

SUPERVISORY CHALLENGES ARISING FROM RACIAL PROFILING LEGISLATION

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This article addresses problems faced by police supervisors who must ensure compliance with legal and organizational requirements of new laws concerning racial profiling. New responsibilities and difficulties can be expected in six main areas: (a) equipping officers to deal with new public expectations (and misunderstandings) about racial profiling, (b) dealing with instances of “monkey-wrenching” resistance, (c) mediating disputes and citizen complaints, (d) handling cases of discipline and morale problems, (e) selling the program to subordinates (perhaps the most important duty of all), and (f) “managing up” within the organization to provide appropriate resources. In some jurisdictions, supervisors will face a seventh requirement: attending at the scene of any consent search. The article looks only briefly at the distinction between intentional targeting of minorities for unequal treatment and the more insidious influence of cultural biases and stereotypes: The focus is rather on the day-to-day ensuring of compliance. By extension, the article addresses the concerns of street-level officers.

The material presented here is an outgrowth of a series of police in-service training sessions on the Massachusetts racial profiling law primarily attended by supervisors who came from municipal and county departments. The sessions were conducted by the author from summer 2000 to late spring 2001 for the Massachusetts Criminal Justice Training Council and the Plymouth County Police Chiefs' Association. Some of the statutory details presented here are specific to the Massachusetts law and may not have analogs in other jurisdictions. I am particularly grateful to my friend and colleague Amy Farrell for her insightful critique of an earlier draft and for directing me to new relevant materials when they became available. Thanks also to Mike Steeves, Andre' Belotto, Ray Eugenio, Director Jack McDevitt of the Center for Criminal Justice Policy Research at Northeastern University, Director John Degudis of the Plymouth Training Academy, John M. Collins of the Massachusetts Chiefs Association, the Massachusetts Criminal Justice Training Council, and the men and women of the many southeast Massachusetts police agencies who shared their concerns and observations during the training sessions.

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In the wake of racial profiling scandals arising from drug interdiction efforts in Maryland and New Jersey, legislation or policies designed to “prevent racial profiling” have been adopted in 21 states. Voluntary efforts have been undertaken by at least another 35 cities and agencies in addition to 7 jurisdictions known to be doing so under legal settlement or consent decree. In large part, these efforts aim to replicate the data analysis of highway users and police activity that formed the basis for the judgments in the case of *State of New Jersey v. Pedro Soto, et al.* (1996) and the civil case of *Wilkins v. Maryland State Police* (American Civil Liberties Union [ACLU], n.d.; Meeks, 2000). In the wake of an April 1998 shooting on the New Jersey Turnpike (Kifner & Herszenhorn, 1998), a review of state police activity in New Jersey added a more focused—though numerically less comprehensive—analysis of stop-and-search data (Farmer, 1999; Verniero & Zoubek, 1999).

A consent decree between the state of New Jersey and the U.S. Department of Justice specified several levels of review including quarterly internal review of stop-and-search statistics. Throughout the *Soto* and Turnpike shooting cases, the scarcity of usable data was problematic (only one third of the stops reviewed as part of the *Soto* analysis recorded the race of the driver, for instance). The *Soto* court stated that the “disproportionate traffic stops against African-American motorists established de facto policy of targeting blacks for investigation and arrest [thus] violat[es] the equal protection and due process clauses.” In granting motions to suppress the evidence, the court laid a foundation for future cases:

Once defendants expose a prima facie case of selective enforcement of criminal law . . . the state must introduce specific evidence showing that either there actually are defects which bias the results or the missing factors, when properly organized and accounted for, eliminate or explain the disparity. (*Soto*, citing *Bazemore v. Friday*, 478 U.S. 385, 106 S.Ct. 3000, 92 L.Ed.2s 315 [1986])

Soto established that racial disparities in stops constituted a prima facie case of discrimination, but the bare fact of disparity was less important than the failure of the State to provide a substantive explanation for the disparities. The *Soto* court laid out the template for justifying particular police actions in the ongoing effort to suppress the drug trade.

Unfortunately, in their response to the public outcry against racial profiling, legislatures and agencies failed to provide the tools (and more important, the resources) to support a comprehensive analysis of the issue. Most simply established laws and regulations that required police officers to do

something that many of them (though certainly not all) had been doing all along: record the race, sex, and other information of the drivers of vehicles they stopped.

The policy expectation is twofold. First, it assumes that officers who do deliberately target by race will be less inclined to do so if they know that their work will be formally reviewed (and alternatively, that those who fail to bring their work habits into compliance with the law will be identified and dealt with appropriately). Second, it creates a mechanism to identify other patterns of disproportionate impact by race. Agencies can correct inadvertent problems and rebut claims of racial profiling with a fact-based explanation of justifiable racial disparities.

