

# THE CALIFORNIA DWB REPORT

*A Report from the Highways, Trenches and  
Halls of Power In California*

**AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA**

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## PREFACE

For the past four years, the ACLU has dedicated itself to fighting against the widespread, but unconstitutional, practice of racial profiling in traffic stops by law enforcement. This report will tell you about our ongoing fight — its victories and its setbacks. We hope that by documenting our continuing effort, we will help build the nationwide campaign to end this menacing practice.

The September 11th terrorist attacks on New York and Washington hit as we were finishing this report. The wounds from those attacks are still raw, and our nation continues to grieve its tragic losses.

Unfortunately, the attacks have spawned something more than the unconscionable deaths of thousands of innocent civilians. In the wake of this national tragedy, although the rhetoric of the federal government has warned against racial scapegoating, its practices have encouraged blatant forms of racial profiling targeting Middle Eastern men. The Bush Administration has proposed and swiftly implemented laws and practices that abridge civil rights and civil liberties for all.

Arabs and Muslims have been presumed guilty. Racial profiling has taken on a whole new dimension as hundreds are jailed, and thousands questioned based on their race and ethnic background. They are targeted because of who they are, and what they look like, rather than anything they have ever done.

The current assaults on the rights of Arab Americans and Muslims builds upon a long history of discriminatory law enforcement tactics that have plagued those groups, as well as African American, Latino and Asian communities. Law enforcement's use of racial profiling has chipped away at our cherished freedoms over the years, and today's escalation of the practice threatens to make racial profiling a permanent feature of American law enforcement.

Some who opposed racial profiling in the past now claim to see it in a different light — as a legitimate weapon in the “war on terrorism.” We vigorously disagree.

Stigmatizing and accusing innocent people because of their ethnic and religious affiliation will not win the war on terrorism, any more than targeting innocent people based on the color of their skin has won the war on drugs. Experience has shown that racial profiling is profoundly counter-productive, as well as illegal and immoral. It has the effect of alienating the people and communities that would be true allies, and drastically undermining respect for law enforcement.

It is tempting to rewrite this report with a new emphasis on racial profiling in the new “war on terrorism.” And while such a report is needed in this period, we cannot abandon the work we have already begun. The problem of “Driving While Black or Brown” did not die in the horrific attacks on the World Trade Center. The problem is still alive and well in communities of color throughout California and nationwide. We hope that the lessons drawn from the enormous effort to bring this form of racial profiling to an end will serve to remind us that racial bias — in whatever form it takes — endangers our most cherished values of fairness, equal protection under the law, and the presumption of innocence. These are the values that make our country worth defending.

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# INTRODUCTION

*R*acial profiling by law enforcement has long plagued communities of color, yet until recently was virtually ignored by the media, courts and public officials. In the past few years, the issue seized the attention of the public as never before, due in no small part to the data first released in New Jersey and Maryland proving what communities of color have always known to be true: Police routinely target people of color at grossly disproportionate rates for humiliating and often frightening detentions, interrogations and searches based not on any evidence of criminal activity, but rather on the color of one's skin.

*The data from Maryland showed that although African Americans comprised approximately 17% of the motorists on the road, they accounted for more than 70% of the drivers who were stopped and searched. Contrary to popular belief, people of color were no more likely than whites to be carrying drugs or other contraband in their vehicles. This data rendered incredible law enforcement's insistence that racial profiling was a figment of the collective imagination of people of color, and catalyzed vibrant reform movements across the country, including in California.*

*This report tells the story of the struggle to bring an end to racial profiling in California. It provides an overview of the issue and includes the political battles, litigation, voluntary data collection efforts, protests, grassroots organizing campaigns, and Governor Gray Davis's adamant refusal to support legislation implementing meaningful reform.*

*Most importantly, this report tells the stories of the victims of racial profiling – men, women, and children who have found themselves by the side of the road, detained, interrogated and often searched by the police because of the color of their skin. We thank these courageous individuals for their willingness to share their stories publicly, overcoming their understandable skepticism that their stories can make a difference when the stories of so many others have been ignored. And we thank them for their willingness to come forward, despite their fear of retaliation by the police. It is because of the courage, self-sacrifice, and perseverance of so many victims, like those whose stories are told here, that we have reason to hope that this dreadful chapter in our nation's history will ultimately come to a close.*

*We also thank the contributors to this report and all those who have stood firmly on the side of those who are often least likely to be believed or truly heard in our criminal justice system – people of color who often lack access to the privilege and resources that make it possible to challenge the violation of one's basic civil rights. We thank you for your time, energy, and commitment to this cause.*

*Finally, we would like to acknowledge those law enforcement agencies that have begun to demonstrate a genuine commitment to eradicating racial profiling by adopting comprehensive data collection programs, implementing clear policies banning the use of race in traffic enforcement, developing training programs designed to root out racial bias, and instituting effective complaint systems with independent oversight to ensure meaningful accountability.*

*We are encouraged that after decades of weak rhetoric and inaction, some progress is finally being made on the issue of racial profiling in California and nationwide. A few steps forward have been made, but we still have a long, long way to go.*

**Michelle Alexander**  
**Director, ACLU-NC Racial Justice Project**  
**April, 2002**

# THE TRUTH ABOUT RACIAL PROFILING

The experience of being viewed by law enforcement as suspicious, dangerous, or out of place, is all too familiar to thousands of African Americans, Latinos and Asian Americans, many of whom can easily recall being stopped, interrogated, detained, or searched for no apparent reason other than the color of their skin. Trading stories of biased police encounters resulting in humiliation or terror is commonplace in juvenile detention centers, on street corners, in barber shops, as well as at fancy functions hosted by minority professionals. A Latino teenager in baggy pants on a street corner is presumed to be a drug dealer; a black lawyer in his new Mercedes is presumed to be a thief. The stories are legion.

Until recently, these biased encounters with the police had no special name, though the experience of being viewed as suspicious and treated like a criminal for no reason has always been understood in communities of color to be a special experience, not shared by whites.

Today, the terms “racial profiling” and “driving while black or brown” are widely used by the media, in political campaigns, and within communities of all colors. Yet the public and political debates regarding the extent to which racial profiling occurs and what, if anything, should be done to stop it, reveals a continued lack of understanding regarding what racial profiling is, how it began, why it has thrived, and the serious harm it causes.

Numerous myths regarding racial profiling have infected the public policy debate. The most damaging, perhaps, is the myth that African Americans and Latinos are more likely to be carrying drugs or other contraband in their vehicles than whites. Law enforcement officials will often point to the racial composition of our prisons and jails in an attempt to justify racial profiling, under the theory that it makes sense to target African Americans and Latinos for traffic stops because they are more likely than whites to be guilty of some other crime. The New Jersey Attorney General dubbed this phenomenon the “circular illogic of racial profiling.”

Contrary to popular belief, however, every comprehensive study of racial profiling has shown that people of color are not more likely than whites to be carrying drugs or other contraband in their vehicles. In fact, recent studies in New Jersey and Maryland revealed that whites were more likely than African Americans or Latinos to be carrying drugs or other contraband. And in California, Latinos are more likely than any other racial or ethnic group to be stopped, searched and then released by the California Highway Patrol without a ticket or arrest, because they are innocent of any crime.

Myths have consequences. The racist myth that motorists of color are more likely to be guilty of something when driving down the road has resulted in thousands of innocent people of color being detained by the police on their way to work, church, school, or the grocery store. Countless motorists have found themselves stranded curbside, fielding questions about their personal life while their car is being searched, or even dismantled, by officers who hold a futile hope of finding drugs or other contraband.

The myth has created a vicious cycle. Because police look for drugs primarily among African Americans and Latinos, a disproportionate number of those groups are arrested, prosecuted, convicted and jailed. The fact that our prisons and jails are filled to capacity with African Americans and Latinos serves to reinforce the false perception that those groups are primarily responsible for drug trafficking. White drivers, by contrast, receive far less police attention, are far less likely to be searched for drugs or other contraband, and are therefore far less likely

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to be arrested. As a result, only a small percentage of whites find themselves behind bars for drug-related offenses, thus perpetuating the false perception that whites are less likely than other groups to commit drug-related crimes.

The myth has also helped to create a political environment in which politicians can get away with offering little more than rhetoric in response to the problem. Governor Gray Davis, for example, has aligned himself with extremist police unions opposed to meaningful reform, and has refused to sign a mandatory data collection bill that would make it possible to track, monitor and prove discrimination by the police.

The time is long overdue for the public, and our politicians, to know the truth about racial profiling. When the truth is known, no excuses for inaction remain.

### *What It Is*

Racial profiling is the use of race by law enforcement in any fashion and to any degree when making decisions about whom to stop, interrogate, search, or arrest - except where there is a specific suspect description. That exception aside, racial profiling occurs whenever police view someone as more likely to be a criminal at least in part because of the color of their skin.

The term “racial profiling” is traceable to the drug courier profiles created by the U.S. Drug Enforcement Agency (DEA) in the early 1970s that purported to describe likely drug couriers based on a number of characteristics, such as whether the person seemed nervous, was traveling between certain cities, or paid for travel in cash.

Although the so-called “indicators” of criminal activity were race-neutral on their face, African Americans and Latinos complained that they were regularly being told by law enforcement that they “fit the profile.” They were stopped, questioned, and searched while minding their own business and engaged in perfectly lawful behavior in airports, on trains, or walking down the street. The indicators were so broad they could be applied to huge numbers of innocent people. It soon became apparent that police officers were routinely using race as a major factor in deciding who should be viewed as a suspected drug courier. The emergence of the term “racial profiling” reflected the growing awareness that the profiles had more to do with race, than any evidence of criminal activity. As explained by Milton Reynolds, a recent victim of racial profiling in the San Francisco Bay Area: “If you’re black or brown, you fit the profile.”

Drug courier profiles continue to be used today in virtually every state law enforcement agency in the country. Even beyond drug enforcement, police officers have become accustomed to viewing and treating people differently on the basis of race. Young black kids, hanging out and laughing with their friends on a street corner, are viewed as potential troublemakers. The police may stop, question and frisk them, based on the assumption that they are probably carrying guns or dealing dope. White kids, hanging out in their neighborhood and laughing with their friends, are viewed as good kids, having a good time. Unconscious and conscious stereotypes regarding who the likely criminals are influence officers’ perceptions of identical innocent conduct.

Unfortunately, many within law enforcement continue to insist that race can and should be used as a factor

in developing “probable cause” or “reasonable suspicion” of criminal activity. They argue that officers should be allowed to consider race as one of many factors in deciding whom to stop and search. Indeed, some advocates of biased police practices argue that racial profiling should be defined as stopping or searching someone “solely” on the basis of race or ethnicity, thus leaving officers free to rely on race in part.

Race has no place in determinations regarding who seems “suspicious.” Whenever law enforcement uses race at all - even as one factor - in deciding whom to stop, interrogate or search, race is being used as a proxy for criminal activity.

If the police have no reason to suspect that criminal activity is occurring without considering someone’s race, they should not stop or search someone after considering the color of his or her skin. Race is not an indicator of criminality. If the officer would not have stopped or searched someone who is white based on the same facts or under the same circumstances, the officer should not treat an African American or Latino differently.

The only situation in which it is appropriate for the police to consider someone’s race is when a specific suspect has been identified as having committed a specific crime. Under those circumstances, race may well be relevant. Obviously, it does not make sense for the police to stop and interrogate an African American man who is 6 feet, 5 inches tall, when looking for a suspected thief identified by a witness as an Asian American man who is 5 feet, 7 inches tall.

*Police should make decisions based on the evidence, not on race.*

Federal law supports this view. In *United States v. Montero-Camargo*, the U.S. Court of Appeals for the Ninth Circuit held that it was unlawful for the Border Patrol, when searching for illegal immigrants, to use racial or ethnic appearance as a factor in deciding whom to stop or search. Hispanic appearance is of “such little probative value that it cannot be considered a relevant factor,” the Court stated.

Treating people differently based on their race, rather than on actual evidence of criminal activity, is what racial profiling is all about. Police should make decisions based on the evidence, not on race.

## *How It Began*

Racial profiling is nothing new. The practice of viewing people of color as likely criminals dates back to the days when slavery was alive and well in Southern states. African Americans who were legal residents in the North were often viewed as run-away slaves, seized on the streets and detained by slave catchers, city officials, and the police. Many lost their freedom and were returned to Southern plantation owners based on the false assumption that they had escaped their owners.

Following slavery and Reconstruction, the police enforced segregation laws through racial profiling, viewing African Americans in white neighborhoods as “out of place” and targeting them as potential criminal suspects. In the early part of this century, vigilante justice in the form of brutal beatings, cross burnings and lynching was carried out against African Americans while law enforcement officials turned a blind eye. In the West, Mexican Americans were subjected to wholesale police round-ups, and often deported. By the 1960s and 70s, widespread complaints of racially biased police abuse and harassment fueled riots and spurred the formation of groups like the Black Panthers and the Brown Berets to organize resistance to police misconduct.

During the past twenty years, a new form of racial profiling has emerged, known as “DWB” or “driving while black or brown.” This new form of profiling is more sophisticated - and sometimes more subtle - than its predecessors, but it threatens to undermine the integrity of the criminal justice system as a whole.

The term “DWB,” like the term “racial profiling,” is traceable to the DEA and the war on drugs. In 1986, the DEA rolled out a federally funded highway drug interdiction program, known as Operation Pipeline. This program trains officers at state highway patrol agencies nationwide to use minor traffic violations as an excuse to

## Operation Pipeline

Under a federal program known as Operation Pipeline, government funding has flowed into state and local law enforcement agencies since 1985 to support special drug interdiction task forces, teams, and roving patrols that target African Americans and Latinos for stops and searches, under the false assumption that they are more likely than whites to be carrying drugs or other contraband in their vehicles.

Today, the California Highway Patrol (CHP) still trains its officers in drug interdiction tactics inspired by Operation Pipeline, including the use of drug indicators such as “fast-food wrappers in vehicle,” “cell phones and pagers,” “maps,” “nervous body language,” “mismatched occupants,” and “hand tools in vehicle.” In addition to these so-called indicators, CHP officers are trained that they may use race as a factor in determining who seems suspicious or a likely drug courier. Not surprisingly, data recently disclosed in a lawsuit [*Rodriguez v. CHP*] brought by the ACLU challenging the CHP’s racial profiling practices revealed that Latinos were three times as likely as whites to be stopped and searched by drug interdiction officers in the Central and Coastal Divisions of the CHP, and African Americans were twice as likely to be stopped and searched.

pull people over and attempt to search their cars for drugs based on a racially biased drug courier profile.

