Penny Harrington	Chuck Shā-King	Bill Lann Lee	Chris Stone	Charles Ogletree	John Justice
Al Sharpton							Ken Lyons
Gil Gallegos							Karen Narasaki
Sheila Jackson-Lee							Robert Stewart
Eric Holder							Ray Fisher
Dan Smith							Richard Green
Rodney Slater							Ron Neubauer
Beverly Watts-Davis							Antonia Hernandez
Robert Scully							Anthony Williams
Thomas Frazier	Kweisi Mfume	Paul Evans	THE PRESIDENT		Hugh Price	Janet Reno	Raul Yzaguirre

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

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

Getting the Facts on Racial Profiling

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

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

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

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

More Progressive Policing for the 21st Century

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

6/9-10
-5 working groups

DRAFT

5/17/99

Crime -
Racial
Profiting

Executive Order No. *****

Fairness in Law Enforcement: Collection of Data

WHEREAS the principles on which our Government is based require the fair administration of law enforcement activities throughout the Federal establishment, without discrimination because of race, color, [religion], ethnicity, gender, or national origin; and

WHEREAS traffic stops, searches, and examinations of persons entering the jurisdiction of the United States from other countries are vital to federal law enforcement and to maintaining the integrity of our borders;

WHEREAS the systematic collection of statistics and information regarding federal law enforcement activities can increase the fairness of our law enforcement practices;

NOW, THEREFORE, by the authority vested in me as President by the Constitution and laws of the United States of America, including [specific statutes provided by WH/OMB], it is hereby ordered as follows:

170 Fed. agencies
Data on every stop: Emerg. delays
- Ask Q's or fill out form self

Section 1. Data Collection Pilot Programs

a. The head of any department listed in subsection (b) shall be responsible for designing and implementing a pilot system to collect and report statistics consistent with the provisions of this section for law enforcement activities in his or her department.

b. The departments covered by subsection (a) are:

- (1) the Department of Justice, - JMS, DEA
- (2) the Department of the Treasury, - Customs
- (3) the Department of Transportation, - FAA
- (4) the Department of the Interior, and - Park Police

[(5) any other department so designated by the President.]

c. Within 120 days of the date of this order, each Secretary in subsection (b) (2) - (5) shall develop, in consultation with the Attorney General, a proposal for implementing a data collection pilot study for his or her agency. The proposal shall include all elements for the study, including the law enforcement agency components, sites, data sets, training, and other methods and procedures to be included in the data collection pilot study.

field test

Gather data on who you don't stop

Check: what practices, policies, training are in place, what recommendations

Check: profiling is presumptively troublesome
Tim J: Edley's for headlines, Racial Profiling OK in some circumstances

d. The data collected shall, to the extent practicable, be sufficiently detailed to permit an analysis of actions relevant to the activities of the included law enforcement agencies by race, color, [religion], gender, ethnicity, or national origin. Such actions may include traffic stops, pedestrian stops, a more extensive inspection or interview than that customarily conducted with entrants to the United States, requests for consent to search, or searches. (warrantless searches)

Ray: keep it simple: race, age, sex (Customs: citizenship)

e. The agencies shall implement their pilots within 60 days of finalizing the components, sites, and data elements to be included pursuant to subsection (c).

Section 2. Reports

a. Six Month Reports.

(1) Each agency in subsection (b)(2)-(5) shall report a summary of the statistics and information collected during the first six months of data collection under the pilot study to the Attorney General within 60 days of the end of the first six month period. The report shall include a summary of any civilian complaints received alleging racial, [religious,] ethnic, or gender bias in law enforcement activities, of the agency's process for investigating and resolving such complaints, and of the outcomes of any such investigations.

Edley: for guarding the henhouse?

(2) Within 60 days of receiving the reports required by subsection (a), the Attorney General shall report to the President on the implementation and results of the data collection pilots of the Department of Justice and of the other agencies.

b. One Year Report.

(1) Each agency in subsection (b)(2)-(5) shall provide an evaluation of its pilot study, including a summary of the statistics and information collected during the first year, a description of training programs, and costs of the pilot study to the Attorney General within 60 days of the end of the first year period, together with recommendations on how to establish a systematic collection of statistics and information on law enforcement activities as related to race, color, gender, and national origin, within his or her agency. The report shall include a summary of any civilian complaints of racial, [religious,] ethnic, or gender bias in law enforcement activities, of the agency's process for investigating and resolving such complaints, and of the outcomes of any such investigations.