Whereas this places a new, though marginal, burden on some officers' street work, for the many agencies and officers who already record race, sex, and other demographic data on vehicle drivers, the laws require no new work.¹ Rather, it is the threat of examination of their work in a highly politicized atmosphere (and against an unknown standard) that officers find unsettling. They view such examination as potentially harmful both in terms of their ability to discharge their professional duties and in terms of potential personal liability to lawsuit. In addition, working officers resent the implications of the laws, which are introduced with rhetorical flourishes that imply, and sometimes baldly claim, that the police are engaged in wholesale racial profiling.

More problematic are the limitations of the laws, which are not attuned to the critical elements of context. The *Soto* and *Wilkins* formulae dealt with a narrow activity: point-to-point driving on interstate highways. The new laws apply to all police vehicle stops, in neighborhoods as well as on highways, for criminal investigative work as well as for traffic enforcement and responding to complaints as well as officer-initiated activities. Racial profiling laws generally impose a simplistic data-collection template over the multifaceted and nuanced activities of policing and place the state at a disadvantage for explaining any patterns of disparity that might emerge (for a cogent summary of studies and issues, see Engel, Calnon, & Bernard, 2002).

THE ORIGINAL PROFILE

Revelations in the *Soto* and *Wilkins* cases, and the less publicized *Whitfield v. Board of Commissioners of Eagle County, Colorado* (1993) case, identified the source of racial profiling as the "drug courier profile"

originally promulgated by the U.S. Department of Customs as a screening device to identify airline passengers who might be drug “mules” (anonymous couriers with no formal connection to a drug network, paid on a one-time basis to smuggle uncut drugs into the country). In 1986, the Drug Enforcement Administration (DEA) adapted it for postimport enforcement under the name Operation Pipeline. Pipeline was designed to intercept bulk drugs in transit from import points in the south before they could reach their destinations in the distribution cities in the north.

The courier profile was composed of a series of behavioral and conditional factors indicative of drug transportation. Those elements included a rental car (or a car with one key) with fast-food wrappers, sleep-in-the-car paraphernalia, strong-smelling substances to conceal the aroma of drugs from human or canine senses, evidence of concealed hiding spots, and the like. Because the drug mules of the day were being recruited in the lower income areas of Florida’s cities, “Black or Latino male, aged 18-25” was a prominent part of the profile.

The profile was not promoted as probable cause to search the car but as a red flag that the individuals might be transporting drugs. Pipeline-trained officers were encouraged to “find a way to get into the car” to locate the drugs. At a practical level, that meant obtaining consent to search, one of the recognized exceptions to the Fourth Amendment requirement to obtain a search warrant. Although police describe this as a legitimate police tactic and a demonstration of the police craft (see, e.g., Webb, 1999), many in the legal community (and the minority community as well) are extremely skeptical of police claims that consent was given freely (the issue predates the coining of the term *racial profiling*; see, e.g., Sutton, 1986). The plaintiffs’ assertion is essentially this: Over the years, all the coherent supporting elements of the drug courier profile but one have fallen away, and in actual police practice, only race serves as an indication of probable criminal behavior.

The common theme illuminated by the Maryland and New Jersey investigations was that minority citizens, particularly Blacks, were stopped by the police, and their vehicle searched, in numbers vastly disproportionate to their presence on the highways. At the same time, the “hit rates” for the vehicle searches were fundamentally the same: Lamberth’s (ACLU, n.d.) analysis of statewide Maryland State Police data indicated that drugs were found in cars driven by Blacks at a rate actually less than those of Whites (28.4% for Blacks and 28.8% for Whites, though the difference is statistically insignificant). The New Jersey hit rates showed a slightly elevated rate

for Blacks (13.5% compared to 10.5% for Whites, with Hispanic motorists at 8.1%—still within the range of chance deviation), but the sample size was so small that it should not be considered a reliable benchmark or as representative of the state as a whole (Verniero & Zoubek, 1999).

The search findings presented in *Soto* and *Wilkins* undercut a tacit assumption that Blacks and Hispanics are more involved with drug use and/or drug trafficking. Those findings also contradicted the training, experience, and commonsense understanding of many police officers, whose regular contact with street drug dealers in the inner cities and elsewhere is made up largely of minority males (see, e.g., Goldberg, 1999, pp. 52-54; Webb, 1999; see also Goldberg, 1999, p. 52, for a contrary view). The police define their application of the technique not as *racial* profiling, but as *criminal* profiling, and many view the public uproar over racial profiling in terms of “[the politicians are] going to let the N.A.A.C.P. tell us how to do traffic stops . . . they’re going to let these people tell us how to run our department” (Goldberg, 1999, p. 51). The issue has been complicated recently (and remains unresolved at the time of this writing) by a not-yet-released study that allegedly demonstrates that Black motorists are more likely than other motorists to speed on the Jersey Turnpike (Kocieniewski, 2002b).