Tens of thousands of officers have been trained by the DEA to use these “pretext stops” to stop, detain, interrogate and search primarily African American and Latino motorists. Through Operation Pipeline, the drug courier profiles developed in the 1970s were taken to the roads and highways in virtually every state in the country, including California. The DEA has trained more than 30,000 officers in 48 participating states in Pipeline tactics and techniques, and countless local law enforcement agencies have embraced the DEA’s philosophy and training, adapting it to suit their own agencies. Pretext stops are now regularly used outside the drug interdiction context to detain, interrogate and search “suspicious” looking people - even when there is no evidence of criminal activity.

People of color have long complained about race-based traffic stops, but the war on drugs and the influence of the DEA have literally made “driving while black or brown” a crime. People of color no longer have the freedom to get in their car and drive down the street without fear that they might be viewed as a potential criminal or drug courier. On their way to work or running an errand, the sight of a police car brings a ripple of fear that they might be stopped, interrogated and possibly searched for driving a car that is too fancy, or a car that needs repairs, or for driving with out-of-state license plates, or driving a rental car or simply driving while black or brown. The war on drugs, taken to the roads and highways, has deprived thousands of innocent motorists of color of the basic freedom to drive down the street without fear of the police.

## *Why It Thrives* The War on Drugs

Racial profiling has thrived during the past twenty years, thanks in large part to the war on drugs. Despite its name, casualties of this domestic war understand that the war has little to do with solving the problem of drug abuse, and much to do with creating an environment in which people of color can be lawfully targeted for incarceration.

The best evidence of this fact is that twenty years after the war was declared, the problem of drug abuse remains unsolved, yet a huge proportion of the African American and Latino communities have been forced behind bars. Although African Americans and Latinos are not any more likely than whites to be carrying drugs or other contraband in their vehicles, they have been the main targets of the drug war. No official announcement by our elected leaders has been made that African Americans and Latinos are the enemy in the drug war, but the message has been heard loud and clear. Ask any ordinary, mainstream voter to picture in his or her mind a criminal, or a drug offender, and the odds are they will imagine someone who is black or brown.

The message has also been heard by law enforcement. In March 1999, the Chief of Troopers for the New Jersey State Police, Carl Williams, was fired by then Governor Christine Todd Whitman soon after a news article appeared in which he defended the targeting of African American and Latino motorists because, he said, “mostly minorities” trafficked in marijuana and cocaine. Williams’ comments were met with shock and outrage, yet in making those remarks he was doing little more than stating explicitly what the DEA had been training officers to

think and do for nearly two decades. Federal funding has been flowing into state and local law enforcement agencies to do precisely what Williams described.

The drug war has created a political environment in which politicians have everything to gain and nothing to lose by cracking down on a supposed enemy that is easily identifiable, and which mainstream white voters understand is not them. The get-tough-on-crime rhetoric sells because white America understands that nobody is talking about getting tough on their children. Not really. Harsh drug laws and mandatory minimum sentences sail through legislatures because white America understands whom those laws are intended for. The black and brown faces by the side of the road, and the black and brown youth spread eagle on the sidewalk while being frisked, are presumed guilty by those who happen to pass by and are quickly forgotten.

### **Is Racial Profiling Justified by Crime Rates?**

Some law enforcement officials argue that police officers target African Americans and Latinos for traffic stops simply because those groups are more likely to be engaged in certain types of crimes, particularly drug trafficking. These officials will point to the racial composition of our prisons and jails and arrest statistics as “proof” that targeting those groups makes sense.

The available evidence indicates that this argument is simply wrong. People of color are no more likely than whites to be carrying drugs or other contraband in their vehicles. In fact, whites have been shown to be slightly more likely to be carrying drugs than African Americans or Latinos.

Discriminatory arrest and incarceration statistics are caused, in part, by racial profiling.

- In Maryland, African Americans made up only 17% of drivers, but they were more than 70% of all of those searched. Troopers found evidence on African Americans they searched 28.4% of the time; they found evidence on whites 28.8% of the time.
- In New Jersey, African Americans and Latinos constitute 78% of those searched. Yet troopers found evidence in the searches of whites 25% of the time, they found evidence in searches of African Americans 13% of the time; and in searches of Latinos 5% of the time. Whites were twice as likely to be found with contraband as African Americans, and five times as likely to be found with contraband as Latinos.
- In New York City, the police launched an aggressive stop-and-frisk program on city streets. African Americans and Latinos were the prime targets. Yet officers found drugs, guns or other contraband more often on whites than African Americans or Latinos.
- In California, Latinos are far more likely than any racial or ethnic group to be stopped, searched, and then released without a citation because the search turned up no evidence of drugs or other contraband.

In addition, some law enforcement officials argue that it makes sense to target African Americans and Latinos for traffic stops in “high crime” neighborhoods, because in those neighborhoods there are more criminal suspects on the loose.

The reality, however, is that typically less than 1% of all traffic stops are made based on an APB or the search for a particular suspect. The overwhelming majority of traffic stops are based on some violation of the traffic code. Studies indicate that African Americans are no more likely to disobey traffic laws than whites.

## **The Missing Fourth Amendment**

As the drug war escalated in this country, the U.S. Supreme Court’s commitment to enforcing Fourth Amendment protections against unreasonable searches and seizures dissipated to the vanishing point. In a series of stunning decisions, the Supreme Court granted law enforcement nearly unfettered discretion to stop, detain, interrogate, search and arrest motorists - even when there is no evidence of criminal activity beyond a minor traffic

violation. Most significantly, pretext stops and consent searches - the primary tools of discrimination in the war on drugs - were upheld by the Supreme Court as reasonable exercises of law enforcement discretion.

A pretext stop, simply stated, is a traffic stop made by a police officer - not for the purpose of enforcing traffic laws - but rather for the purpose of investigating imaginary criminal activity for which the officer has no evidence. Officers trained to conduct pretext stops use extremely minor traffic violations - such as a burned out license plate light or the failure to use one's turn signal at precisely the right time — as an excuse to stop, interrogate and search motorists, even when there is no good reason to believe the person is involved in criminal activity.

This practice was challenged in 1996 in a case called *Whren v. United States*. The question before the Court was whether the police can use a minor traffic violation as an opportunity to go on a fishing-expedition for drugs, interrogate a motorist and ask for consent to search, even when there is no evidence of illegal drug activity. The Supreme Court, in a 5-4 decision, concluded that, yes, officers could do precisely that without violating the Fourth Amendment prohibition against unreasonable searches and seizures.

In practice, the *Whren* decision has given the police virtually unlimited authority to stop and search any vehicle. Every driver violates some provision of the vehicle code at some point, because state traffic codes identify so many different infractions. Even when driving a very short distance, it is likely that a motorist will fail to use his or her turn signal at precisely the right time, fail to track properly between the yellow lines, fail to stop the proper distance from the pedestrian walkway, or will drive a little too slow or too fast. Vehicle equipment is also highly regulated. A small light bulb must illuminate the rear license plate. Taillights must be visible from a particular distance. Tire tread must be a certain depth. And all equipment must be in working order at all times. In order to stop someone who “looks” suspicious or out of place, or who looks like a criminal or a drug courier, all the police have to do is wait for the person to commit some minor traffic violation and then pull them over to check them out, interrogate them, or get consent to search for purely imagined criminal activity.

Because officers hold conscious and unconscious stereotypes regarding who the likely criminals are, and because the drug war creates a climate in which people of color are viewed as the enemy, it is not surprising that African Americans and Latinos are subjected to pretext stops far more frequently than whites. Generally speaking, whites are stopped because the officer actually wants to enforce the traffic code. The motorist is ticketed or warned and allowed to go on their way. For people of color, every traffic stop carries with it the real likelihood that they may find themselves interrogated, detained, searched - and even arrested - for doing nothing more, for example, than failing to use their turn signal at precisely the right time.

Since *Whren*, the Court has extended police power over cars and drivers even further. In *Maryland v. Wilson* (1997) the Court gave police the power to order passengers out of their vehicles, regardless of whether there is any basis to suspect they are dangerous or involved in criminal activity. And in *Ohio v. Robinette* (1996) the Court held that when a motorist refuses consent to search, the officer is not required to tell the driver that he or she is free to leave. Few motorists refuse consent to search, either because they do not know they have a right to refuse, or because they fear that if they refuse they will arouse the officers suspicions further or provoke the officer to violence. The Supreme Court ruled that officers have no duty to dispel these fears or inform a motorist that dares to refuse consent to search that they are free to go.

Perhaps the most shocking Supreme Court decision in recent years, however, is *Atwater v. Lago Vista* (2001). That case held that officers may arrest motorists and put them in jail for minor traffic violations, such as failing to wear a seat belt - even if the maximum penalty for the traffic violation is a fine, not jail time. In *Atwater*, a white woman who was driving with her children in a pick-up truck without her seat belt was stopped, arrested, and thrown in jail, even though a seat belt violation is punishable only by a fine. The Supreme Court ruled that the officer's actions did not constitute an unreasonable seizure under the Fourth Amendment, thus opening the door to the possibility that any and every traffic violation may culminate in arrest.

While the victim in *Atwater* was white, there can be no doubt that the overwhelming majority of motorists who find themselves behind bars for committing a minor traffic violation will be black or brown. Studies of racial profiling have consistently shown that African Americans and Latinos are far more likely to be treated harshly in the

course of an ordinary traffic stop than whites. Indeed, the U.S. Supreme Court appears content to eviscerate Fourth Amendment protections against unreasonable searches and seizures in large part because the Justices understand that their sons and daughters are not likely to be arrested for a minor traffic violation, or stranded on the side of the road while their car is dismantled in the hopes of finding drugs.

## **The One in the Blue Is Always Right**

One of the main reasons racial profiling continues to thrive, aside from the political environment and the evisceration of the Fourth Amendment, is that victims of racial profiling are rarely deemed credible, and rarely have the time, money or other resources to challenge a discriminatory traffic stop. Most victims of racial profiling are so relieved when the encounter is over, they want nothing more than to forget the incident ever occurred. Those who do challenge race-based traffic stops find that they are discouraged from filing complaints, and even when they manage to file a complaint, the police are generally trusted to police themselves. After an internal investigation, police departments routinely conclude that the officer's version of events and stated intent is more credible than the victim's. So the complaint is often dismissed or ignored.

Victims of racial profiling also fear retaliation. Stories abound of police harassment of innocent motorists increasing, rather than decreasing, following the filing of a complaint. In addition, California law provides that police officers have a special right to sue people who file false complaints against them, and seek monetary damages. Thus, any victim who worries that his or her story might not be believed is unlikely to file a complaint out of fear they will become the target of a lawsuit filed by the police officer who discriminated against them.

These practical and legal barriers make victims extremely distrustful of the legal system, and make lawyers reluctant to represent people who have valid complaints. As a result, another vicious cycle is created, in which judges come to believe that racial profiling affects only the guilty. Because few victims of racial profiling file lawsuits, the only cases of racial profiling judges tend to see involve the "guilty ones." And because the police target primarily African Americans and Latinos, judges are constantly confronted with African American and Latino defendants who are guilty of something, thus reinforcing their predisposition to believe that racial profiling may well be justified.

Undocumented immigrants who are targeted on the basis of race by law enforcement, are perhaps the most vulnerable to discrimination and abuse by the police, because they risk deportation if they complain of mistreatment. For example, in February 2001, the *Los Angeles Times* reported that Orange County police departments had detained more than 4,000 suspected illegal immigrants during the previous two years, driving many straight to the INS checkpoint in San Clemente for deportation. The suspected immigrants are stopped for minor infractions, asked about their immigration status, and then taken to the border if the officers think they might not be in the country legally.

An 18-year-old Anaheim woman was taken into police custody following a traffic stop for expired registration. An INS agent determined that she may be in the country illegally, and suddenly a minor traffic violation turned into a deportation proceeding. In another incident, a 16-year-old Latino boy was arrested for jaywalking. Although he was in the country legally, he couldn't produce identification. The police turned him over to the Border Patrol and he was wrongly deported. The Border Patrol does not keep statistics on the legal residents wrongly taken to San Clemente for deportation. An INS spokesman in Washington, D.C. said that it is common for local police to say "he looked illegal," and make judgments about legal residency based on appearance alone.

Although thousands of Latinos have been victims of racial profiling by local law enforcement, the INS, and Border Patrol, few people will file complaints with law enforcement out of fear that the police could retaliate by deporting them, or someone in their family, who happens to be an immigrant.

The invisibility of innocent victims of racial profiling is one of the reasons it remains critically important for all law enforcement agencies to collect data regarding the race and ethnicity of motorists who are stopped and searched. Without data tracking the rate at which people of color are stopped, searched, and released because they

are innocent, racial profiling remains hidden from view and individual complaints can be easily dismissed as “isolated incidents.” Data recently released by the Oakland Police Department, for example, showing that African Americans were more than 3 times as likely to be stopped and searched as whites, lent considerable credibility to claims of victims such as Reggie Williams, who had been stopped more than 10 times in two years, and searched on more than half of those occasions. “When that data came out,” he said, “I felt like finally somebody is going to have to take this seriously. I know they won’t take me seriously ‘cause I don’t have an education, and I don’t have any money, and so I know I can’t fight this thing. They can write me off, and they can write off each of us one-by-one, but now they have to explain why all of us are being treated this way. Now they’ve got to give some answers.”

## *The Harm It Causes*

*Racial profiling is particularly damaging to youth. It sends the powerful message that no matter how hard you try in school, no matter whether you play by the rules and obey the law or not, no matter what your dreams and goals might be, because of your race - because of who you are - you will always be viewed as and treated like a criminal.*

Being stopped, interrogated or searched by the police on the basis of race is an experience that is often remembered for a lifetime. The humiliation of being ordered out of your car, hands and feet spread apart, frisked while neighbors or strangers pass by, having your car searched or torn apart in a futile search for drugs, being interrogated about your personal life, whether you live in the neighborhood or what business you have in this part of town - these experiences are hard to forget, and they color one’s view of law enforcement and the criminal justice system for the rest of one’s life.

Racial profiling is particularly damaging to youth. It sends the powerful message that no matter how hard you try in school, no matter whether you play by the rules and obey the law or not, no matter what your dreams and goals might be, because of your race - because of who you are - you will always be viewed as and treated like a criminal. Young people generally strive to fulfill the expectations of others. Racial profiling tells young people that nothing more than criminal activity is expected from them.

Far from deterring juvenile crime, racial profiling eliminates a major incentive for law-abiding behavior. If it becomes obvious at an early age that no matter what you do, you are likely to be “jacked up” by the police and land in jail, the perceived benefits of playing by society’s rules fade from view. It stands to reason that in low-income, racially segregated neighborhoods, where youth of color are denied adequate education and are

exposed to few opportunities or examples of success, the police should be particularly careful to treat young people with respect, and stop and search them only when there is actual evidence of criminal activity. Allowing officers to make stops and searches based on stereotypes sends the message that there’s no way to avoid being viewed and treated like a second-class citizen.