(2) Within 60 days of receiving the first year reports, the Attorney General shall report to the President on the implementation and results of the data collection pilots. The

report shall include recommendations on how to establish future data collection efforts within the agencies covered by subsection (b) and to additional agencies. The report also shall include recommendations on methods to improve the fair administration of law enforcement activities and to identify and prevent bias and stereotyping based on race, color, ethnicity, [religion,] gender, or national origin.

Section 3. Privacy and Confidentiality

Data acquired pursuant to this order shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of any individual.

Section 4. General Provisions

a. Costs. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

b. General. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

c. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

DRAFT

5/17/99

Executive Order No. *****

Fairness in Law Enforcement: Collection of Data

WHEREAS the principles on which our Government is based require the fair administration of law enforcement activities throughout the Federal establishment, without discrimination because of race, color, [religion], ethnicity, gender, or national origin; and

WHEREAS traffic stops, searches, and examinations of persons entering the jurisdiction of the United States from other countries are vital to federal law enforcement and to maintaining the integrity of our borders;

WHEREAS the systematic collection of statistics and information regarding federal law enforcement activities can increase the fairness of our law enforcement practices;

NOW, THEREFORE, by the authority vested in me as President by the Constitution and laws of the United States of America, including [specific statutes provided by WH/OMB], it is hereby ordered as follows:

Section 1. Data Collection Pilot Programs

a. The head of any department listed in subsection (b) shall be responsible for designing and implementing a pilot system to collect and report statistics consistent with the provisions of this section for law enforcement activities in his or her department.

b. The departments covered by subsection (a) are:

- (1) the Department of Justice,
- (2) the Department of the Treasury,
- (3) the Department of Transportation,
- (4) the Department of the Interior, and
- [(5) any other department so designated by the President.]

c. Within 120 days of the date of this order, each Secretary in subsection (b) (2)-(5) shall develop, in consultation with the Attorney General, a proposal for implementing a data collection pilot study for his or her agency. The proposal shall include all elements for the study, including the law enforcement agency components, sites, data sets, training, and other methods and procedures to be included in the data collection pilot study.

d. The data collected shall, to the extent practicable, be sufficiently detailed to permit an analysis of actions relevant to the activities of the included law enforcement agencies by race, color, [religion], gender, ethnicity, or national origin. Such actions may include traffic stops, pedestrian stops, a more extensive inspection or interview than that customarily conducted with entrants to the United States, requests for consent to search; or searches.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 9, 1999

REMARKS BY THE PRESIDENT
ON CIVIL RIGHTS LAW ENFORCEMENT

Marriott Wardman Park Hotel
Washington, D.C.

1:08 P.M. EDT

THE PRESIDENT: Thank you very much. Madam Attorney General, Secretary Slater, Congresswoman Sheila Jackson Lee, Congressman Gregory Meeks, Mayor Williams, and other distinguished panelists in the gathering. Let me say I will try to be brief because I want to get to the roundtable discussion, but there are one or two things that I want to say.

First, I thank all of you for coming here. This is a truly extraordinary group of Americans. People who don't always see eye to eye on issues, sitting down for a real heart-to-heart conversation about something that is profoundly important to all of us. And I thank you for that.

Second, before we get into this whole issue about the safety and security of our communities, I'd like to say a few words about another important law enforcement issue that is breaking today in Washington, involving our efforts to keep guns out of the wrong hands. Just before the Memorial Day recess, the United States Senate passed a bill designed to close the dangerous gun show loophole, to require that safety locks be sold with every handgun, to ban the importation of large-capacity ammunition clips, and to ban violent juveniles from owning handguns as adults. Now the House of Representatives will take up such legislation.

According to reports in the morning paper, the House leadership has decided to bypass the Judiciary Committee and just report out a bill that dramatically waters down the provisions in the Senate. It is a bill plainly ghost-written by the NRA. I think it is wrong to let the NRA call the shots on this issue. They've been calling the shots on this issue for decades now, and we have failed to do what is manifestly in the interest of our children and our community.

Now, I don't know what else to say about this. But if the American people care about it, if we can still remember Littleton -- it hasn't even been two months -- then we ought to speak up and be heard. This is a classic, horrible example of how Washington is out of touch with the rest of America, and it is time that the rest of America corrected it. (Applause.)