In addition, there is an inherent distrust of the use of statistics, a belief that even if the police are doing a good job (lawful, righteous, and without bias), someone will come along and twist the numbers to make the police look bad. Although police distrust of the numbers is generally intuitive, few if any of the laws create an analytical framework that can account for context. Most of the laws of 2000, like Massachusetts’s SB 228, mandate the collection of only enough data to permit a *Soto*-like analysis: Blacks account for 15% of drivers on the highway (or, in a municipal jurisdiction, of the residential population) but were 46% of the drivers stopped. For police officers, the most important question—ironically, one shared by their fiercest critics—is *why* those vehicles were stopped (a reprise of the racial vs. criminal profiling argument), and it is that question which analysis of aggregate data cannot answer.

As a result, the laws take on an importance symbolically much greater than their actual elements, which generally require only recording the race of the driver (and sometimes passengers) of the vehicles stopped, any poststop actions (exit orders, frisks, types of searches conducted), and the outcome action (warning, citation, arrest). To many police officers, the racial profiling laws represent, at best, Monday-morning quarterbacking by persons ignorant of the realities of policing. At worst, they are shackles,

cynically manipulated by antipolice forces to eviscerate effective enforcement and advance criminal enterprises. Into that cauldron of seething resentment steps the line supervisor, who has the responsibility of ensuring that the law and agency policies are followed in letter and spirit, not only for the protection of the agency but for the protection of the officers in spite of themselves.

SUPERVISORY CHALLENGES

Persons familiar with the implementation of new policies in police departments recognize that many are simply “papered on”: A memorandum is read at roll-call, perhaps supplemented a video or (more rarely) an in-person visit; copies of the new policy and procedure are distributed to the officers’ mailboxes, to be added to Volume 34 of their personally signed-for Handbook, already laden with dust in the back of their locker. Within a week, the policy has disappeared from memory, forgotten by all, and business proceeds as usual. The topic may be refreshed in the mandatory and formulaic in-service training lectures in subsequent years, whereupon it once again fades into oblivion, leaving no impact on actual police practice.

Whether interpreted as a legitimate concern or dismissed as a moral panic, the high profile of racial profiling controversy makes the customary tactic of ignoring unpopular directives very risky. Like the 1984 *Thurman v. Torrington* decision in the realm of domestic violence, the New Jersey consent decree served notice that noncompliance comes with a potentially high price tag. Police records are public data, available for scrutiny by almost anyone (though perhaps not without difficulty); once the data are collected, they can be scrutinized by police supporters and detractors alike. It falls to the supervisors to bring about the changes in street-level practice that keep the agency in compliance with the law.

EQUIPPING THE TROOPS

On-street circumstances differ across the nation. Some officers will encounter motorists almost exclusively in the course of traffic law enforcement duties; others will use the vehicle stop primarily as an investigatory tool, either for drug- or gang-related crime or in response to resident-identified problems and situations in neighborhoods. The broad requirement to record the race of the individual, under conditions of both external scrutiny and a heightened public awareness of the racial profiling debate,

presents officers and supervisors with some unpleasant dilemmas: making an accurate (and satisfactory) determination of the race and/or ethnicity of the person before them and dealing with accusations that they are engaged in racial profiling. Both situations are most likely to occur in the “dialogue at the driver’s door,”²² where the officer is on her or his own to deal with dissatisfied “customers.”

Helping the officers deal effectively with grumbling at the scene may forestall many complaints—particularly in those states that have mandated a toll-free complaint line for motorists who feel aggrieved, as New Jersey and Massachusetts have. Even if the motorist still pursues a complaint, it can at least provide a better groundwork for subsequent interactions than some of the freelance, shoot-from-the-lip responses that are possible. Although departments may vary in their policies and procedures on this matter, supervisors tend to be closer to the officers in their units than the policy makers are, and more respected. Whether they are doing it to help the officers under their command, or on behalf of the agency’s image, or to simply to reduce the problems they will have to deal with themselves, supervisors can set the tone and illuminate the path in this area.

Satisfactory Determinations of Race

In a large number of cases, the determination of race simply requires the officer to copy that information from the driver’s license. Not every state provides the information, however, and not every passenger in a stopped vehicle will necessarily carry a photo identification card.

A prominent difficulty of the modern age is the great ambivalence about the notion of race, especially its rapidly declining precision. Whereas “Black” and “White” remain the primary categories of dispute (though the 2000 Census data have indicated that Hispanic heritage will soon complicate that simple binary equation), more and more persons are identifying themselves as being of dual heritage or “mixed race.” At the same time, historical memory is still grappling with the legacy of the “race codes,” wherein “a single drop of Black blood” meant that one was considered “Black” regardless of skin color, cultural identification, table manners, or any other factor.

Police officers working under the aegis of a racial profiling law or ordinance know instinctively that making a determination of race on an official record is an invitation for trouble. Accustomed to controlling motor vehicle stops from a position of authority, they interpret the racial profiling laws as placing them at a double disadvantage. They expect more challenges during

stops, and rightly or wrongly, they feel that they will be second-guessed or undercut (“sold down the river”) by politically timid administrators wishing to avoid negative publicity. (The fact that statistics are generally collected only in the aggregate, without specific identifiers for officer or driver, appears to be too abstract or technical to have meaningful influence on this view.)