Frustration, rage and cynicism are the predictable by-products of racial profiling. These justifiable emotions render healthy police-community relations impossible. Why should a young Latino man who was stopped, searched, and held at gunpoint for no apparent reason be willing to trust the police? Would he be willing to come

forward as a witness to a crime? If called to serve on a jury, could he trust a police officer who takes the stand? Would he be willing or interested in working collaboratively with law enforcement to address any issue in his community?

Riots and uprisings in communities of color - including the explosions in Los Angeles, New York, D.C., Cincinnati, and Philadelphia - are usually triggered by a fatal shooting of an unarmed African American or Latino man. The rage and violence that follows is a testament to the powerful impact pervasive, racially-biased police harassment has on communities of color. During every race-based stop, search, or interrogation, the victim knows, in the back of his mind, that if he makes a wrong move or gesture the police may respond with deadly force. A cell phone, wallet or candy bar might be mistaken for a gun; a sudden move might be interpreted as threatening. And he may not get through the encounter alive.

Perhaps the most pervasive effect of racial profiling is the grossly disproportionate number of African American and Latino men arrested for nonviolent drug offenses. Every comprehensive study has shown that people of color are no more likely than whites to be carrying drugs or other contraband in their vehicles. However, because they are stopped and searched for drugs at grossly disproportionate rates, they are also arrested and incarcerated at grossly disproportionate rates. The racial composition of our prisons and jails today is, in large part, a product of racial profiling.

Ultimately, the question is not whether racial profiling harms communities of color or the criminal justice system as a whole - it unquestionably does. The important question we, as a society, face today is whether we care enough about the victims - the real people behind the profiles - to do what is necessary to bring this sordid chapter in our nation's history to an end.



Rick Rocamora



## THE MANY FACES OF DWB

In April 1999, the Racial Justice Project of the ACLU of Northern California established statewide toll-free hotlines for victims of discriminatory traffic stops and encouraged victims to step forward and tell their stories, with a promise that they would be kept confidential unless they wanted to share them with others. In the first three minutes after the hotline number was aired on the TV news in Los Angeles, more than 100 people called and the phone system crashed temporarily. (The English-language hotline is 877-DWB-STOP; the Spanish-language hotline is 877-PARALOS.). The Project swiftly moved to expand its capacity and has now received several thousand calls from people of color throughout California, from all walks of life - some rich, some poor, some from inner-city neighborhoods, some from the suburbs, some recent immigrants - all of whom recounted similar experiences of being stopped, detained, interrogated, searched, arrested, and sometimes assaulted, because of the color of their skin.

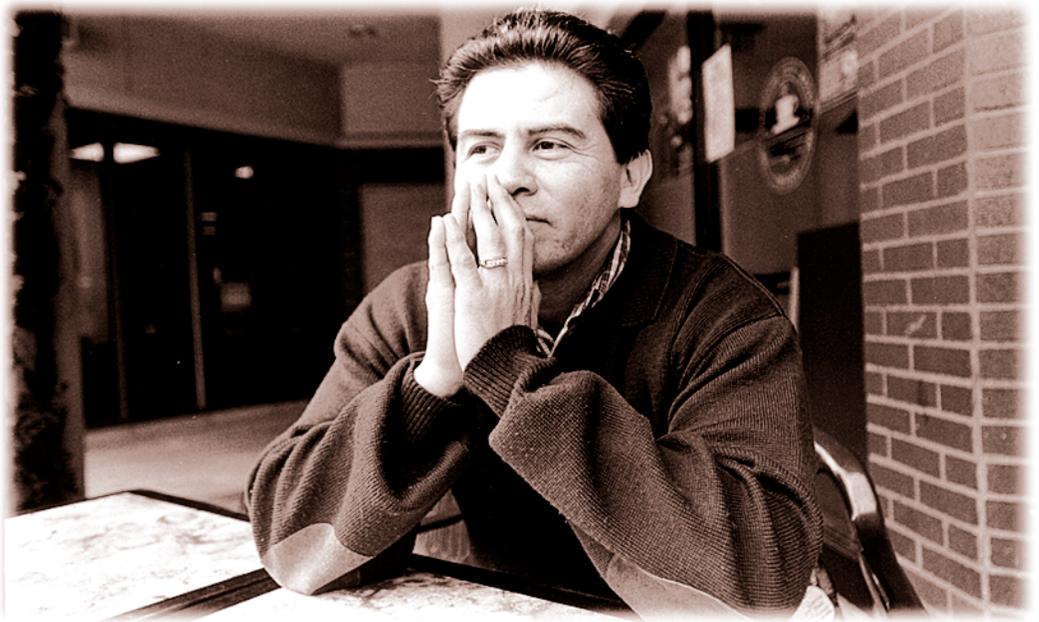
Most of the callers had never reported their incidents to the police, because they feared police retaliation. Even callers who had been stopped and searched more than ten times had never filed one complaint. Many of these people feel, quite rightly, that they have nowhere to turn safely in their community to report misconduct by the police, nor do they hold any realistic hope that something will be done to address the problem.

The following is a small sample of the stories that were reported to our hotlines. The vast majority of people who called our hotlines did not want us to include their stories or pictures in this report, due to fear of increased harassment or retaliation by the police. In fact, although we received numerous complaints regarding egregious discrimination by the INS and Border Patrol, not a single individual who had been targeted by those agencies would allow us to include their stories in this report, including those who are U.S. citizens, out of fear that family members could be deported or suffer retaliation.

We therefore extend a special thanks to the courageous individuals who not only came forward to tell their stories, but have also allowed us to share their stories publicly. Because of their unselfish commitment to this cause, the public can now understand with a bit more clarity and insight, that real people are behind the staggering statistics and that their lives are forever changed after a racist encounter with the police.

## *Innocent Casualties of the War on Drugs*

On June 6, 1998 Curtis Rodriguez, a Latino criminal defense attorney from San Jose was driving with fellow attorney Arturo Hernandez to Merced. On a ten-mile stretch of Highway 152, they noticed a large number of CHP vehicles involved in traffic stops. One after another they saw cars stopped by the side of the road, and passengers - all of whom appeared to be Latino — standing by their cars on the highway. Distressed by what they were witnessing, Rodriguez and Hernandez decided to photograph these race-based police stops to prove to others what they had seen. On their way back to San Jose, Hernandez took photos of the Latino drivers, while Rodriguez concentrated on obeying the speed limit and all traffic laws, to avoid giving the police any excuse to pull them over. Hernandez kept the camera on top of the dashboard.



**Curtis Rodriguez**

Despite these precautions, a CHP vehicle began to follow them, and signaled Rodriguez to pull over. The CHP officer told Rodriguez that he had been pulled over because his car “had touched the line” and because he had turned his headlights on. (Drivers are advised to turn on their headlights in this section of Highway 152).

“The officer told me he was going to search the car for weapons,” said Rodriguez. “I refused permission for the search. Since I’m an attorney, I know my rights. The officer had no probable cause to search the car, so I refused consent to search. Unfortunately, the officer refused to respect my legal rights. He ordered me out of the car and searched it, without my permission.”

*“Since I’m an attorney, I know my rights. The officer had no probable cause to search the car, so I refused consent to search. Unfortunately, the officer refused to respect my legal rights. He ordered me out of the car and searched it, without my permission.”*

The officer told them he was in fear of his personal safety, and later claimed he thought the camera - that was on the dashboard the whole time - was a gun.

“Of course, he found nothing illegal,” Rodriguez said. “After checking all of our license and insurance papers, he ordered us back in the car. We sat waiting twenty more minutes in the car, and then finally, he told us we could go. He didn’t issue me a ticket, because I didn’t do anything wrong.”

Rodriguez and Hernandez, in their attempt to document the unwarranted stops of Latino drivers,

found themselves caught up in the same dragnet. The CHP’s drug interdiction program, Operation Pipeline, stopped nearly 34,000 people in one year, but less than 2% of them were actually carrying drugs. In the area of the Central Coast, Latino drivers were three times as likely to be stopped as white drivers. Curtis Rodriguez and Arturo Hernandez were two of the tens of thousands of innocent motorists who were stopped, searched and treated like criminals based on nothing more than a police officer’s mistaken hunch.

Jose Lopez and Stephanie Gevorkian were stopped in the same area for nothing more than a miniature crystal ball hanging from their rearview mirror. Like a lot of busy couples, they were on a tight schedule the day the CHP pulled them over on Interstate 5 near Los Banos. They’d left their infant son Stephan in Fremont with Stephanie’s father while they returned to their home near Los Angeles so Jose could keep a doctor’s appointment. That stormy afternoon in April 1999 they were on their way back to Fremont to join Stephanie’s family for the baby’s christening.

CHP Officer Michael Arpaia and his partner, Officer Sumner, were driving the opposite direction on I-5 that day, but when they spotted Jose Lopez, they immediately made a U-turn across the median and began to follow his mini-van. After driving alongside the van for a few minutes, the CHP officers activated their lights and pulled the couple over.

Why were they stopped? Not for speeding. Jose was taking care to observe the speed limit, and the officers never suggested that he had been going too fast. No, Arpaia had a more obscure reason for stopping the couple, and subjecting them to a roadside interrogation and drug investigation. He told them that he stopped them because a small crystal ball on a bit of fishing line was hanging from the rearview mirror of their mini-van.

“The officer said the glare caught his eye and it could distract another motorist,” Stephanie says. “I took it off and put it in the glove compartment.”

At the time of their stop, Stephanie and Jose did not know that the CHP viewed “mismatched occupants” - in this case a Mexican man and a white woman - as a drug indicator. While their appearances may not “match” according to the CHP, they do have a child together and a serious, committed relationship. Stephanie is tall and fresh-faced with a cascade of dark, curly hair. Jose, who repairs appliances for a large department store chain, is shorter, compact and handsome. As they sit at the kitchen table of their cozy home and relate their ordeal, they exhibit the ease of people comfortably in love, completing each other’s sentences and passing their sleepy toddler Stephan back and forth between them.

Thinking back on that awful spring day, they remember how dark the sky was. They had just passed through a hailstorm when the officers pulled them over. As they began their interrogation, the officers separated Jose and Stephanie.

Arpaia took Jose’s license and asked him how much he paid for it, insinuating it was a false document. Then he started grilling Jose about his immigration status - where was he born? How long had he been in California? How did he come to the United States?

“I knew from the beginning there was no reason for him to stop me,” Jose says. “I asked him, why are

*“But I can’t change the color of my skin. He used his badge to insult me. It takes something from you.”*

you asking me these questions? What does this have to do with the crystal ball? He said, ‘I ask the questions and you answer them.’ He asked me if there was something illegal in my vehicle. He asked me if I’d ever been arrested for trafficking. He was very powerful, looking into my eyes. Demanding. Very powerful. I knew he was trying to use his badge to intimidate me.”

Stephanie shudders. “The other officer kept asking me, What are you doing with this man? I kept saying, I love him and he’s the father of my child.”

Little did Stephanie know, Arpaia would later testify that he views race as a relevant factor in deciding whom to stop and search. He also views the presence of baby items in the backseat, but no baby, as a possible drug indicator. At that time, all Stephanie knew was that the officers didn’t seem to want to believe that they even had a child. Where was the baby? Where was his car seat? Where are you going with that man? Stephanie explained that Stephan and most of his trappings were in Fremont with her father. She even pointed out his christening outfit draped over the back seat, but the officer continued to act skeptical.

The officers were following Operation Pipeline protocol, which calls for detaining and interrogating motorists for as long as possible in an effort to dig up evidence of drug activity or get consent to search the vehicle. Meanwhile, Stephanie was starting to feel as if she’d driven into a nightmare.

By detaining potential suspects and separating them, officers hope to trick them into saying something incriminating. Arpaia kept asking Jose what he was doing with Stephanie, why he wasn’t at work, how much he’d “paid” for his license, where they were going, where he was from. After thirty minutes, he finally released Jose and Stephanie without a citation. On his daily field report Arpaia listed Jose’s race as “W” for white, although he knew Jose was Mexican - an apparent attempt to disguise his racist conduct.

When it was over, Jose’s legs were shaking so bad he could hardly drive. The incident continues to haunt

them. Stephanie is afraid it might happen again. “She wanted me to shave my mustache,” Jose says, glancing at Stephanie. “But I can’t change the color of my skin. He used his badge to insult me. It takes something from you.”

Baby Stephan snores gently against his father’s chest. “What am I supposed to tell our son about this kind of thing?” Stephanie says. “I don’t want our child growing up in a world where law enforcement can treat people this way.”

### *Rites of Passage for Youth*

Describing the numerous times he’s been stopped and searched by the police, Chevis Kaywood’s tone is never one of shock or outrage, at most there’s a hint of mild disbelief. “I’m a good guy. I’m a hard worker. I’m completely legal. But none of that matters to



**Chevis Kaywood**

them.” His black 1996 Nissan Ultima has fancy chrome rims and tinted windows. “They must think I’m a drug dealer or something.” At 21, he has only been driving for two years but he is already resigned to the situation. “It happens all the time. I’m always frustrated but I’m cordial. I don’t want to make the cops any more upset than they are.”

In addition to working fulltime as an assistant to the legal staff at the Lawyers’ Committee for Civil

Rights in San Francisco, Chevis attends night classes at Alameda Junior College. Given his busy work and school schedule, he used to look forward to relaxing with his friends on the weekends. But he's grown weary of being stopped by the police as he drives to a friend's home or heads out to a concert. "It's too much of a hassle. Chances are, I will get pulled over - for no reason, but it still ruins your evening."

The incidents all bear a striking similarity in the non-existent or minor reason for the stop. There was the Saturday night in March 2000 when Chevis met up with some of his friends at a gas station across the street from a high school in Oakland. There were several young people of color sitting in cars, catching up with each other and making plans for the rest of the evening. This is the sort of thing young people in America have been

*"I'm a good guy. I'm a hard worker. I'm completely legal. But none of that matters to them.... They must think I'm a drug dealer or something."*

doing as long as there have been cars. But the mere presence of young people of color seemed to be enough to attract police attention.

As Chevis began to pull out of the gas station, he noticed several police cars swarming into the station and blocking all of the exits. The police officers began collecting the car keys of all those gathered at the station. There were about eight cars and all of the occupants were between the ages of 16 and 25. The officers piled the keys on the ground and went from car to car asking, "Who's got warrants?" and issuing "fix-it" tickets for innocuous infractions such as tinted windows or dim license plates. Chevis did not see anyone receive a ticket for a serious violation and, as far as he could tell, all of the drivers presented valid registration documents and driver's licenses. He left the station with a "fix-it" ticket for a small cardboard air freshener hanging from his rearview mirror.