Now, why are we here? For several years now, crime has been going down in nearly every category, in virtually every community in America. In the areas where it is highest, or was highest several years ago, there is no question that one of the reasons -- and perhaps the principal reason -- that crime has dropped so much is that communities all across our country have put more dedicated community police officers on the street -- working the neighborhoods, knowing families, knowing children,

MORE

going the extra mile to help prevent crime in the first place.

Now, that has worked very well on the whole. But we also know that we have a major problem, which in some places has gotten worse as our communities have grown increasingly diverse. While public confidence in the police has been growing steadily overall, people of color continue to have less confidence and less trust, and believe that they are targeted for actions by the police not because of their illegal conduct, but because of the color of their skin.

We have to restore the trust between community and police in every community in America. It is the only way that community policing can really work to make our streets safe. The vast majority of police officers do great honor to the badges they wear with pride. But we must continue to hold accountable those who abuse their power by using excessive or even deadly force. These cases may be relatively rare, but one case can sear our hearts forever.

We also must stop the morally indefensible, deeply corrosive practice of racial profiling. Last year, I met with a group of black journalists, and I asked how many of them had been stopped by the police, in their minds for no reason other than the color of their skin -- and every single journalist in the room raised his hand. Everyone.

People of color have the same reaction wherever you go. Members of Congress can tell this story. Students. Professors. Even off-duty police officers can tell this story. No person of color is immune from such humiliating experiences. A racial profiling is, in fact, the opposite of good police work, where actions are based on hard facts, not stereotypes. It is wrong; it is destructive; and it must stop.

As a necessary step to combat it, we, too, need hard facts. Today, I am directing my Cabinet agencies to begin gathering detailed information on their law enforcement activities. The Justice Department will then analyze this data to assess whether and where law enforcement engage in racial profiling and what concrete steps we need to take at the national level to eliminate it anywhere it exists. We are committed to doing this, and we hope that all of you will support us in this endeavor.

Of course, we must also recognize that only a fraction of our law enforcement officers work under the jurisdiction of the federal government. So today, I ask all state and local police forces and their agencies to make the same commitment to collecting the same data. And I ask Congress to provide them with the resources they need to take this vital step as the bill, sponsored by Representative Conyers would do.

We all have an obligation to move beyond anecdotes to find out exactly who is being stopped and why. We all have an obligation to do whatever is necessary to ensure equal protection under the law.

Some say police misconduct is an inevitable byproduct of the crackdown on crime. I don't believe that's so. As a society, we don't have to choose between keeping safe and treating people right, between enforcing the law and upholding civil rights. We can do both. Everybody in this room knows it, and you know we have to do both.

We have seen this happen in city after city: In

MORE

Boston, where the community is involved at every level of problem-solving, where crime has fallen and trust in the police and minority communities has grown. We see it in communities in Chicago and San Diego and Houston. We can see it in every community in America .

We have our models, we need to work on them. We need to find out what is going on. We need to talk freely, we need to listen carefully. One of the things I have learned, much to my surprise, since I moved to Washington is that there are probably more words spoken and fewer heard here than anyplace I have ever lived. (Laughter.)

So let us listen to each other, as well as speak our peace. Let us emerge from this conference with a concrete plan of action for keeping up the work. We can do it, we must start today.

Thank you very much. (Applause.)

END

1:15 P.M. EDT





Crim -
Racial
Profiling

Clinton Order Targets Race Profiling

Partner Sites:

• [Newsweek.com](#)

• [Britannica Internet Guide](#)

By Sonya Ross

Associated Press Writer

Wednesday, June 9, 1999; 5:11 p.m. EDT

WASHINGTON (AP) -- President Clinton instructed federal law agencies Wednesday to collect race and gender data on people they stop or arrest, in a move to end racial profiling by police. "It is wrong, it is destructive, and it must stop," he said.

Clinton said at meeting of police and civil rights activists that while his executive order would cover "only a fraction" of the nation's law officers, he hoped it would spur state and local agencies to begin collecting such data, too.

"We all have an obligation to move beyond anecdotes to find out exactly who is being stopped and why," Clinton said.

Police shootings this year have killed young blacks in New York, Pittsburgh and Riverside, Calif., and traffic stops based on a driver's race -- an occurrence known casually as "driving while black" -- have prompted a national outcry.