In terms of available technology, a few officers will have at their disposal state-of-the-art card readers that automatically scan information, including the driver’s race, from the license into both an electronic citation form generator and the network of state and federal checks for wants and warrants. Most will continue to copy the information—including the driver’s race—from the license to the citation form by hand. In most cases, the nature of the individual’s racial identity will already be available to the officer, voluntarily provided on the license form. In these jurisdictions, the identification of race is automatic and can be expected to be no source of contention.

However, there are some jurisdictions where race identification is not available. The Massachusetts Registry of Motor Vehicles does not include race information on licenses,³ and officers doing street interrogations or field investigation stops of pedestrians frequently deal with persons who are carrying no identification or identification that does not record the person’s race. In those situations, officers required to record race information have two equally unpalatable choices: ask the person directly or record their own “best guess available” on the forms.

Parenthetically, McDevitt has observed that when police make an arrest, they have no problems at all with assigning a race to the individual on the booking sheets (J.F. McDevitt, personal communication, March 21, 2000). Although that militates against the “we can’t tell the race sometimes” objection, the contexts are different and distinct. Copies of those sheets are not given to the arrestee, and the fact of arrest carries a separating moral stigma that is far different from that of a traffic ticket. With motorists, police are far more likely to be dealing with respectable citizens (though certainly also with disreputable ones), and complaints from respectable citizens carry far more weight in an officer’s world (and a police executive’s) than do those from the criminal element and chronic low-level offenders.

Officers view with horror the suggestion that they might simply ask a driver for his or her race. It interjects the racial profiling issue into a contact where it might not otherwise have been a factor. Officers instinctively (and probably correctly) expect that the inquiry will be considered insulting, possibly turning a civil contact into an argumentative one. In addition, officers

are aware of the external discussions and the fact that community activists *want* them to guess, on the assumption that racial profiling stems from the officers' perceptions of race rather than the absolute fact of racial identity. The "ask" scenario thus represents a trap with only one outcome: trouble for the officer.

Guessing at the driver's race is equally problematic, potentially more insulting (in the case of a wrong guess), and runs the risk of complicating the question of race with that of ethnicity. Massachusetts officers, for example, inevitably bring up the Cape Verdean community (whose members are darker skinned and would likely be categorized as "Black" under the Massachusetts scheme). The descendants of 16th-century Iberian seafarers and African natives, the Cape Verdean community identifies with neither of its progenitors, insisting on its own unique identity, which is not accommodated by the seven-part Massachusetts race-recording code. In other areas, the exact racial status of someone of Middle Eastern heritage (or of Arabic descent from African nations north of the Sahara) is not specified by the 19th-century racial distinctions anchored in sub-Saharan African origins of the slave trade. Departments in New Jersey have designations for "Black Hispanic" and "White Hispanic," recognizing the racial/ethnic mix, but it is largely a self-identified status, not an assigned one. Officers report considerable ire among East Asian persons who are confused with members of a nation historically antagonistic to theirs (Koreans and Japanese; Vietnamese and Chinese, etc.). And there is a potential difficulty with erroneously assigned identities based on misreading or misinterpreting a name: "Officer, my *married* name is Rodriguez; my family name is O'Malley, and the last time I checked, the Irish weren't Hispanic!"

Dealing With Challenges

"Preparing the officers" is usually interpreted as making sure they are aware of the requirements of the law. With racial profiling, the letter of the law is relatively simple, but the devil is in the details. Supervisors need to help officers prepare a "script"—a set of answers or dialogue responses—to help them deal appropriately with questions and verbal challenges on the roadside. Persons will challenge a stop for one of two main reasons: Either they truly do not believe they have committed a violation (or think they have been singled out of a line of cars committing the same infraction⁴—the variation often offered in community anecdotes about racial profiling) or they are trying to bluster their way out of a ticket essentially by threatening the officers with a retaliatory complaint. (Some officers suggest a third

category, the knuckleheads who know they are busted and are simply trying to make the officers pay the only price the knuckleheads can exact, forcing the officers to endure a stream of false accusation and invective in the hopes of making them “lose their cool” and thus provide leverage to trade down the knucklehead’s offense.)

Although the accusation, “You only stopped me because I’m—” has been a familiar part of police work for years,⁵ an officer used to be able to walk away (with or without a sarcastic retort⁶) with relative impunity. The racial profiling laws have changed that dynamic, at least in the officers’ minds, and give sufficient power to the citizens to render that option ineffective. Supervisors should be aware that a dispassionate and responsive reply at the scene will save them and the officers considerable grief and aggravation later.