A couple of weekends later, on his way to a friend's house, Chevis saw a police car parked beside an intersection as he approached a stop sign. Seeing the police car, he was careful to pull up to the stop sign, make a complete stop and then slowly continue through the intersection. He wasn't through the intersection before the police officer signaled for him to pull over. When Chevis protested the stop, one of the officers replied, "Well,

it's your word against ours, isn't it?"

This statement, so casually made, scared him. He thought about recent and not so recent stories of black men being stopped by law enforcement officers and ending up brutally beaten or dead.

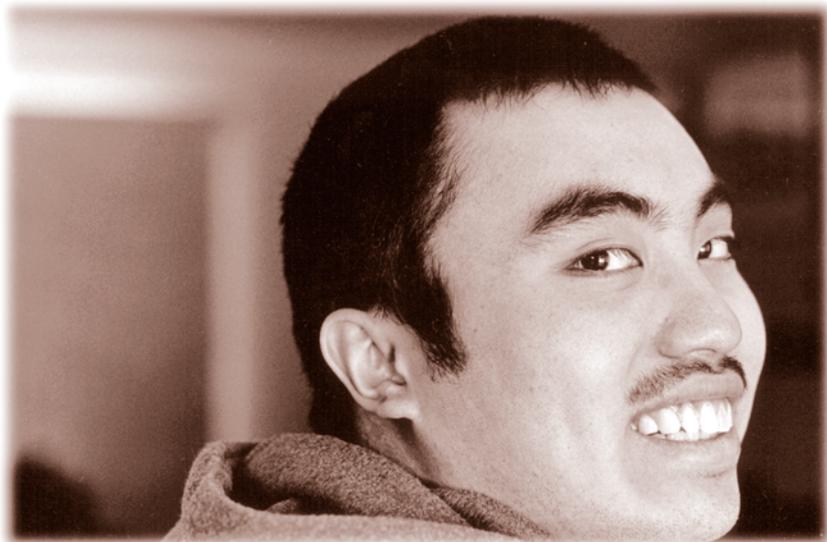
Chevis kept his mouth shut. When the officers handed him his citation, he headed straight home and called his friend to say he wouldn't be coming over after all. "It was way too difficult to just drive down the street."

In June, 2001 Chevis was stopped again. While he was idling at a red light at Foothill Boulevard, two Oakland police officers drove up beside him, demanded he turn off his car engine and hand over his keys. When Chevis asked what he had done wrong, the officers told him he was "playing his music too loud." They searched his car - without his permission - and asked where he lived. When he responded that it was not too far, the officer responded, "Good. You won't have too far to walk."

One of the officers took his keys, got into Chevis's car and drove off. Chevis had to call his mother in the middle of the night to pick him up. His mother, understandably upset, drove Chevis to the police station where they saw his car in a lot. The officer told Chevis and his mother that he would not be able to get his car back until Monday - and that it would cost \$236 - a towing fee plus a two-day storage fee. The officer told Mrs. Kaywood that it had something to do with a "sideshow" and that her son "was in the wrong place at the wrong time." Chevis did not even know the meaning of a "sideshow" at the time.

These are just three in a string of incidents that have made Chevis think twice about even leaving his home in the evenings. "I can be pretty sure that I have a good chance of being pulled over if I go out in my car," he says. "It makes me more tentative about making plans on the weekend. In fact, I try not to even be in my neighborhood - East Oakland - on the weekends. The cops are always out there and they seem to be looking for reasons to give you a ticket."

One of the most disturbing side effects of racially motivated traffic stops is that these incidents lead many youth to become cynical about law enforcement. Jason Marr, a 19-year-old of Chinese and Filipino ancestry, has lived in California all his life. In recent years he's noticed that the police treat him differently depending on the race of his companions.



**Jason Marr**

“With kids of color, the cops and deputies make the assumption that you’ve done something wrong,” Jason says. “When you talk to your white friends about this driving problem, they look at you funny because their experience with the cops is just so different, they don’t know what you’re talking about.”

When Jason was a sophomore and class president at Hogan High School in Vallejo, he worked weekends delivering pizzas from 5 p.m. to midnight. “My dad got me a 1979 Lincoln Versailles so I could get around. That’s a really big, old-looking car. It was faded brown, nothing flashy, you know, just really b.i.g.”

At the end of a shift he was driving his friend and coworker Nehemiah home. Along the way they passed the sheriff’s office near the county line. A sheriff’s cruiser popped out of an alleyway and followed them. “I was going the speed limit but the next thing I’m getting sirens and flashing lights. I pull over and the deputy says, ‘Your tail light is out. Let’s see your license.’” Jason shakes his head, remembering the scene. “I wasn’t worried. I give him my license and he calls it in. He then asked for insurance, which I give him and he starts asking me a bunch of questions like, ‘Who owns this car, where are you coming from, where are you going?’ Kind of hostile like.”

While Jason was busy with one deputy, his partner ordered Nehemiah, who is black, out of the car and demanded his ID. The officer got very aggressive and began searching the car.

“The cops proceed to look in the glove compartment, check under the floor mats, peep into the back of the car, and ask me to open the trunk. My friend was holding a piece of pizza wrapped in tin foil. The deputy grabbed the pizza as if he expected to find something, some drug. Maybe he thought it was a weapon. By this time, I’m getting a bit scared.”

After searching the foil packet, the deputy gave it back to Nehemiah and told him they were clean and free to go.

“I don’t want no grief so I just keep quiet, even though I’m pissed at them. So I took Nehemiah home. I was curious about the stop because of the way we were treated, so hostile and all. So, out of curiosity, I looked at my rear lights before going in the house. Sure enough, they were both lit up bright as day.”

Three years have passed since that incident. Jason now has a part-time job as a DJ at a local club and he volunteers at a radio station. The mantel over the fireplace in his parents’ living room is filled with Jason’s trophies. There’s a computer corner where Jason does his homework most nights. As Jason prepares for manhood, an aura of cynicism has entered his life. “Always harassing Mexican and black youth when they have done nothing wrong gives us more reason not to respect authority,” he says. “I’ve got a friend whose uncle is a cop and he’s a real nice guy, so it’s not every single cop, but certain ones disrespect and lie to us. Police and sheriff’s deputies should be here to serve, but most of them are not.”

*“When you talk to your white friends about this driving problem, they look at you funny because their experience with the cops is just so different, they don’t know what you’re talking about.”*

Several mothers who called the hotline were so afraid of police retaliation on their sons that, though they were willing to tell their story, they did not want their last names used. Mary is a supervisor in a factory in the aero parts industry in Los Angeles. She works different shifts, mostly nights. She relates a saga of never-ending police harassment of her sons, whether they are in the car or just sitting in their postage stamp front yard.

One evening, she and her son Jared were stopped by a sheriff's deputy who said that their light was broken. In fact it was not. "So, they want you to get angry with them and once you get mad, then they got something to say. Jared asked them, 'Why are you harassing me?' And the policeman replied angrily, 'I'm gonna show you; I'm arresting you.'" Mary said the police then pushed Jared down on his face, took him to the police station. She couldn't pick him up until the next day.

"I am a working mother trying to keep the LAPD and the Sheriff's Department from harassing my three sons," says. "It's terrifying. You have to live your life scared and you never know when you're gonna go home and find out one of your sons has been hurt or even killed by the police."



**Eva Royale and her son Miguel**

Eva Royale is a fourth generation farm laborer who now works for a union in San Francisco. She is torn between filing a complaint about police harassment of her son, or letting it go for fear of retaliation. "You say, you've got to complain about this police abuse, but usually it's your word against theirs. And yet, it's my son who has to be out on the streets. So, you say nothing and you ask yourself, how many other abuses have gone unreported?"

Lisa DeWitt was born and raised in Alameda, a Bay Area island town that was dominated by a military post until just a few years ago. Like most African Americans in Alameda, DeWitt lives on a part of the island called the “West End.” She shares a cottage edged with trailing rose vines with her son Mickey Weaver, 18 and his best friend David Robinson, 20. Their home, which abuts that of her father, a vice-mayor of Alameda, is down the street from a large housing project and across the road from a high school.



**Lisa DeWitt and her son Mickey**

“Alameda is a beautiful island. I love Alameda,” DeWitt says. Nevertheless, now that Mickey has graduated from high school, she is preparing to send him to Holland to live with his father. “I worry all the time. You’re supposed to worry about the bad guys but I have to worry about the police. Every time I see someone pulled over, I’m looking to see if it’s Mickey. I don’t want to send my son away, but I just don’t feel he’ll be safe if he stays here. I’m worried about these West End police officers.”

### *Crossing the Border Into White Suburbia*

In 1969 when Faye Bremond and her husband and two young daughters moved from East Palo Alto, at



**Faye Bremond**

the time a predominately black enclave, across the road to Atherton, a small, affluent, mostly white town, they settled into their new neighborhood with relative ease. “We had no problems buying the property,” Bremond recalls. “Our realtor was pro-integration.” Although Bremond later learned that in the late 1960’s some Atherton parents sold their houses

because they didn’t want their children attending the integrated local high school, she’s always felt at home there.

“I have enjoyed it very much,” she says. “I like my neighbors. I’ve really gotten along very well.”

With a population just shy of 7,200, according to Census 2000, Atherton is 85.4% white and about 10% Asian. Only 50 of Atherton’s residents are African American. Situated a few miles from Stanford University, the town is synonymous with wealth. Several of Silicon Valley’s most powerful CEOs live in Bremond’s neighborhood, Lindenwood Homes. The smallest lots are at least an acre. The streets are wide and the houses are large. Bremond, who grew up in the country, was drawn to the pastoral setting. Her backyard is filled with redwood trees, flowers and a thriving vegetable garden. Like most of her neighbors, she also has a pool.

Despite her ease with her neighbors, Bremond and some of her friends and relatives have endured

disturbing run-ins with the local police. Sometimes they are followed, occasionally they are questioned, rarely they are ticketed.

Bremond, who is divorced, lives alone. As a retired college biology professor, she has many friends who teach. Sometimes these friends send her students in need of temporary housing. So many of her student boarders complained of being stopped, searched and harassed by Atherton police that Bremond wrote a letter about these incidents to her local newspaper. She was particularly upset by the way the police treated a young African American doctor who stayed with her for a couple of months while he completed his residency at Stanford.

Because of his hours at the hospital, the doctor drove in and out of Atherton at all hours. He told Bremond that without fail, when he got on the road, the police would follow him. It got to the point where he literally could not leave the house without worrying that he would be followed by the police. Bremond talked to her city council members and the chief of police to protest this treatment but the police harassment stopped only when her boarder moved away.

But Bremond, who has invested 32 years in Atherton, isn't about to move on. "I'm 67 years old," Bremond says. "I've lived a good life. I've got to make one more statement. Few people are willing to make a stand against these issues."

*"I'm 67 years old,  
I've lived a good life.  
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these issues."*

Ray Marshall, a resident of Piedmont, another upscale, predominately white Bay Area town, had a similar reaction when an Oakland Police officer stopped and questioned him and his wife in the driveway of their home.



**Ray Marshall**

*“The officer then approached us in our garage and asked us if we lived in our house. My wife and I were stunned. Where did he think I had put the owner - in the glove compartment?”*

“One night my wife and I were coming home late from the movies. A police car followed us up Redwood Road, and when we turned into our driveway, he followed us and ordered us to stay in our car. The officer then approached us in our garage and asked us if we lived in our house. My wife and I were stunned. Where did he think I had put the owner - in the glove compartment?”

“The officer demanded our ID and verification of our residence. Imagine, in our own house, our own property, in our own garage! He never gave any reason for the stop. Once he verified who I was, he just left, giving no explanation for what had happened.”

Marshall, the first African American president of the State Bar

of California, is a partner at a prominent San Francisco law firm and the recipient of numerous public service awards. But none of that mattered that night when an officer ordered him to prove he had a right to be in his own driveway in an exclusive town with a scant 1.2% black population.

## Hot Wheels

Like a lot of physicians, Dr. Norris Hollie drives a luxury sedan. But the Sacramento police officer that pulled him over in 1997 didn't look at him and see a medical

*“I’ve never used drugs. I don’t even smoke and for her to insult me saying that I could be a drug dealer from Oakland really made me angry,”*

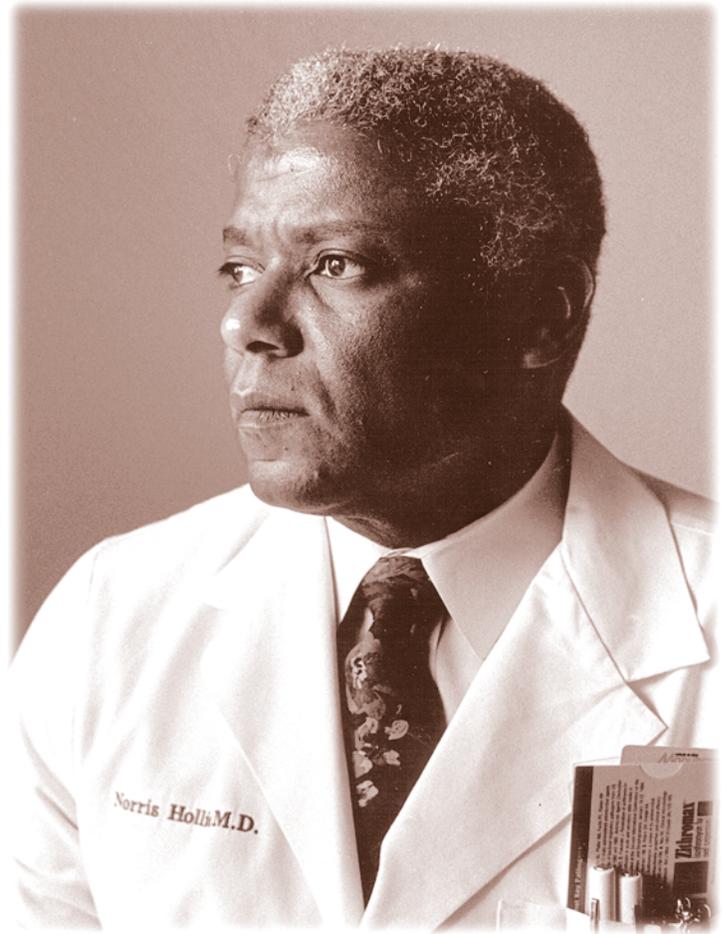
professional on his way home after a 12-hour shift. She saw a potential suspect driving a Mercedes Benz 420 SEL.

“The officer came up to my window and said, ‘You know you don’t have a sticker on your license plate.’ And I said, ‘Someone stole it.’”