The Treasury, Justice and Interior departments will develop, within 120 days, a plan for collecting data on the race, gender and ethnicity of people agency officers stop to question or arrest. Field tests on those plans would begin within 60 days after that.

Reggie Shuford, the American Civil Liberties Union's lead attorney on racial profiling cases, said Clinton's order would have "a domino effect" at the state and local levels, and would alleviate the problem in federal jurisdictions wherever it arises.

"Wherever you have a predominantly white environment and there are people of color, they're going to be scrutinized beyond what is necessary. So if it's in a park, yes, it could happen in the Park Service," Shuford said.

"Clinton's order ... confirms what people of color have said for a long time, and it starts the process of getting documentation to support those allegations."

Clinton also voiced support for legislation by Rep. John Conyers, D-Mich., to provide funds for states to collect similar data. Law enforcement officials generally have resisted such efforts.

"Our opinion on this hasn't changed," said Robert Scully, executive director of the National Association of Police Organizations, which represents 4,000 police groups.

"There are laws on the books for people who feel they are being harassed, and vehicles for them to file complaints," Scully said Wednesday. "It would be better to invest more time in the laws already on the books rather than add another burden to law enforcement officers."

Clinton's order covers federal officers such as the police who patrol national parks, and the Customs agents and Immigration and Naturalization officials monitoring U.S. ports of entry.

The Customs Service is facing a class-action lawsuit by nearly 100 black women who say they were singled out for searches because of their race and gender.

Customs officials said 50,892 of 71.5 million international air travelers were subjected to a body search, mainly simple pat-downs, during 1998.

Black and Hispanic travelers were subjected to 43 percent of body searches last year, according to an analysis presented to Congress earlier this year by a Cornell University law professor.

Customs Commissioner Raymond W. Kelly has appointed a panel to review policies and procedures used by Customs inspectors; a report is expected in mid-July.

Also, Rep. John Lewis, D-Ga., is planning to introduce legislation that would require detained travelers have access to a lawyer within 24 hours, and that a magistrate approve any detention that lasts longer than 12 hours.

Lewis said legislation is necessary because Clinton's order does not address the civil liberties issues behind Customs detentions. He said he is responding to media reports which showed blacks made up 90 percent of passengers X-rayed for drugs at Hartsfield Atlanta International Airport, while only 20 percent of detained blacks were found to be carrying drugs.

Clinton recounted how he once asked a group of black journalists how many of them had ever been stopped by police "in their minds for no reason other than the color of their skin." All of them raised their hands, he said.

"Members of Congress can tell this story. Students. Professors. Even off-duty police officers can tell this story," Clinton said. "No person of color is immune from such humiliating experiences."

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**CONFERENCE ON STRENGTHENING POLICE-COMMUNITY RELATIONS
PARTICIPANTS FOR THE ROUNDTABLE DISCUSSION**

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President William J. Clinton

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Attorney General Janet Reno
Deputy Attorney General Eric H. Holder, Jr.
Associate Attorney General Raymond C. Fisher
Acting Assistant Attorney General Bill Lann Lee, Civil Rights Division
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Ronald Daniels, Center for Constitutional Rights
Paul Evans, Boston Police Department
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Robert Stewart, National Organization of Black Law Enforcement Executives
Christopher Stone, Vera Institute of Justice
Beverly Watts-Davis, San Antonio Fighting Back
Mayor Anthony Williams, District of Columbia
Raul Yzaguirre, National Council of La Raza

**CONFERENCE ON STRENGTHENING POLICE-COMMUNITY RELATIONS
 ROUNDTABLE DISCUSSION
 SEATING CHART**

Wade Henderson	Ron Daniels	Penny Harrington	Chuck Sha-King	Lee	Bill Lann Stone	Chris Ogletree	Charles Justice	John
Al Sharpton								Ken Lyons
Gil Gallegos								Karen Narasaki
Sheila Jackson-Lee								Robert Stewart
Eric Holder								Ray Fisher
Dan Smith								Richard Green
Rodney Slater								Ron Neubauer
Beverly Watts-Davis								Antonia Hernandez
Robert Scully								Anthony Williams
Thomas Frazier	Kweisi Mfume	Paul Evans	THE PRESIDENT			Hugh Price	Janet Reno	Raul Yzaguirre