A reasonable, brief explanation of the state’s law and/or the agency’s policy and practice, coupled with an invitation to view the (aggregate) data at the motorist’s convenience, is a verbal offering of legitimacy. It is rare that anyone will take the offer up (though not impossible), and the act of making the offer has the effect of defusing suspicion that the officer is acting outside her or his brief. (In training sessions, however, this recommendation is extremely unpopular and almost always met with great skepticism. Supervisors and officers alike view it as unnecessarily prolonging of what is expected to be a short, formulaic encounter between officer and citizen.) At the other end of the spectrum is the “kill ’em with kindness” approach, more detailed and far more time-consuming and serving a double purpose. Like the shorter rejoinder, it serves notice that the officer and the agency are well prepared to rebut accusations of racial profiling and, therefore, that attempts to play the profiling card are much less likely to succeed. Second, it extends the contact to the officer’s benefit (and the chagrin of the motorist), constituting either an informal punishment or a “baffle ’em with whatever is at hand” ploy to discourage any further follow-up by the motorist or pedestrian.

DEALING WITH MONKEY-WRENCHING

In light of the great distaste with which officers view this new encroachment on their autonomy, supervisors need to be prepared for a range of countermeasures designed to minimize the officers’ discomfort (and potential risk). Work slowdowns, various forms of defiance designed to thwart the requirements of the law, “going underground” while making stops, “balancing”

or “ghosting,” and behavioral problems collectively summed as “bad-mouthing” are all harbingers of future problems. It will fall to the supervisors to look for, identify, and correct these deviations before they reach the point of formal complaints against the agency or the officers.

Work Slowdowns

In the training sessions, a prediction that a severe reduction in motor vehicle activity would be the first reaction of the officers on the street to the law was a unanimous response. Despite the fact that the Massachusetts law provides for no identification of individuals, officers and supervisors alike interpreted the law as a danger to them personally. Faced with the possibility of being put in legal jeopardy, they would cease doing proactive work and merely respond to complaints. “I get paid as much for sitting on my butt all day long as for working it off” has long been a reality (in more than just police agencies). Embedded in that attitude is the belief that officers generate more problems for themselves by being active than by doing little or nothing (in support of which many of them can point to examples of “loads” or “slugs” in their own agencies who contribute almost no proactive work but have never been disciplined). Avoiding the work is a low-profile way of avoiding the hassles as well as making a covert protest.

There is also some evidence that this retrenchment is indeed the response of police agencies and individual officers, though the well-publicized cases are rendered more ambiguous by the presence of a strong police union (Peterson, 2001). Whether the work reductions are truly the collective result of individual demoralization or the product of union-directed job actions becomes a matter of debate in many instances.

In the long run, however, cops are cops. When the issue was brought up in training sessions—and it invariably was the first thing mentioned by both supervisors and officers—the counter was that cops will not long stand idly by while the bad guys run amok, getting up on the cops. As soon as the ruffled feathers are outweighed by the affront of criminal arrogance, officers will start figuring out how they can get the bad guys while still remaining in compliance with the law. Such a course requires little more than the officers becoming more consciously aware of, and articulate about, the subtle indicators that lead them to suspect that an individual is “dirty” or of evil intent. And the evidence of slowdowns is mixed; San Jose, California, even recorded an increase in motor vehicle activity after imposing a race-recording provision to its stop protocols (“Police Chiefs Tackle Racial Profiling Issue,” 2000).

Defiance

Individual defiance of the law is also a resort, and several different courses of action are available. The most overt act of defiance is refusal to comply with the requirements, leaving the race section blank. This is something that should be caught in even the most cursory supervisory review of work. Because it can easily be corrected retroactively, such defiance may even be seen as a testing mechanism to see whether supervisors will “be on board” with the new law or turn a blind eye to the resistance.

An analogous practice is the uniform assignment of an aberrant racial category to all persons stopped. A colleague of the author who shall remain anonymous, while reviewing vehicle stop data as part of another project, found one jurisdiction in an eastern seaboard state where all individuals stopped were recorded as being “Asian/Pacific Islander,” a statistical impossibility given what was known about the makeup of the resident population and the surrounding counties.

Traditionally, police have avoided the sticky problem of identifying mixed-race individuals by writing “other” or “unknown” in the race category; a variant of the practice records “American,” a nationality rather than a race. The new Massachusetts law does not allow such practices, restricting the category choices to seven: White (non-Hispanic), Black (non-Hispanic), White Hispanic, Black Hispanic, Asian/Pacific Islander, Middle Eastern, and American Indian.

There is an intermediate exercise wherein the officer gives the copy of the citation to the motorist with nothing entered in the race box and then fills in that category after releasing the car. Race would be visible on all copies viewed by the agency (at supervisory review, data input, etc.), and at least temporarily, the officer would be considered in full compliance with the law by his or her superiors. The danger remains of a complaint by the motorist or a court clerk noticing a pattern of returned summonses that have no entry in the race category. Because the most obvious inference to be drawn is that the officer is trying to hide something, this practice is as much a danger to the officer and the agency as the overt acts of defiance.

Going Underground

As noted above, most police officers will not long tolerate the bad guys “getting over” on them. Officers unable to reconcile themselves to the multiple public interests present in the racial profiling issue may attempt to evade scrutiny by making their suspicion stops “off the record.” This

involves making no record of the activity on paper unless the stop produces a criminal charge, revealing drugs or other contraband.