While he looked for his registration, the officer ran a check on his license. When Dr. Hollie found the registration, he got out of his car to walk over to the patrol car. Seeing him coming, the officer jumped out of her car and shouted hysterically, “Get back in your car!” The officer appeared poised to point her gun.

Hollie replied, “All I want to do is give you my registration. You’ve kept me waiting. I have a headache. I’ve put in a 12-hour day. I’m tired and I’d like to go home.”

The officer said, “Well, I can’t help how long it takes me to make sure you’re not a drug dealer from



**Dr. Norris Hollie**

Oakland.” She eventually gave him a citation for the missing sticker.

“I’ve never used drugs. I don’t even smoke and for her to insult me saying that I could be a drug dealer from Oakland really made me angry,” Hollie says.



**Carlos Gonzalez**

Carlos Gonzalez is a 30-year-old middle school math teacher in Los Angeles. He has just been promoted to head the bilingual education department at his school. One evening in May 1999 he was dropping his cousin off at a small hotel when his 1995 red Mustang convertible caught the eye of two officers in the city’s CRASH unit.

“That’s Community Resources Against Street

Hoodlums. Chief Parks banned it recently but they just call it something else. They target: street gangs, drug dealers. They’re not really there to stop you for traffic infractions.”

As Gonzalez left the hotel, he noticed the CRASH unit was following him. Within a couple of blocks, the officers pulled him over. He quickly realized this wasn’t a normal traffic stop.

“He called me on the speaker to get out of the car and I got out of the car. Then he took me to the curb. He started frisking me and telling me things. I’m asking him why did you stop me. He said that there’s a lot of stolen cars around there.”

Despite Gonzalez’s protests that he was the owner of the nice car, the officers didn’t immediately check his registration or license. When Gonzalez asked the officer if he’d run the plates, he didn’t answer him;

instead, he called Gonzalez’s name into the station. I told them, look, I’m a schoolteacher. I’ve been in this neighborhood for so long. I’m not here to cause any trouble. Just hear me out.”

*“I told them, look, I’m a schoolteacher. I’ve been in this neighborhood for so long. I’m not here to cause any trouble.”*

After Gonzalez had been detained in handcuffs for about 20 minutes, the officer went to open the car to get the registration from the glove compartment. After looking it over and examining his driver’s license, the officer who made the stop told him he was going to ticket him for speeding. He claimed Gonzalez had been traveling 38 mph in a 25 mph zone. This was the first time any of them mentioned they were holding him for committing a moving violation. After writing the ticket, they let him go.

For a long time after that incident, Gonzalez was angry and anxious. He was afraid to drive his beloved Mustang, fearing he would be stopped again. For a while, he refused to go out unless it was absolutely necessary. When he did go out, he made his girlfriend drive. Six months later, he traded in the Mustang for a car he hoped would not attract the attention of the police.

### *From Victim to Activist*

Michael McBride, a youth minister at a San Jose church, never intended to become a crusader against racial profiling. But his life - and his sense of purpose - changed the night of March 9, 1999. Although McBride,



**Michael McBride**

who was 23 at the time, had been stopped and questioned by the police several times before, his encounter that night with two white San Jose police officers was the first time he'd ever feared for his life.

“Black men are frequently targeted and misunderstood in this culture and everyone has a breaking point. That night was my breaking point.”

McBride grew up in the Bayview-Hunters Point area of San Francisco, one of the city's last predominately black neigh-

borhoods. Although inhabitants complain they have a hard time getting police assistance when they need it, officers constantly patrol Bayview-Hunters Point looking for drug and gang activity. “In the Bayview, I'd been stopped a whole lot of times before and handcuffed for no reason,” McBride said. “But I'd never been thrown to the ground or treated the way I was that night in San Jose. In the past, I'd probably been stopped about 10 times and I never got a ticket. But I was always with my friends and we made a big joke about it. But I didn't know San Jose all that well and I was alone.”

At 9:50 on a Tuesday night two officers pulled McBride over after he switched from the left to the middle lane on Berryessa Avenue. Officer Alex Keller asked McBride why he was swerving. When McBride replied he'd merely changed lanes, Keller asked him whether he had weapons or a criminal record.

McBride told Keller he was a minister and encouraged him to run a check on his license since he knew his record was clean. Keller ordered him out of the car, and, ignoring his protestations of innocence, told him to spread his legs.

“When he started to pat me down, my level of anxiety began to rise,” McBride said.

Keller, who was behind McBride, reached between the pastor’s legs and grabbed his testicles, squeezing them hard.

Shocked and in pain, McBride reached towards his groin, asking, “Hey, what are you doing?” At that, Keller grabbed his right hand and twisted it, forcing him to the ground. Keller’s partner, Officer Anthony Guarducci, grabbed his right arm and pulled it nearly out of its socket. “If you touch my hand again, I will snap your fucking neck,” Keller said, pulling McBride’s left arm behind his back. McBride felt the force of a foot or a knee in his back as the officers handcuffed him. The cuffs were so tight they chafed against his wrists.

“I was very afraid and upset,” McBride says. “I couldn’t understand why this was happening to me.”

Keller continued to curse at McBride as he stood him up and began searching his pockets and underwear. In pain, McBride pleaded with him: “I don’t have anything. Oh my God, I have not done anything. I’m a Christian minister.”

While they searched his car and called in his license, the officers locked McBride in the back of their cruiser. When he returned to the police car, Keller warned McBride never to touch a police officer’s arm. McBride explained that was the first time a man had ever grabbed and squeezed his genitals. The assault had startled and frightened him.

McBride says Keller replied, “What are you talking about? This is not Alabama or Mississippi.” But McBride explained, “I’m a young black man. This doesn’t have to be Alabama.”

At that point, Guarducci stepped in and said, “That’s a bunch of bullshit. If you want to talk like that,

*“Black men are frequently targeted and misunderstood in this culture and everyone has a breaking point. That night was my breaking point.”*

we'll take your ass to jail right now. We don't see you as a black man, we see you as a citizen. If you see us as two white guys, that's your problem. If we were two crooked cops, we would have beat your ass already and threw you in the field."

Cold, frightened and in pain, McBride again implored the officers to release him. They told him he was going to jail - Keller said there was a warrant out for the arrest of a Michael McBride of Fresno who was charged with carrying firearms. McBride replied that although he'd been to Fresno for church conventions, he'd never lived there; in fact, he lived in his pastor's house, down the street from where they'd stopped him. Keller called him a liar and the officers searched his car two more times.

The officers pulled a record for another Michael McBride up on the computer screen in their car. McBride demanded they enter his correct date of birth and Social Security number; when they entered this information, his record came up clean.

Now that it was clear they had the wrong man, McBride again asked to be released. At first, Guarducci said they were going to jail him for obstructing a police officer. But eventually they released him without a ticket or citation. Or an apology.

When McBride got home that night, his pastor's family was shocked by his appearance. "My shirt was ripped. My shoulder and arm were swollen. My shoulder was bleeding and my wrists were raw from the handcuffs. I was very shaken. They took me to the hospital where the doctor told me I had bruised ligaments in my shoulder."

Encouraged by church members and friends, McBride decided to speak out against his treatment at the hands of those two San Jose police officers. "Because I didn't have a record, I was articulate and a youth pastor and I had support, I felt a sense of duty to make sure people knew this was happening to people who aren't guilty."

After McBride filed a statement with the watch commander at the police department, a local television reporter showed up at his house to interview him. The directors of the San Jose NAACP called McBride to tell

him he wasn't alone. They accompanied him when he spoke to members of the city council to demand the officers apologize and change their tactics for handling routine traffic stops.

"The Amadou Diallo shooting was still on people's minds," he said. "I think it was unnerving for Mayor Ron Gonzalez. He didn't want San Jose to become known for this kind of thing."

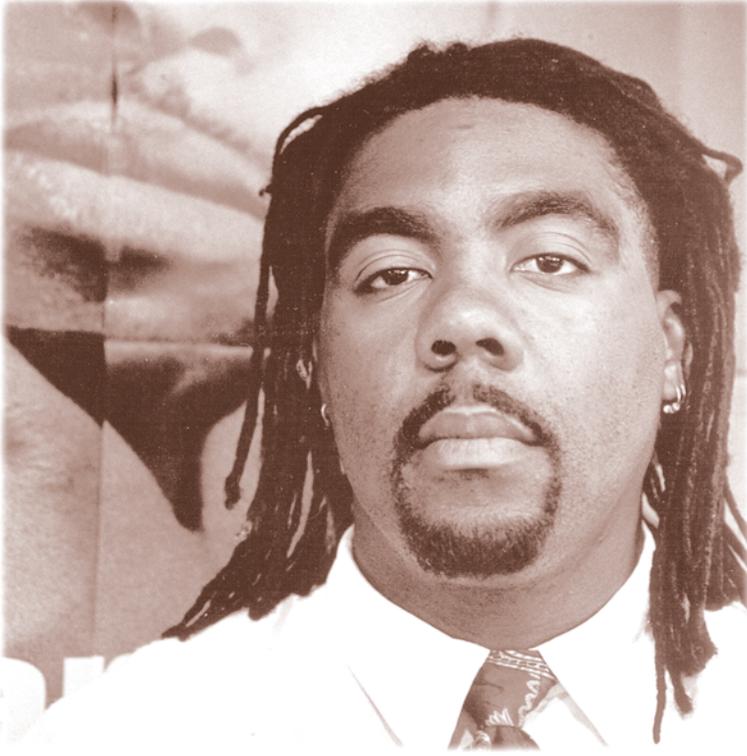
The San Jose Chief Police Department announced its plans to start voluntary collection of data on traffic stops about a week after the incident.

"To this day, I feel like this is something that shouldn't happen to anyone. Even if you're a criminal, you should be treated fairly. Everyone should be treated with an appropriate sense of justice. That's what my work is devoted to." McBride became an advisor to the San Jose Human Rights Commission on matters of police brutality and hate crimes. He has been a guest speaker at two U.S. Dept. of Justice conferences on law enforcement and community building. He has advocated data collection at scores of churches and rallies. MTV featured McBride in a documentary on racial profiling. And in January 2001 he was elected Vice President of the San Jose NAACP.

"I consider it a blessing from God that my experience has led me to help other folks. He gave me the strength to speak on this," said McBride. "It's depressing to think that human life is valued so low in the eyes of some police officers. By no means do we attempt to paint all police officers with the same broad brush. But we need to put effective parameters in place to offset those officers' behaviors. With data collection, they are aware that people are watching them."



Speaking at a press conference to promote the campaign to end racial profiling, San Carlos middle school teacher Milton Reynolds pulled out a folded, tattered paper from his wallet and held it up for the cam-



**Milton Reynolds**

*“I carry the citation around with me all the time because I don’t want to forget what happened.”*

eras. “I carry the citation around with me all the time,” he said, “because I don’t want to forget what happened.”

It is unlikely that Reynolds will forget the day he was followed to his home by a police officer who flashed the siren lights on Reynolds in his driveway. “There I was - right at the door of my own home — and the officer ordered me back into my car,” said Reynolds, who also works as a consultant for a diversity and communications consulting company. “When I asked the reason for the

stop, he told me I had run a stop sign, which was absolutely not the case. He then asked for my license and registration and went to check on that information. I could see his partner in the

police car stroking his shotgun and looking at me.

“It was almost surreal,” said Reynolds, a tall, enthusiastic young man whose bright smile fades when he recalls the unjustified stop. “He’s staring me down through his shades like some kind of B-grade movie while stroking the barrel of a shotgun. That was essentially what put me over the edge. When another police car drove up, I got really scared. I thought, ‘This is not going to happen to me anymore.’”

“The officer issued the ticket, told me if I had a problem with it, I could see him in court. After that incident, police cars were driving by my apartment, parking in front, even shining spotlights into my apartment. I worried that I was getting paranoid, but then my neighbor asked what was going on, and my fears were con-

firmed. In the end, the charges were dropped,” Reynolds added.

Reynolds called the ACLU DWB Hotline to report the incident. “I teach children at an impressionable age, and I didn’t want this to keep happening to them.”

Reynolds has since become an activist in the Racial Justice Coalition, and has spoken at press conferences, rallies and on the radio about the need for legislation to collect data on racial profiling. He has helped to organize Town Hall meetings so that others will have a platform to speak out as well.

## *The Cost of Complaint*

A Modesto Sheriff’s deputy never gave Victor Moreno, 39, a reason for the stop when he detained him, questioned him about drugs and weapons and searched his car. Moreno, who fixes cash registers and other business machines, was angry when he got back to work and decided to file a complaint.

Moreno, a father of two who is studying to become a CPA at Cal State University Stanislaus, works full time as a service technician for a business machine company. Part of



**Victor Moreno**

his job is to drive to businesses to troubleshoot their computers, cash registers and other machines, so he felt it was especially important that he be able to drive without being stopped for no reason.

When he went to the Sheriff's Department to drop off his complaint forms, he included a hand-drawn map of the area and contact information for a witness to the incident. He also submitted a copy of his complaint to his state representative. The legislator's office called back to say that they'd contacted the Sheriff's Department and the Sheriff would contact Moreno within 10 days. He never received a response from the Sheriff.

Moreno feels the Sheriff's Department tried to dismiss the incident. The witness said the department called him and he told them what he saw. But later the department left a message for Moreno, saying that he'd listed a non-existent patrol car number on his complaint. Moreno spotted the same patrol car again and called back to say that the department was wrong. He never heard from them again.

Moreno recalled that when he first came to the United States at age 16 from Zacatecas, Mexico, he worked in the fields with other dark-skinned Mexican immigrants. Often, they'd share a car to get to the fields. Usually, there would be a little cross or a medal for the Virgin of Guadalupe hanging from the rear view mirror. Many times the police pulled these cars over and harassed Moreno and his friends. Because his English was better than theirs, Moreno would speak for the group, attempting to get the police to let them go.

These days he feels more people are beginning to speak up and against this kind of mistreatment. "Someone is going to start listening and realizing that this is not an isolated case. This is not just about me, it's about all of us."



LaFrance Hamilton found a watch commander's threats of prosecution so daunting that he decided not to file a complaint against two officers who beat him to the ground and choked him during a routing traffic stop.

Hamilton, a 42-year-old African American auto detailer, was riding his bike in San Bernardino in March 1999 when he was stopped by two police officers, who were also on bikes. After a brief verbal exchange over whether or not he had the proper license for his bike, the officers pulled Hamilton off his bicycle, grabbed him around his throat, and kicked his legs out from under him, leaving him sprawled in the dirt. One of the officers landed on top of him and placed a knee on his chest, while continuing to choke him. What was the offense that drove the officers to beat and choke Hamilton? He didn't have a valid bike permit.

