

Testimony before the House Judiciary Committee's Subcommittee on Crime and  
Corrections

October 22, 2001

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First, I would like to express my thanks to the House Judiciary Committee's Subcommittee on Crime and Corrections and to Representatives Cohen and James who invited me to testify at this hearing.

Since 1993, when I developed, designed and implemented a specific methodology to determine if Racial Profiling exists, I have been active in determining ways to answer the question which House Resolution 269 addresses. I would like to briefly summarize my activities in this area over the last 8 years.

In 1993 I developed a methodology to determine whether racial profiling existed on the New Jersey Turnpike. That methodology was subjected to scientific and Court scrutiny in *New Jersey v. Soto* and was found to be a scientifically valid methodology. Since that time the methodology has been relied upon by Courts in Arizona and Maryland and utilized by Scientists in North Carolina and Rhode Island as they attempted to answer the question we are addressing this morning. In 1998 I began work on a methodology to determine whether racial profiling was occurring in urban and suburban areas and have recently completed the first study utilizing that methodology in Michigan and am in the process of making that determination in 10 other police departments in Michigan and Kansas.

Today I would like to share with you some of the things I have learned and respectfully suggest a strategy to detect "whether the practice of racial profiling exists in this Commonwealth." (H.R. 269). There are two major categories of data which must be collected to determine if profiling is occurring. The best known are police data which catalogue the racial/ethnic make up of those who are stopped and/or searched by the police. These data, which are being collected by many police departments around the country are vital to the endeavor.

The second set of data which are absolutely necessary to assessing racial profiling, but that are often omitted in data collection endeavors, are the comparison data, or **benchmarks**. It is axiomatic in science that when data are collected, they must have a standard or comparison criterion. If one says that a particular Police Department stops 1,000 people every month and that 200 of them are African American, these data are meaningless until the appropriate benchmark is determined. Unfortunately, the collection of benchmark data are often not considered until stop data have been collected and the entity collecting them realizes that they must be compared to something. The most frequently utilized comparison data are

census data, but they are fatally flawed. To utilize census data, one must assume that the transient demographic of motorists is essentially the same as those people who live in the area where police are stopping motorists. Let me give an example of the fallacy of using census data. I have just concluded a project in Michigan in which the stop data of a Sheriff's Department was compared to traffic benchmarks which we collected at 11 different locations in the county. The 11 locations were selected on the basis of traffic and police activity by the Sheriff's Department. Table 1 compares the actual traffic percentage of Black motorists to the census data for 2000 in the census tracts that directly abut the specific locations.

**Michigan Sheriff's Department**

<b>Location</b>	<b>Black Traffic</b>	<b>Black Census</b>	<b>Percent Error</b>
1.	35.6%	23.6%	- 50.8%
2.	21.5	22.9	+ 6.1
3.	25.4	27.3	+ 7.0
4.	34.9	14.6	- 139.0
5.	7.1	2.5	- 184.0
6.	33.9	8.4	- 303.6
7.	3.5	7.3	+ 52.1
8.	20.9	9.4	- 122.3
9.	4.4	2.5	- 76.0
10.	18.1	11.6	- 56.0
11.	18.5	21.3	+ 13.1

**Table 1. Percentage of Black motorists at 11 different locations compared to Census Tract data for those same locations. Traffic data were collected on randomly selected days, nights and times.**

Note: The percent difference is arrived by subtracting the traffic percentage from the census percentage and then dividing by the census percentage. Census data are the census tracts immediately surrounding the locations of the benchmarks.

As you can see from Table 1, census data are quite different from traffic data. In these data, utilization of census data would underestimate the percentage of Black motorists at 7 of the locations and in general underestimate dramatically the actual percentage of Black motorists on the roadways. The use of

census data in this situation would have led us either to overestimate the amount of racial profiling that was going on or to conclude that profiling was occurring when it was not. These results are consistent with other work that we have done.

I would like to suggest to you a model that has been successfully utilized by the State of Kansas as a possible way for Pennsylvania to proceed. In 2000, the State Legislature of Kansas directed the Attorney General and Governor to determine whether racial profiling was occurring in the State. Ultimately the State of Kansas retained us to develop a scientifically valid methodology for determining whether racial profiling existed in the State with an eye to taking further steps if it did.

First, we randomly sampled police departments in Kansas, choosing 3 each large, medium and small departments. We are currently in the data collection phase of the project and expect to complete our report in the Spring of 2002. There are several aspects of the approach Kansas took that are important.

1. They decided on an integrated approach, rather than decreeing, as several states have, that all police agencies must collect data.

2. They carefully considered numerous proposals for scientifically assessing whether profiling is occurring.

3. They funded this project with money from the COPS division of the Justice Department. I was recently told that there are even more of these funds available now than there were in 2000. This has the effect of greatly reducing one of the most common complaints that police departments have in other states that have mandated data collection—that of an unfunded mandate.

4. If the conclusion of the study in Kansas is that racial profiling is occurring, Phase 2 of the project will begin, which will probably include assessment of profiling in other departments, training and the like.

5. If the conclusion of the study in Kansas is that racial profiling is not occurring, then it will be necessary to provide members of the minority community who perceive that it is occurring, details about the study and why that particular conclusion was reached.

I strongly recommend that, whether you adopt the model of Kansas, or proceed in a different way, that you incorporate some of these elements in your planning. States that have told police departments to collect data, without specifying exactly what data to collect and how it will be analyzed have created great

animosity among police departments. As I speak to police executives around the country, I become privy to their complaints and their frustrations. As more data that are ambiguous are released from various agencies around the country, the intensity of the disagreement between police and communities intensifies.

The information that I think is important to disseminate today is that there are scientifically valid ways to determine whether racial profiling is occurring and that it is an issue that can and is being addressed around the country. While there are pitfalls that should be avoided, I applaud your continuing interest in and willingness to determine if the practice exists in the Commonwealth.

Finally, let me mention some research that I began in 1995 and which pertains to the importance of assessing racial profiling. In those areas where we know profiling is going on the practice of targeting minorities proliferated in the 1980s as a corollary to the War on Drugs. The implicit assumption was that minorities would be more likely to be carrying contraband, particularly drugs, and stopping them would increase the number of arrests that an officer could make. Therefore, at least in some circles, the practice was seen as good police work. In 1995 I first researched “hit rates” and found that in Maryland, if you were Black and were searched by the Maryland State Police you were found to be carrying contraband 28% of the time, but if you were White you were found to be carrying contraband 28% of the time. This finding, for which I have taken quite a bit of heat in the intervening years has now been replicated in at least 10 other jurisdictions. While my time does not allow me to delve into this area in detail, I have provided the Committee with an article from the New York Times that Professor David Cole of Georgetown University School of Law and I authored and graphs of the underlying data. Suffice it to say this morning that racial profiling can be assessed, when it occurs it is corrosive to the social order and it constitutes bad police practice.

Thank you for inviting me today and should you need further information, please do not hesitate to call on me.