Savvy officers understand that their superiors will first look to the official records (paperwork, officer logs, and calls for service or radio logs) when confronted with a complaint. Plausible deniability thus requires staying off the record completely, which translates into making motor vehicle stops without calling them in to the dispatch center.⁷ Unrecorded stops are a short-term danger to officer safety as well as a long-term detriment to the officer's (and the department's) financial well-being. In the extreme case, if the officer is shot, no one else knows where he or she is or even that he or she is engaged in anything other than regular patrol. To the aggrieved citizen, the most logical explanation for an unrecorded stop is an attempt to avoid detection because the officer is in fact doing racial profiling. It is equally plausible to expect that that tack will be taken in media portrayals of the officer's behavior if the matter becomes public (and in the most dramatic cases, judicial and jury evaluation of the officer's conduct are at stake as well).

Not calling in a stop is an effective camouflage only if there are no credible witnesses: An officer going underground in this fashion counts on the protection of the traditional "he said/I said" split wherein the benefit of the doubt goes to the officer and, thus, denial is possible. In an age of video cameras and heightened public awareness of the racial profiling issue, this is a thin veil of protection at best. Beyond the statutory requirement to protect the public's interests—that is, for both the safety of employees and the protection of the agency's interests—it will be incumbent on supervisors to ensure that the full range of the officers' activities remain public.

Balancing and Ghosting

One of the items of opposition that arises in training sessions is that of balance. Whether statistically sophisticated or not, many officers demonstrate an instinctive understanding of the proportionality issue in racial profiling. To them, the issue is reduced to simple terms: "If I stop a Black guy, I have to stop *X* number of White guys to make the numbers come out right."

That is balancing, a negative (to police and citizens alike) in two different ways. For the officers, it means unfairly stopping unoffending motorists to protect themselves from the statistical microscope, individually or collectively. (Naturally, members of the minority communities will counter that claim with an assertion that the police have not scrupled against stopping "unoffending motorists" as long as the motorists' skin color was dark; that is the core of the racial profiling issue in the first instance.) Second, balancing

requires a great deal of work, and essentially unproductive work at that. It demands a constant mental calculus of how many stops of Whites and Blacks the officer has done and would probably be abandoned in fairly short order.

Whether balancing represents anything more than a symbolic protest remains to be seen. Pretext stopping of motorists an officer does not suspect of unlawful activity requires a lot of time and energy “off-task” if the officer is interested in beating the bushes for criminals. The practice also increases the potential for complaints from politically connected Whites, against whom the defense of “they’re just racial agitators”—wielded against the ACLU and the National Association for the Advancement of Colored People (NAACP) and their local equivalents—will not hold water. (Again, the minority community will suggest that such police reticence simply demonstrates that the core of the racial profiling complaint has substance, based in the historical political disenfranchisement of minorities: police targeting those least able to complain effectively about their treatment.)

Ghosting is the practice of falsifying patrol logs to “make the numbers come out right.” It consists of entering as a “stop” the plate numbers (and perhaps the owner’s information as the driver if such can be obtained surreptitiously via the MDT or other means) of vehicles driven by Whites who were not stopped. The term comes from the investigation of the April 1998 New Jersey Turnpike shooting case (Kifner and Herszenhorn, 1998): The state alleged in an indictment that the two troopers involved in that shooting had falsified at least 19 incidents by substituting the vehicle information from a White-owned car for that of a minority-driven vehicle that had been stopped (Kocieniewski, 1999). The issue before the courts has been resolved by a negotiated plea (Kocieniewski, 2002a), but the case illustrates the potential for monkey-wrenching the racial profiling data laws. It is a particular concern for supervisors, because the practice is unlikely to come to light through any means other than routine call-backs that sample each officer’s stop activities. Though that is done by some departments as a quality-assurance check on how calls for service are answered, most agencies do not have the resources to conduct such checks systematically. Practices such as this are generally discovered only in retrospective investigations once a scandal has broken out.

Badmouthing

Badmouthing is a generic term for any number of ways that officers may voice their displeasure about the law and their new duties. It may be ad-

dressed to supervisors and colleagues, creating a negative pole for morale; it may be to the media, a modern-day version of Bumper Morgan's "plastic cops" tirade in *The Blue Knight* (Wambaugh, 1972); or it may be to drivers of stopped vehicles. Roadside badmouthing may be in response to the "you only stopped me because" sally, or it may be instigated by the officer as a first strike. Officers who nurture a real grudge can create difficulties for an agency by mounting a balancing campaign that incorporates badmouthing of the law as a political gesture, such as the following imaginary monologue:

No, you weren't really doing anything wrong, but I've stopped two "citizens of color" already today, so I gotta stop a dozen White guys or they'll accuse me of racial profiling. Wouldja mind if I searched your car for drugs?

This example is more hypothetical than probable, of course, because such a stop—clearly beyond the authorization of law—creates a tangible risk for the officer; nevertheless, just the verbalization in a public arena, over lunch or standing near a waiting line on a detail, can do the damage.