A shaken Hamilton signed a citation for not having a bicycle license. When he was released, he headed to the San Bernardino Police Department to file a citizen's complaint against the officers. The watch commander handed him a complaint form, but told him that if he knowingly filed a false complaint he could be criminally prosecuted. The watch commander told Hamilton that he had already spoken with one of the officers, who assured him that Hamilton had no injuries.

*“That law is used to intimidate people like me who wish to file legitimate complaints of police abuse”*

“I showed my injured wrist to the watch commander,” Hamilton explained, “but he told me that my injured wrist was the kind of injury that comes from resisting arrest.”

Hamilton was so discouraged by the watch commander's response, and so chilled by the threat of criminal prosecution that he decided not to file a complaint against the officers for their unreasonable stop, search and use of excessive force against him.

But Hamilton did not give up. With the help of the ACLU of Southern California, he filed a federal lawsuit in U.S. District Court in the first known challenge to the constitutionality of the California criminal statute that was used to threaten him into not filing a complaint. “That law – which treats complaints against law enforcement officers different from complaints against all other public officials --- is used to intimidate people like me who wish to file legitimate complaints of police abuse,” Hamilton explained.

Though Hamilton never filed his complaint against the officers, his subsequent actions may have a far greater effect: in August 2000, a federal judge ruled that the law is unconstitutional, stating that it “discriminates on the basis of the content of speech which it criminalizes, and therefore ...violates the First Amendment and the Equal Protection clause.”

Benjamin Prado, an immigrants rights activist in San Diego, was so concerned about racial profiling by the Border Patrol that he volunteered in a program to document the practice. The American Friends Service Committee and the Raza Rights Coalition had received many complaints from riders that the agents were targeting all Latinos on public transportation demanding proof of citizenship based “solely on their ethnic appearance.”

Prado explained that the INS and Border Patrol were stopping Latinos at sites away from the border, such as shopping centers and train stations, in an effort to circumvent a recent federal court ruling that bars agents from stopping people at the border and questioning them just because they look Mexican.

As a volunteer participant in a program designed to document these abuses, in February 2002, Prado was filming Border Patrol agents who were questioning Latino-looking passengers on the San Diego Trolley. A Border Patrol supervisor approached Prado and asked if he was a U.S. citizen. The officer then demanded that Prado relinquish his video camera. When he refused, several agents jumped him, wrestled him to the ground, grabbed the camera and destroyed the tape. When Prado got up and demanded the return of his equipment, he was again tackled by the officers. He was arrested for suspicion of assault on a federal officer, but although he was held for 25 hours, no charges were filed.

“The Border Patrol is well aware that the use of racial profiling as the sole indicator to suspect someone of illegal immigrant status is not permissible,” said Prado. “But when I caught them, they felt little compunction about turning on me and destroying evidence of their illegal activity.”

## THE STRUGGLE TO END RACIAL PROFILING IN CALIFORNIA

Although racial profiling has come to be recognized as a national disgrace by elected officials and civil rights leaders from President Bush and President Clinton to Jesse Jackson and Dolores Huerta, California's Democratic Governor, Gray Davis, has placed himself firmly on the wrong side of the issue.

As the leader of the country's most populous and racially diverse state, Governor Davis has become the most visible and stubborn opponent of meaningful reform. Davis has refused to sign bills of the type eagerly supported by other governors from both parties. His "do nothing" approach to racial profiling has led to litigation and profound disillusionment in communities of color.



*Governor Davis is the only sitting governor to veto a racial profiling bill.*

### *Governor Davis Vetoes Data Collection Legislation*

The controversy for Davis started in September 1999 when the California Legislature passed a modest data collection measure that would have required the state's law enforcement agencies to collect less than one third of the data required by the bills enthusiastically signed into law by the governors of Rhode Island and Missouri. The vote in the Legislature was overwhelmingly bipartisan: 29 - 0 in the Senate and 61 - 16 in the Assembly. The bill was supported not only by the civil rights community but also by national minority police associations and the state Attorney General.

The bill was carried on the Assembly floor by Rod Pacheco, the first Latino Republican elected to the California Legislature in nearly a century, and a former prosecutor who had been named "legislator of the year" by law enforcement. Pacheco gave a passionate speech on the floor about his own experience with racial profiling growing up in East Los Angeles.

Nonetheless, on September 28, 1999, Governor Davis stunned California by vetoing the bill on the ground there was "no evidence the practice is taking place statewide." The Governor claimed it was not "appropriate" for state government to require local police agencies to address this civil rights issue with data collection, but "encouraged" the state's law enforcement agencies, if they chose, to address racial profiling with data collection on a voluntary basis. He ordered the California Highway Patrol to begin collecting data, but he told local law enforcement agencies that it was up to them to decide whether they wanted to collect data or not. As civil rights advocates pointed out, Davis's position harkened back to the days when Southern politicians claimed that the enforcement of the nation's civil rights laws should be a local option. Ironically, the only other governor to veto a racial profiling bill was Davis's predecessor, Republican governor Pete Wilson.

Within hours of the veto, outrage spread through communities of color and civil rights organizations

mobilized in response. The backlash against Davis's refusal to take this simple step of tracking traffic stops, so that it would be possible to identify and prove discrimination, was so swift and vehement that within 24 hours the Governor felt compelled to engage in damage control. The day after the veto, he released a befuddling statement saying that he had written the Mayor of Los Angeles and the Los Angeles County Board of Supervisors asking them to collect the data required in the bill he had vetoed the day before. While the targets of the letter openly expressed irritation at the governor's stunt, communities of color fumed.

Press conferences were held in San Jose, Oakland and Los Angeles in the days that followed at which civil rights leaders from the NAACP, ACLU, LULAC, and MALDEF, as well as elected leaders - including the former mayor of Oakland - blasted the governor for turning his back on communities of color and taking their concerns seriously. The bill's sponsor, Senator Kevin Murray, explained to the *Sacramento Bee*, "He's done something harmful and maybe even insulting to the minorities of this state."

Governor Davis, elected with the overwhelming support of communities of color, had not only minimized his gubernatorial obligation to protect civil rights on the local level, he insulted and betrayed key constituencies.

## Grassroots Uprising

Four months after Davis's veto, not a single major law enforcement agency had volunteered to collect data. In response, what the *Bee* described as a "determined group of nearly a dozen state legislators" challenged their Governor in January by re-introducing the data bill he had vetoed. They spoke of their own experiences with racial profiling and insisted that data was necessary. Senator Maria Escutia and Assemblyman Edward Vincent talked about being stopped for no reason - in Vincent's case when he was working as a probation officer. "This is something that particularly male Hispanics and African-Americans have contended with very quietly. . . . (This)

has happened to me over the years," said Sen. Richard Alarcon, D-San Fernando. "This issue has reached critical mass in communities of color ... We will not let this issue die," said Sen. Kevin Murray, D-Culver City, the lead author of the bill.

The response from Governor Davis? "The Governor's position on this hasn't changed an inch," said his spokesman Michael Bustamante. (*Sacramento Bee*, January 27, 2000.)

The Governor was not only ignoring legislators of his own party, but thousands of people who

stepped forward to speak out about their own experiences of "Driving While Black or Brown." The ACLU advertised its English and Spanish DWB hotlines on billboards, radio stations and ethnic publications around the state. Thousands of people of color who had been racially profiled, stopped and searched by the CHP, local police departments and sheriffs' departments called to report their stories, and express their desire to take part in a movement that would stop the practice.

Civil rights and grassroots organizations throughout California came together to form the Racial Justice Coalition (RJC). Immediately on the heels of Governor Davis's veto, the coalition called its first meeting and vowed to launch a major statewide campaign against racial profiling in California with the primary goal of securing statewide mandatory data collection.

From the beginning, the RJC merged traditional civil rights groups like the NAACP, MALDEF, LULAC,



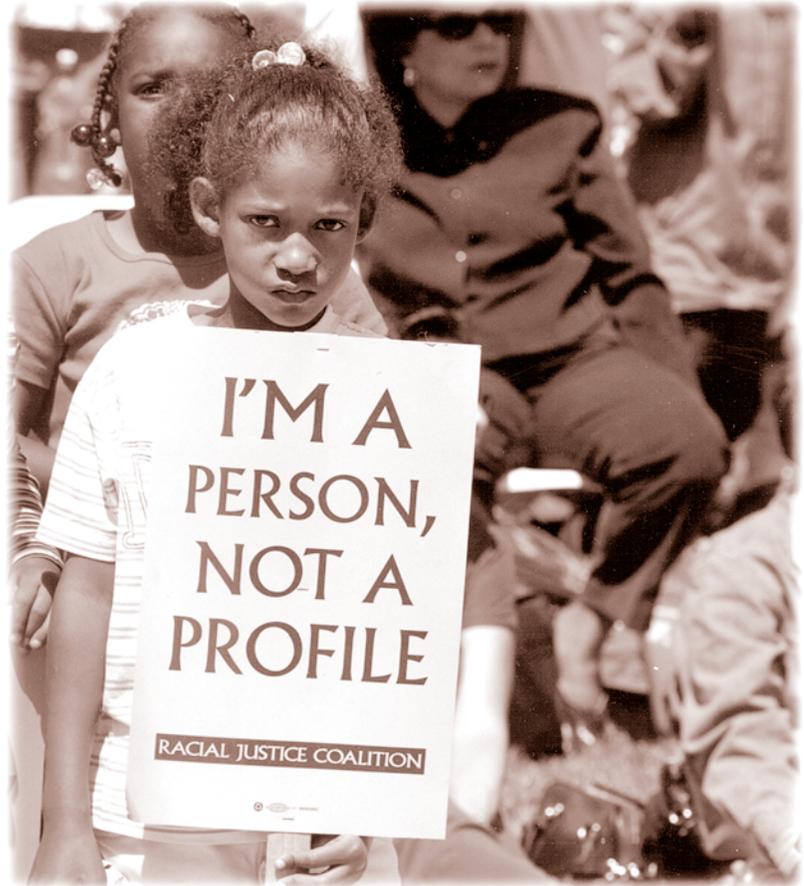
Lawyers' Committee for Civil Rights and the ACLU with local, grassroots, and immigrant rights groups like Ella Baker Center for Human Rights, La Raza Centro Legal, PUEBLO, Californians for Justice, and the National Center for Immigrant and Refugee Rights. It also attracted labor unions like the United Farm Workers and SEIU locals, among others. Most importantly, the Coalition provided a means by which victims of racial profiling could join a large-scale organizing campaign against biased police practices.

The RJC was united in its view that the time was long overdue for racially biased police practices to come to an end. "The veto was an insult to people of color in California," stated Michelle Alexander, Director of the Racial Justice Project of the ACLU of Northern California. "If Governor Davis doesn't know that racial profiling is a serious problem in California, then he doesn't know the people he claims to represent."

"Racial profiling is not a figment of our imagination," said Walter Wilson, then-Political Action Chair for the Western Region of the NAACP. "If Governor Davis thinks that we are going to forget this veto, he's wrong. We won't rest until discriminatory police practices are part of the distant past. The question is what side of history Governor Davis wants to be on."

A strong commitment to organize with, and on behalf of, those most affected by biased police practices emerged as central to the RJC's philosophy. Marcos Contreras, then-State Director of LULAC, explained, "The Latino community in California is gravely concerned about racial profiling. In front of our families and loved ones, we are being humiliated and interrogated for no good reason. We joined this coalition because these practices have to stop, and it is up to us to make them stop."

The RJC's determination to mobilize against racial profiling quickly attracted a wide spectrum of public support. In California alone, over 50 organizations endorsed the call for a major demonstration on April 27, 2000 at the State Capitol to demand that Governor Davis sign the new data collection bill. Eight town hall meetings were organized by the RJC across the state attracting thousands of people, and hundreds related poignant testimony describing incidents of racial profiling and brutality by law enforcement. A racial justice constituency that had been separated and frustrated in their efforts to achieve change, joined to flex their collective political muscle. Compelling testimony at the town hall meetings generated local and statewide media coverage of discrimination by the police. "DWB" became a part of California's vocabulary.



Susana Millman

## *Fraudulent Racial Profiling Bill*

Less than an hour before the statewide April 27th demonstration in front of the State Capitol began, the

Governor issued a press release stating that he had agreed to sign a bill “outlawing” racial profiling. The area was bristling with TV cameras, satellite trucks and microphones. The news media expected the crowd and the Coalition speakers to respond with elation.

It was immediately apparent, however, that the new racial profiling bill was no cause for celebration. Davis had cut a deal with the sponsor of the legislation, Senator Kevin Murray, in which Davis agreed to sign a bill that would supposedly “outlaw” racial profiling in exchange for Murray’s promise to abandon his data collection bill. The deal also included diversity training for police officers and a requirement that the police hand out their business cards to people who are stopped but not ticketed. The Los Angeles Police Department (LAPD) issued a press release congratulating Davis and Murray, noting that the new racial profiling bill “will require all law enforcement agencies to conform to long-standing LAPD practice.” The LAPD - an agency notorious for its own racial profiling practices — had not even begun to solve its own problem, yet pursuant to the new bill all officers in California would be expected follow the lead of the LAPD.



Susana Millman

Weeks later, the actual language of the new racial profiling bill was finally released. As it turned out, the deal was worse than anyone had imagined. The new bill did not “outlaw” racial profiling or create any new civil or criminal penalties for race discrimination by the police. Instead, the bill simply defined racial profiling as “detaining a suspect . . . without any individualized suspicion.” That has been the law for more than 200

years - the Fourth Amendment to the U.S. Constitution. There was no new law in the bill.

The so-called “diversity training” was also a fraud. The bill eliminated all of the substantive training provisions that had existed in an earlier diversity training bill, and gave nearly unfettered discretion to establish the curriculum and standards to Peace Officers Standards and Training - a group adamantly opposed to data collection and other meaningful police reform.

The business cards included in the new bill did not provide any means for motorists who suffered discrimination to report complaints. The bill merely required the business card to provide a phone number that “may be used, if necessary, to report any comments, positive or negative.” It did not require the phone number to be connected to the complaint system already required by state law. The bill, in effect, required agencies to create a “suggestion line” while leaving agencies free to completely ignore the “suggestions.” The bill would actually reduce police accountability, by making it more difficult for complaints to be filed, investigated and tracked.

In the months that followed, civil rights leaders and community members held press conferences at the State Capitol denouncing the watered-down bill and explaining why it would do more harm than good. Hundreds of concerned community members and advocates lobbied legislators and testified at numerous hearings on the new bill, exposing its inadequacies and demanding data collection. The Governor had hoped to throw the Coalition in disarray by signing the fraudulent bill, but the Coalition held together and pressed for mandatory data collection.