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

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

1. HYPOTHETICAL SITUATION

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

Suggested Questions for THE PRESIDENT:

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

2. HYPOTHETICAL SITUATION

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

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

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

Suggested Questions for THE PRESIDENT:

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

3. HYPOTHETICAL SITUATION

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

Suggested Question for THE PRESIDENT:

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

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

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

4. QUESTION

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

5. HYPOTHETICAL SITUATION

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

Suggested Questions for THE PRESIDENT:

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

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

2. Suggested Question to Ken Lyons, International Brotherhood of Police Officers or

Karen Narasaki, Asian Pacific American Legal Consortium:

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

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

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

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

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

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

Getting the Facts on Racial Profiling

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

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

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

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

More Progressive Policing for the 21st Century

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

Record Type: Record

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

cc:

Subject: text of press paper

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Message Sent To: _____

**CONFERENCE ON STRENGTHENING POLICE-COMMUNITY RELATIONS
PARTICIPANTS FOR THE ROUNDTABLE DISCUSSION**

CHAIR

President William J. Clinton

PARTICIPANTS

Attorney General Janet Reno
Deputy Attorney General Eric H. Holder, Jr.
Associate Attorney General Raymond C. Fisher
Acting Assistant Attorney General Bill Lann Lee, Civil Rights Division
Secretary Rodney Slater, Department of Transportation
John Crew, American Civil Liberties Union (tentative)
Ronald Daniels, Center for Constitutional Rights
Paul Evans, Boston Police Department
Thomas Frazier, Baltimore Police Department
Gilbert Gallegos, Fraternal Order of Police
Richard Green, Crown Heights Youth Center
Penny Harrington, National Center for Women in Policing
Wade Henderson, Leadership Conference on Civil Rights
Antonia Hernandez, Mexican American Legal Defense & Educational Fund
John Justice, National District Attorneys Association
Representative Sheila Jackson Lee, 18th District, Texas
Ken Lyons, International Brotherhood of Police Officers
Representative Gregory Meeks, 6th District, New York
Kweisi Mfume, NAACP
Karen Narasaki, Asian Pacific American Legal Consortium
Ron Neubauer, International Association of Chiefs of Police
Professor Charles Ogletree, Harvard Law School
Hugh Price, National Urban League
Robert Scully, National Association of Police Organization (tentative)
Rev. Al Sharpton, National Action Network
Chuck Sha-King, Youth Force
Dan Smith, National Sheriff's Association
Robert Stewart, National Organization of Black Law Enforcement Executives
Christopher Stone, Vera Institute of Justice
Beverly Watts-Davis, San Antonio Fighting Back
Mayor Anthony Williams, District of Columbia
Raul Yzaguirre, National Council of La Raza

WHITE HOUSE STAFFING MEMORANDUM

Date: June 6, 1999 ACTION / CONCURRENCE / COMMENT DUE BY: --

Subject: Ruff Memo on Racial Profiling EO

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MOORE	<input type="checkbox"/>	<input type="checkbox"/>
PODESTA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
ECHAVESTE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	REED	<input type="checkbox"/>	<input checked="" type="checkbox"/>
RICCHETTI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	RUFF	<input type="checkbox"/>	<input type="checkbox"/>
LEW	<input type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BERGER	<input type="checkbox"/>	<input type="checkbox"/>	SPERLING	<input type="checkbox"/>	<input type="checkbox"/>
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JOHNSON, B.	<input type="checkbox"/>	<input type="checkbox"/>	UCELLI	<input type="checkbox"/>	<input type="checkbox"/>
JOHNSON, J.	<input type="checkbox"/>	<input type="checkbox"/>	VERVEER	<input type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input type="checkbox"/>	<input type="checkbox"/>	WALDMAN	<input type="checkbox"/>	<input type="checkbox"/>
LANE	<input type="checkbox"/>	<input type="checkbox"/>	YELLEN	<input type="checkbox"/>	<input type="checkbox"/>
LEWIS	<input type="checkbox"/>	<input type="checkbox"/>	<u>Kagan</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LOCKHART	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MARSHALL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

This has been forwarded to POTUS

RESPONSE:

THE WHITE HOUSE
WASHINGTON

June 6, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: Charles Ruff 

SUBJECT: Executive Order on Racial Profiling

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

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

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

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

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

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