Where internal badmouthing will be known immediately, and any media performances shortly after, the effects of roadside badmouthing can be more insidious. Badmouthing may come to the agency's attention directly, in the form of a complaint, or it may emerge quietly, in the form of "a word to the wise" that one of the officers (or more) has been behaving peculiarly. It may also go unreported for a long time while creating resentment as word-of-mouth accounts make their way through the community. Regardless of the format in which the information is received, it will be a part of the supervisor's duties to verify and correct the errant officer's behavior or document it as part of an impending process of graduated discipline.

MEDIATION OF DISPUTES AND CITIZEN COMPLAINTS

This is a brief section, as handling of citizen complaints is not made markedly different by racial profiling: Citizens have complained about the type and nature of their contact with the police since there have been police. The new element is that there are a label and a sense of collective grievance that can validate and enhance the individual sense of being wronged. By identifying their complaint with a larger, documented phenomenon, citizens may feel they have greater leverage and thus feel more empowered to complain.

Supervisors are either the first person contacted by the complaining citizen, or—when the complaint goes “right to the top” or outside the chain of command to a political patron—the point at which the downward roll of “authority” to respond to the complaint stops. They will have to develop a new working language to derail the “racial profiling” juggernaut and correct individual misunderstandings about what police may and may not do. The type of response discussed above in the Equipping the Troops section will also be needed by the supervisors, and it will need to be more persuasive, because they will be dealing with a citizen whose sense of affront has been elevated to the point of taking the effort to complain formally.

At the same time, supervisors will need to develop a sense of when the complaining citizen has a legitimate grievance as well as the ability to distinguish unusual patterns in an officer’s activity. Though racial profiling tends to be identified with unit- and organizational-level practices in the high-profile media cases of Maryland and New Jersey, it can also be done by individuals. (And the profiling may not be race-based; the Massachusetts law also mandates gender analysis, a tacit recognition of the occasional officer who uses the motor vehicle stop of young, attractive female drivers as a way of arranging his social calendar.)

Although police culture traditionally recognizes, even rewards, individual officers who have a gift for honing in on a particular type of criminal activity or suspect (see, e.g., Goldberg 1999, p. 52), racial profiling increases the risks posed by that approach. Despite the validation of the pretext stop in the *Whren* decision, “sixth-sense” stops more likely to come under scrutiny or at least to be challenged. The real danger to the police does not lie in those cases of successful searches, however. The danger, and the new element compounding supervisors’ already difficult job, lies in the “fishing-hole” approach, succinctly summarized by one of Coleman’s host officers:

To find the car with 50 rocks of crack in it, maybe it’s the 10th car or the 20th car we stop. If you want to catch fish, you go where the fish are. (Coleman, 2001)

Now that racial profiling has been validated by the New Jersey and Maryland cases (at least insofar as the general public is concerned; police officers still attempt to distinguish their work from the state police, highway-based, drug interdiction efforts), citizens probably will be less tolerant of the intrusion into their lives and more likely to complain about being stopped. This is certainly true of citizens of color, but even White motorists may make complaints about being stopped for balance—regardless of the validity of that

assertion (“playing the race card” becomes an equal-access means of trying to wriggle out of a ticket).

The issue of “fact” has been muddied recently by the assertion that Black drivers supposedly speed more often, and at higher speeds, than White drivers on the New Jersey Turnpike:

In the southern segment of the turnpike, where the speed limit is 65 m.p.h., 2.7 percent of black drivers were speeders, compared with 1.4 percent of white drivers. Among drivers going faster than 90 m.p.h., the disparity was even greater. (Kocieniewski, 2002b)

Police officers are quick to claim that the study validates the racially disparate rate of stops, but the issue has not yet been settled on methodological grounds. Because the report has not yet been released, salient questions concerning rates of speeding, times of day, and matching those general speed patterns to the actual patterns of stops cannot be resolved. Furthermore, the ancillary evidence of racial profiling from memos in the records of the New Jersey state police remains. The mere existence of the speeding disparity, if valid, does not explain the disparate rates of requests to search the vehicle, which is much closer to the core of the racial profiling issue than the issuance of a speeding ticket.

Although “where there’s smoke, there’s fire” is a neat adage, it is not a basis for policy or for imposing punitive measures. Statistical patterns will need to be confirmed, either by covert observation (especially necessary if there is a suspicion that an officer has gone underground) or an intensification of overt supervisory presence at stops. Supervisors may also find themselves spending time doing call-backs to individuals stopped by an officer to develop a clearer picture of the nature of the transactions at the driver’s door. All of this takes time and energy away from the primary task of overseeing and assisting line officers in the field, and it may place supervisors in direct conflict with their subordinates (whose view of the supervisor is “someone who’s supposed to help me,” that is, “run interference and keep those [expletives deleted] off my back!”).