Every major newspaper in California issued editorials acknowledging that the new racial profiling bill would do little or nothing except give Governor Davis the opportunity to claim false credit for addressing racial

profiling. The bill was labeled a “fraud” by the *Sacramento Bee*, “a flimsy bill that meekly ambles between compromise and pandering,” by the *San Jose Mercury News*, and “less than a compromise than it is a cop-out” by the *Oakland Tribune*. The *Los Angeles Times* pointed out that, since Davis supports the tracking of school scores to spot problems that need to be solved in education, “the same should go for law enforcement.”

With the Democratic National Convention coming to Los Angeles, it fell to national civil rights leaders to try to convince California’s governor of the need for mandatory data collection. Numerous other states had already enacted laws requiring data collection, including Rhode Island, North Carolina, Connecticut, Kansas, Missouri, Tennessee and Washington. Four of those bills were signed by Republican governors; three were signed by Democrats. Governor Davis was the only sitting governor to veto a data collection bill, and his opposition threatened the positive momentum that was building across the country.

In an August 7, 2000 press release, members of the Congressional Black Caucus urged Davis to drop his opposition to data. The release quoted Congressman John Conyers saying, “Nothing is more important to developing a solution to this problem than gathering meaningful data.” With the Convention opening locally that day, Congresswoman Maxine Waters said, “Los Angeles is a city that has been plagued by problems of racial profiling and police abuse. We have to address racial profiling on the battleground where it is a particular problem.”



Susana Millman

The next day, the Racial Justice Coalition ran a full page ad in the *New York Times* under the headline, “Governor Davis: Why Are You the Only Sitting Governor to Veto a Racial Profiling Bill?” with an open letter to the governor signed by 18 key, national civil rights figures and organizations ranging from Rev. Jesse Jackson, Sr. of Rainbow/Push and Martin Luther King III of the Southern Christian Leadership Conference to Raul Yzaguirre of the National Council of La Raza, Ira Glasser of the ACLU, Karen Narasaki of the National Asian Pacific American Legal Consortium and Elaine Jones of the NAACP Legal Defense and Education Fund.

Finally, on August 24, 2000, the broad coalition of civil rights groups and elected officials succeeded in getting its message across. Legislators on the Senate Public Safety Committee made clear that they were not fooled by the new racial profiling bill and would not pass it out of committee. When Senator John Vasconcellos was asked by the *Los Angeles Times* what he thought of the Governor’s racial profiling bill, he replied: “It’s b.s. Business cards are a cover for doing nothing.” Senate President Pro Tem John Burton made it clear that the fraudulent racial profiling bill was dead. “Every civil rights leader in the country is opposed to it,” Burton said. The bill was promptly withdrawn.

Civil rights leaders applauded the demise of the bill, and vowed to continue the fight for data collection and police accountability. Liz Guillen, MALDEF’s Legislative Director, breathed a sigh of relief: “I’m glad to see that the legislators came to understand that Latinos and others who are racially profiled would still have no way of documenting the problem. We will continue to work toward enacting a meaningful racial profiling bill that includes data collection.”

But the collective sigh of relief came too soon. In the final days of the legislative session, another racial profiling bill backed by Governor Davis was introduced and swept through the Legislature with no meaningful hearing and little debate. There was no time to mobilize or respond. The bill included diversity training and an empty ban on racial profiling. The business cards were dropped. The new bill was a recycled version of the profiling bill that had just been withdrawn.

Governor Davis signed the new bill on September 26, 2000, and issued a press release congratulating himself. In the release, Davis acknowledged that the bill did not include mandatory data collection or any other form of police accountability, stating “I believe that local mayors, supervisors, and law enforcement officials, not the state, are best positioned to decide whether or not to collect data on racial profiling. And I strongly urge them to do so. . . . In addition, the City of Los Angeles will soon join the ranks of law enforcement agencies collecting data on racial profiling.”

What Davis failed to point out is that Los Angeles would be collecting data not because of the Governor’s encouragement but because the federal government was forcing them to do so. In fact, ever since Davis’s veto of the data bill the prior year, the LAPD and the Mayor had continued to vigorously resist instituting data collection. In February 2000, the ACLU of Southern California filed a federal lawsuit on behalf of three African American and two Latino men who had been followed, stopped and detained by Los Angeles Police officers for no valid reason. Eventually, the Civil Rights Division of the Justice Department had to step in and insist that a traffic stop data program be made part of the consent decree it was forcing on the department, because Governor Davis and local officials had abdicated their responsibility to protect motorists of color from discrimination. Had Davis been willing to sign a data collection measure, this part of the decree would have been unnecessary.

## *The Failure of Voluntary Data Collection*

Governor Davis’s “all optional, all the time” approach to racial profiling data collection and reporting has proven to be a failure - even with respect to the agencies that have volunteered.

Under the bill Davis vetoed in 1999, all law enforcement agencies in the state would have been required to collect and report several key, specific categories of data on their stop and search practices and send that information to the California Highway Patrol (CHP) for inclusion in a statewide report to be released each July for at least four years. Davis rejected that approach, and instead instructed the CHP to produce a report annually for three years on the CHP’s voluntary data collection efforts and to include in the report “information from any agency willing to voluntarily submit their data to the CHP.” (Governor Davis letter to CHP Commissioner D.O. “Spike” Helmick, September 28, 2000.)

The CHP’s first report was dated July 1, 2000, but was not made public until months later when it was leaked to the Stockton Record. The report was grossly inadequate. To begin with, it aggregated all the stop data, making it impossible to make the relevant comparisons and measure stop and search rates of each CHP division and office as compared to the surrounding geographic areas. In addition, the report failed to include any race data on the search practices - even though search rates are generally the best indicator of whether racial profiling is occurring in an agency. The CHP report simply stated in passing, with no data or documentation: “Hispanics were most often represented in searches resulting in a verbal warning.” The CHP Commissioner claimed the failure to include the search data was an oversight. If Governor Davis had signed the mandatory data collection bill, all of the relevant data would have been reported by the CHP as required by law.

As for data from local agencies, the report revealed that only a small handful of agencies in California reported their data to the CHP. There are more than 350 law enforcement agencies in California, but only 16 agencies in the entire state reported data. Only one agency south of the Bay Area, the San Luis Obispo County Sheriff’s Department, reported data. Dozens of California agencies engaged in data collection efforts declined to report their data to the CHP - apparently because of the lack of standardization and consistency in the program.

## Who is Collecting What?

In 2001, the Racial Justice Project of the ACLU conducted a survey under the Public Records Act to find out which law enforcement agencies were collecting data to track racial profiling, and what data they were collecting. Not all agencies responded to the survey. Others have notified us that they have changed their data collection practices since the survey.

Based on the available information, fewer than 50 of the more than 350 law enforcement agencies in California are currently collecting data on racial profiling. Only a handful of agencies are collecting the five essential elements of data, including (a) the race and ethnicity of the driver; (b) the reason for the stop; (c) whether a search was conducted; (d) what, if anything, was found in the search; and (e) the result of the stop. If Governor Davis had signed a mandatory data collection bill, this basic information would be publicly available for every police department.

### **Agencies currently collecting the five key categories of data:**

Alameda County Sheriff  
California Highway Patrol  
Los Angeles Police Department  
Los Angeles County Sheriff  
Modesto Police Department  
Napa County Sheriff  
Oakland Police Department  
Sacramento Police Department  
San Diego Police Department  
San Francisco Police Department  
Stanislaus County Sheriff

### **Agencies currently collecting some data (but not the correct data)**

Alameda County Sheriff  
Alameda Police Department  
Amador County Sheriff  
Angels Camp Police Department  
Berkeley Police Department  
Blue Lake Police Department  
Chula Vista Police Department  
Citrus Heights Police Department  
Colusa County Sheriff  
Corning Police Department  
Davis Police Department  
Emeryville Police Department  
Fresno Police Department  
Half Moon Bay Police Department  
Hayward Police Department  
Livermore Police Department  
Los Angeles County Sheriff  
Marin County Sheriff  
Menlo Park Police Department  
Merced County Sheriff

Modesto Police Department  
Napa County Sheriff  
Newark Police Department  
Palo Alto Police Department  
Piedmont Police Department  
Placer County Sheriff  
Pleasanton Police Department  
Redding Police Department  
Richmond Police Department  
Riverside Police Department  
Sacramento County Sheriff  
San Jose Police Department  
San Luis Obispo County Sheriff  
Santa Clara County Sheriff  
Stanislaus County Sheriff  
Stockton Police Department  
Sutter County Sheriff  
UC Berkeley Police Department  
UC San Francisco Police Department  
Union City Police Department

### **Agencies reporting an intention to collect data in the future:**

Oakdale Police Department  
Placerville Police Department  
Santa Cruz County Sheriff  
Tiburon Police Department

### **Agencies that collected data for some period of time in the past:**

Davis Police Department  
Fremont Police Department  
San Carlos Police Department  
San Leandro Police Department

The data that was forthcoming from these 16 agencies was extremely limited, and rarely included highly relevant data about searches and the reason for the stop - information that is critical to determining whether racial profiling is a problem in any agency. The few agencies that reported search data by race didn't seem to understand its significance. The San Leandro Police Department, for example, reported that Latino drivers were twice as likely to be searched after traffic stops than whites. With young male drivers often thought to be the most likely target of profiling practices, Latinos were three times more likely to be searched and African Americans were 80% more likely to be searched than their white counterparts. Yet, notwithstanding these glaring disparities, the San Leandro Police Department's reaction was to suspend the data collection program citing the lack of direction from Governor Davis's program.

Although Davis's call for volunteerism in law enforcement has proven to be an abysmal failure, Davis has given no indication that he ever plans to show leadership and require law enforcement to do what is necessary to protect motorists' civil rights. Quite to the contrary, Davis refused to support yet another racial profiling bill in 2001, this one introduced by Assemblymember Marco Firebaugh with broad support from the Latino and Black Caucuses. The bill correctly defined and prohibited racial profiling, provided a cause of action for victims, and mandated statewide data collection. It was supported by more than 100 organizations, including every major civil rights organization and minority law enforcement associations, such as the National Organization of Black Law Enforcement Executives (NOBLE). After Davis vowed to veto the bill if it reached his desk, the bill stalled and never reached a floor vote.

Adding insult to injury, on July 26, 2001, Governor Davis wiped out key voluntary data collection provisions from the annual budget, thus allowing local law enforcement agencies to qualify for special funding to support data collection programs, even if those agencies are not collecting the basic data that is necessary to determine whether racial profiling occurs in their departments.

The 2001 state budget included \$1 million in special grants to local law enforcement agencies that agreed to collect data voluntarily to track racial profiling, in addition to approximately \$2 million rolled over from last year's budget. The budget language stated that the funds would be available only to those law enforcement agencies that required its officers to collect the five essential categories of data necessary to track racial profiling. Governor Davis eliminated the key provisions, including the reason for the stop, whether a search was conducted, whether drugs or other evidence of illegal activity was found and the result of the stop.

On behalf of the NAACP, LULAC, victims of racial profiling and taxpayers, the ACLU immediately sued the Governor, charging that he usurped the Legislature and exceeded his authority under the state constitution when he struck all of the relevant data provisions for the 2001 Budget Bill. As governor, Davis has the power to sign or veto bills, but not rewrite them by striking provisions that he does not like.

Before the court had the opportunity to hear the case, Davis switched his position and announced that all law enforcement agencies would now be required to collect the specified data in order to qualify for funding to support their voluntary data collection programs. Recognizing that he was about to lose a major racial profiling lawsuit, Davis cut his losses and made the necessary changes.

While this is a significant victory, the reality remains that only a small percentage of law enforcement agencies are collecting any racial profiling data, and the vast majority of agencies that are collecting data, are not collecting the essential elements of data that are necessary to determine whether racial profiling is occurring, such as search data.

Search data is critical to determining whether and to what extent racial profiling occurs in any law enforcement agency, because it indicates the extent to which motorists of color are viewed and treated as potential criminals in the course of an ordinary traffic stop. Search data revealed through discovery in the class action lawsuit, *Rodriguez, et al. v. California Highway Patrol*, showed that Latinos were three times as likely as whites to be searched by drug interdiction officers in the Central and Coastal Division, and African Americans were twice as likely to be searched. In response to these discriminatory search rates, the CHP issued a six-month moratorium on consent searches (the practice of seeking consent to search a vehicle even when there is no evidence of criminal activity). The CHP is the only law enforcement agency in the country to ban this controversial drug interdiction tactic; the

moratorium on consent searches is still in effect.

Search data has proved critical in uncovering patterns of racial profiling in other agencies in California as well. For example, the Oakland Police Department recently released data showing that African Americans were three times as likely to be searched as whites. Similarly, the Stockton and San Diego Police Departments released data showing that Latinos and African Americans were more than twice as likely as whites to be searched in the course of an ordinary traffic stop.

There are more than 350 law enforcement agencies in California. According to a Public Records Act survey conducted by the ACLU during the summer of 2001, fewer than 50 agencies have agreed to collect some data voluntarily. Only a small handful of agencies have agreed to collect the five essential elements of data that were outlined in the original budget language, including the Sacramento Police Department, the San Francisco Police Department, the San Diego Police Department, and the Oakland Police Department. These agencies clearly recognize that positive police-community relations is impossible if law enforcement is unwilling to take the basic step of collecting the information necessary to monitor and protect people's civil rights. As long as communities of color experience pervasive discrimination by law enforcement, the police will be viewed in those communities as the enemy, rather than as an ally in the fight against crime.

## *Reluctance to Change*

Although a few departments have begun to collect the necessary data, few departments have been willing to make any policy changes to remedy the severe disparities in stop and search rates. Law enforcement still clings to the notion that it makes sense to employ tactics that have the purpose or effect of targeting motorists by race.

For example, the Sacramento Police Department has arguably the best data collection program in California. The department collects all of the necessary data and has demonstrated a genuine commitment to gathering accurate data. However, after a year of collecting data, the department released a biased and misleading report by an "independent analyst," Howard Greenwald, a management and policy professor from the University of Southern California.

Greenwald's report showed that African Americans were twice as likely as whites, and Latinos were 1.75 times as likely, to be ordered out of their cars, detained for prolonged periods of time, and searched following routine traffic stops. The data also revealed highly disparate stop rates. For example, in two neighborhoods where African Americans comprised only 7.2% and 8.6% of the population, they accounted for 22.4% and 27.7% of the drivers stopped respectively.

The report concluded that, despite these gross racial disparities, there was no reason to believe that the Sacramento Police Department was engaged in "inappropriate" racial profiling. According to Greenwald, it made sense for officers to rely on race as a factor in making decisions about whom to stop and search in high crime areas or during certain times of the night. He further reasoned that since a higher percentage of African Americans are reported as perpetrators of certain types of crime, disproportionate traffic stop and search rates make sense. He arrived at this conclusion despite the fact there is no evidence whatsoever that African Americans are more likely to commit traffic offenses than whites. His analysis proceeded by first asserting that it is appropriate to target African Americans and Latinos for traffic stops based on the assumption that they are more likely to be guilty of some unrelated crime, and then he concluded that the data revealed no "inappropriate" racial profiling. He reached this remarkable conclusion notwithstanding the fact that motorists of color were no more likely to be carrying drugs or other contraband in their vehicles than whites.

The Greenwald report sparked outrage among community groups. Yet, instead of condemning Greenwald's explicit approval of racial profiling, or correcting the impression created by the report that it is "appropriate" to target motorists on the basis of race, Chief of Police Arturo Venegas put the report on the department's website, congratulated himself for the department's data collection efforts before the Sacramento City Council, and con-

vened a committee of community groups to consult with Greenwald on how to analyze data in the future.

It seems that even in progressive departments, there remains considerable reluctance to confront the problem of racial profiling and implement meaningful reforms. Unfortunately, the overwhelming majority of law enforcement agencies are following Governor Davis's lead and doing nothing to address the serious problem in California. Historically, the voluntary enforcement of people's civil rights has proven to be utterly unworkable. The same remains true today.

## *The New Threat to Accountability*

Today, there is a new, extraordinary threat to fair and equitable police practices, as well as racial justice in virtually all spheres. This new threat is dubbed by its sponsors, the Racial Privacy Initiative. This initiative is sponsored by Ward Connerly, the African American businessman who led the campaign to prohibit affirmative action at the University of California in 1995, and then took his campaign statewide to secure passage of Proposition 209.

Despite its name, this initiative has nothing to do with protecting people's privacy, and everything to do with turning the clock back to a time when laws against discrimination did not even exist. The so-called Racial Privacy Initiative would prohibit state agencies from collecting racial data, and thus keep secret from the public basic information about race and ethnicity so that it would be nearly impossible to enforce anti-discrimination laws, or make policy reforms that are in the best interests of the communities those laws are designed to serve.

Since the passage of the Civil Rights Act of 1964 — which outlawed racial discrimination in housing, employment and other key areas of public life — data collection and reporting has been a critical feature of civil rights enforcement. Without mandatory data collection and reporting by employers, for example, it would be impossible to know whether an employer is engaging in a pattern of discrimination in hiring, promotion or discipline. Accordingly, data collection has been a key enforcement mechanism in state and federal civil rights laws for decades. The fact that law enforcement has been exempt from data collection requirements to identify and track possible discrimination in its operations reflects a glaring loophole - a loophole which the ACLU, NAACP, LULAC, MALDEF and dozens of other civil rights organizations have been struggling to close through the DWB Campaign.

Ironically, Connerly's initiative would create an exception for law enforcement, thus allowing police departments to continue to create crime statistics and identify suspects by race. Yet the initiative also includes a provision specifically prohibiting the California Legislature from enacting any law that would require local law enforcement agencies to collect data, including data to track racial profiling. Thus, the initiative specifically allows law enforcement to continue identifying suspects by race and engaging in racial profiling, but prevents the public from passing any laws that would have the effect of uncovering that discrimination.

Because the Connerly initiative would have the effect of nullifying any mandatory data collection bill enacted by the Legislature, and would permanently thwart any effort to identify and address race discrimination by state and local law enforcement agencies (or any other public agencies), the ACLU and numerous other civil rights organizations in the state have made defeating the Connerly initiative a top priority.

# DATA COLLECTION IN CALIFORNIA

## Who is Being Stopped and Searched?

### California Highway Patrol

Latinos are the most likely racial or ethnic group to be stopped, searched, and then released without a ticket or citation because they are innocent of any crime.

Latinos are three times as likely as whites to be stopped and searched by drug interdiction officers in the Central and Coastal Divisions, and African Americans are twice as likely as whites to be stopped and searched.

In 1997, the CHP's drug interdiction canine units stopped nearly 34,000 people, but less than 2% of them were actually carrying drugs.

### San Diego Police Department

Latinos represented 20% of the city's driving population, but 28% of stops, and 50% of searches.

African Americans represented 8% of the city's driving population, but comprised 11.6% of vehicle stops, and nearly 20% of searches.

In more than 90% of all vehicle searches, officers found no drugs or contraband of any kind. Less than 2% of vehicle stops resulted in arrest for any offense.

### Sacramento Police Department

In every neighborhood except one, the percentage of African Americans who were stopped exceeded the percentage of African Americans in the neighborhood's population. In one neighborhood, African Americans accounted for only 8.6% of the population, but accounted for 27.7% of the stops.

African Americans comprise only 14% of the driving population, but 34% of those stopped for non-hazardous violations.

African Americans were twice as likely as whites to be ordered out of their vehicles, and Latinos were 1.74 times as likely to be ordered out of their cars.

African Americans were twice as likely as whites to be searched in the course of a traffic stop, Latinos were 1.75 times as likely to be searched.

### San Leandro Police Department

Latino drivers are twice as likely to be searched as whites.

Among young men, Latinos are three times as likely to be searched, and African Americans are 80% more likely to be searched.

### Oakland Police Department

African Americans are 3.3 times more likely than whites to be searched in the course of a traffic stop.

More than 14% of all stops of African American motorists resulted in a search, while only 4% of stops of white motorists resulted in a search. African Americans were 65.8% of motorists searched.

Whites are far less likely to be stopped than motorists of color. According to the 2000 census, whites comprise 31.3% of Oakland's population, yet they account for only 16% of vehicle stops.

## THE ROAD TO REFORM

In the era of the war on drugs, African American and Latino men have been identified as the "enemy" and presumed guilty by law enforcement, politicians, and the media. As a result, racial profiling has become part of the culture of law enforcement and our society as a whole. In this report, we have tried to deepen the public understanding of this problem and document the ongoing efforts to eradicate racial profiling.

We have heard the voices of some of the thousands of black and brown motorists who have been stopped merely because of the color of their skin. We have reported the difficult, complex - and as yet, unsuccessful -- political struggle to secure the passage of a data collection bill in California. Where do we go from here?

Bringing an end to racial profiling will not be easy, but it is possible. The ACLU calls on state, federal, and local legislators, as well as law enforcement officials to pursue the following five-point plan for eliminating racial profiling. This plan should be implemented through (a) state legislation; (b) city council ordinances; (c) amendments to city charters; and (d) voluntary action by law enforcement.

### *Define and Prohibit Racial Profiling*

A clear definition and prohibition against racial profiling should be adopted and implemented at the federal, state and local level. Law enforcement should be prohibited from relying on race in any fashion and to any degree when making decisions about whom to stop, detain, interrogate or search except where there is a specific suspect description.

*Law enforcement should be prohibited from relying on race in any fashion and to any degree when making decisions about whom to stop, detain, interrogate or search except where there is a specific suspect description.*

This definition and prohibition was originally promulgated by the U.S. Justice Department and included in the consent decree resolving the racial profiling lawsuit against the New Jersey State Police. It is a model definition, and is the standard against which all police conduct should be judged.

Some law enforcement agencies and advocates of biased police practices argue that officers should be free to rely on race, in part, when developing reasonable suspicion or probable cause of criminal activity. They argue that illegal racial profiling should be defined as occurring only when police rely "solely" on race or ethnicity, thus leaving officers free to rely on race in part.

If the police have no reason to suspect that criminal activity is occurring without considering someone's race, they should not stop or search someone after considering the color of his or her skin. Motorists should not be treated differently based on their race or ethnicity to any degree.

Quite simply, there is no excuse for the use of race by law enforcement, except when there is a specific suspect description identifying a particular suspect by race. Every law enforcement agency should have a clear policy prohibiting racial profiling in accordance with this definition.

## *Secure Comprehensive Mandatory Data Collection*

Without comprehensive data, it is impossible to track, monitor or prove discrimination by the police. Every law enforcement agency in the state should be required to collect, at a minimum, data regarding: (a) the race and ethnicity of the motorist; (b) the reason for the stop; (c) whether a search was conducted; (d) what, if anything, was found in the course of the search; and (e) the result of the stop - i.e. whether a ticket was issued or an arrest was made. These five categories of data are absolutely essential to determining whether and to what extent racial profiling is a problem in any community. Because Governor Davis has abdicated his responsibility to protect people of all colors from discrimination, local city councils (and county boards of supervisors) should pass resolutions and amend local city charters to require collection of the five essential elements of data. Of course, any agency that is seriously committed to ending racial profiling will agree to collect this data voluntarily.

### **What Data Should Be Collected?**

Any law enforcement agency that fails or refuses to collect the five categories of data listed below is NOT collecting the basic data that is necessary to determine whether a problem exists. In fact, the decision by a law enforcement agency to collect some, but not all, of this data may be an attempt to conceal - rather than uncover - racial profiling by their officers.

1. **Race/Ethnicity of Motorist.** Without this information, it is impossible to determine whether and to what extent people of color are stopped at a disproportionate rate.
2. **The Reason for the Stop.** People of color are often stopped for extremely minor traffic violations, such as burned out license plate lights, overly worn tire tread, failure to use the turn signal properly, etc. Without information regarding the reason for the stop, it is impossible to know whether motorists of color are being singled out and stopped for minor violations that are ignored when committed by whites.
3. **Whether a Search Was Conducted.** Search data is absolutely essential. In some jurisdictions, people of color may be stopped at similar rates as whites, but people of color are searched at dramatically higher rates. If data is collected only regarding who is stopped, it may seem like no discrimination is occurring, when in fact discrimination is rampant.
4. **Whether Drugs or Other Evidence of Illegal Activity Was Found.** It is not enough simply to learn that a search was conducted. Without information regarding whether drugs or other evidence of illegal activity were actually found during the search, it is impossible to determine whether officers are searching extraordinary numbers of innocent people, or generally wrong in their assumptions about certain racial or ethnic groups.
5. **Whether a Citation Was Issued or Arrest Was Made.** This information is critical to determine whether there are discriminatory ticketing patterns, or whether certain racial and ethnic groups are being subjected to "status checks" - stopped, interrogated, possibly searched, and then released without a ticket or citation.

## *Ban Pretext Stops*

Pretext stops should be banned. Pretext stops occur when police officers use minor traffic violations as an excuse to stop drivers when the real reason for the stop is that officers - without any reasonable suspicion of any criminal activity - want to conduct a fishing-expedition for illegal drugs or other criminal activity.

Police officers should be prohibited from using minor traffic violations as an excuse or “pretext” for investigating imaginary criminal activity for which there is no evidence. Motorists of color are far more likely to be viewed as “suspicious,” stopped for minor traffic violations and then detained for questioning regarding some imaginary criminal activity that has nothing to do with the supposed traffic violation.

Although the U.S. Supreme Court has held that police officers do not violate the Fourth Amendment when they use minor traffic violations to engage in fishing expeditions for drugs or other criminal activity (*Whren v. United States*), pretext stops are bad police policy. They operate to discriminate and they destroy trust in law enforcement.

If there is no evidence of criminal activity, police should not be allowed to use minor traffic violations to stop people who “look like” they might be guilty of something. Pretext stops were recently outlawed in the State of Washington, and they should be made illegal here in California as well.

## *Ban Consent Searches*

Consent searches should also be banned. Consent searches are the police practice of seeking consent to search a vehicle even when there is no evidence of criminal activity. The U.S. Supreme Court has said that it is permissible to search completely innocent people, even where there is no evidence of criminal activity, as long as they are persuaded to give their consent. Although the U.S. Supreme Court has said this practice is constitutional, this practice is bad policy and should be prohibited.

Police officers should not be allowed to search people’s vehicles without probable cause of criminal activity. People of color are far more likely than whites to be viewed as likely drug couriers and asked for consent to search their vehicles for no good reason. Actual evidence of criminal activity - not race - should be the sole justification for a search. Without probable cause, there should be no search.

On April 19, 2001, the California Highway Patrol issued a six-month moratorium on consent searches following release of data showing that Latinos were three times as likely to be searched as whites by drug interdiction officers, and African Americans were twice as likely as whites to be searched. No law enforcement agency should be permitted to request consent to search someone’s vehicle without actual evidence that they are engaged in criminal activity.

## *Enact State Legislation on Racial Profiling*

The California State Legislature should pass, and the Governor should sign, a racial profiling bill that correctly defines and prohibits racial profiling, and requires statewide mandatory data collection, including, at a minimum, the five essential elements of data described above. Democratic and Republican governors have signed mandatory data collection bills in numerous other states, including Connecticut, Kansas, Maryland, Massachusetts,

Missouri, North Carolina, Rhode Island, Tennessee and Washington. California is one of the most racially and ethnically diverse states in the country. It should not be slow to prohibit and protect its residents from racial discrimination by the police.

## *Mandate Proper Training*

Because racial profiling is based on ingrained practices, assumptions and stereotypes that have been learned and practiced by officers for decades, it is essential that every department institute a program to retrain officers. Officers must be taught the value of data collection, and the reasons why pretext stops and consent searches are discriminatory and ineffective. Officers must also be trained about the harmful effects of racial profiling and its ineffectiveness as a law enforcement tool. The training needs to deal with profiling, not just in the abstract, but also as it affects individuals in their community.

It is worthy of emphasis, however, that a “diversity training” program - in the absence of data collection, a proper ban on racial profiling, and the elimination of discriminatory tactics such as pretext stops and consent searches - will not be effective. Attempting to change discriminatory attitudes or stereotypes without changing discriminatory policies and practices is futile. In order for a training program to be meaningful, it must be designed to get officers to unlearn many of the biased tactics, as well as the biased ideas, they have been taught to believe are appropriate. Training should be mandatory and implemented at the academy as well as in individual departments.

## *Establish Meaningful Accountability*

Any serious effort by a department to confront racial profiling must address the manner in which people can lodge complaints about individual officers. Victims of racial profiling must have confidence that their complaints will be thoroughly and aggressively investigated by an independent agency that has the authority to investigate and act upon complaints, as well as influence department policy.

The oldest civilian review board in the country is in Berkeley, California. There, the Police Review Commission hears complaints at public meetings brought by individual members of the community and addresses broad policy issues - recommending changes in departmental procedures and practices. In San Francisco, the Office of Citizen’s Complaints functions as the department’s internal affairs division, but is located in a separate building and is run and staffed entirely by civilians.

Independent civilian oversight allows victims of racial profiling to voice their complaints about police in an environment where they have a reasonable chance of being heard. It leads to more vigorous investigations, brings a non-police perspective into the process, and increases credibility in the community. Victims of racial profiling rarely file complaints with the police department because of lack of trust and fear of retaliation. The existence of an independent civilian review process helps to ensure that victims feel more confident filing complaints, thus making it easier to identify, retrain, and discipline officers engaging in racial profiling.



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