HANDLING PROBLEM CASES

Two kinds of problems are inherent in those jurisdictions affected by the racial profiling debate. The first is the need to impose discipline (that is, corrective punishment or reassignment) if analysis confirms that racial profiling is occurring. Where state-level scrutiny uses the jurisdiction as its unit of

analysis (as in Massachusetts), individual officers and units cannot be identified. In local analysis of data, however, those patterns may be discerned.

If problems do exist, it is better to deal with them before the glare of publicity occurs, but disciplinary actions have the potential to exacerbate the second problem: the need to deal with any morale problems that arise. From the organization's standpoint, even a demonstration of racial inequity may be sufficient to require intervention or at least inquiry. Interventions, particularly those without clear-cut substantiation of improper race-based targeting, will be interpreted by the rank and file as "politically correct" (operationally defined as "administrators caving in to public pressures and sacrificing the innocent to save their exalted positions"), exacerbating any existing morale problems.

The ability to distinguish racial profiling from racial disparity depends in large part on the sophistication of the agency's own mechanisms of analysis. As the preliminary data analyses in other jurisdictions have shown, a race-based disparity should be anticipated in and around major cities and developed areas; it may also be present along highways and in rural areas. In some instances, there may be a valid explanation for the disparity (discussed in more detail in the Selling the Program section, below), but if there is not, both internal and external pressures will demand that something be done to bring police operations into a greater balance.

Morale is the great bugbear of supervision. It is a legitimate feeling, but it can be consciously and illegitimately manipulated (as when police unions call for a vote of no-confidence on a chief because "morale is low" in an attempt to win some other gain in the bargaining process). It can be an individual phenomenon, or it can affect entire units or organizations (Gross, Arner, & Fitzsimons, 2001). Poor morale cannot be ignored, but neither can it be pandered to, especially when it arises from the conflict between two legitimate interests. Sorting through the briar patch of asserted reasons to find the real cause of morale difficulties can be a difficult task and correcting the problems a near-impossible one.

In the case of racial profiling, dealing with morale problems places the supervisor squarely in the middle of diametrically opposed interests: the police commitment to a noble cause and the public's expectation of equitable treatment. Complaints articulated in racial profiling training sessions suggest that the greatest impact on morale is the colossal insult offered by the laws themselves (and the surrounding verbiage of political sponsors), which seem to make the assumption that all police everywhere engage in overt racial profiling. Any additional encroachments, and especially any

discipline imposed on one of their number, will be a negative morale factor among the rank and file. The legitimate public interest in the issue is rendered invisible.

Outside of formal disciplinary measures—rarely a good tool for improving morale—the only trick a good supervisor has in his or her kit is moral suasion. That involves finding the words and concepts that will help the officers strike a balance between their own interests and perceptions and the new factor that has altered their work environment. In essence, that requires the supervisor to sell the program in terms that are meaningful to the officers.

SELLING THE PROGRAM

It can be difficult to sell a program or course of action that one does not believe in oneself, and most of the supervisors the author has spoken with in training sessions are as mistrustful of the law as are their subordinates. Nothing forfeits personal credibility—vital to supervisory success in a police environment—like trying to promote an unpopular edict in Pollyanna fashion. At the same time, by accepting the promotion, the supervisors have made themselves a part of management. They are obliged to translate the organization's demands to the rank and file as well as promote rank-and-file needs upward. Supervisors have two main courses of action.

The first is the time-honored shrug method: a shrug of the shoulders, accompanied by words to the effect of, "Look, guys, I think this is a crock of [bleep], too, but we gotta do it or we lose our homes and pensions." Overt acknowledgement of the dissatisfaction preserves the supervisor's personal integrity with the troops, reminds them of the bottom line, and essentially hands the ball off to the officers. It is a *de minimus* response, meeting the bare requirements of the agency's dictate but doing almost nothing to ensure that the spirit is observed (it also runs the risk of creating a climate under which the letter will not be observed, either).

The second course is riskier, by no means guaranteed to work, and far more difficult to pull off. It, too, is grounded in a recognition of the offensiveness (to the officers) of the new requirement and an acknowledgement that the statistics might prove harmful. Instead of turning a blind eye to that possible future, however, it uses the "threat" as a springboard to go beyond the minimum requirements of the law, collecting data that will permit a better analysis of police activity in context.

The Massachusetts law requires only a minimal amount of data, and only on vehicle stops that resulted in the issuance of a citation form (used for either warnings or summonses). The law imposed a requirement for uniform recording of race and gender, the traffic offense that led to the stop, whether or not a search was conducted (with no distinction between probable-cause searches and consent searches⁸), and the outcome of the stop: warning, citation, or arrest. Such data can only produce gross statistics (percentages) with almost no explanatory value. Although the law specifies that the Registry of Motor Vehicles will provide the data to an academic researcher experienced in police data, with no identifying information for individuals, police officers are mistrustful of the anonymity. One of the outcomes of the *Wilkins* case was that 13 Maryland state troopers' names now appear on the ACLU Web site, along with their individual stop tallies and percentages by race. Because Registry and court records are public records, officers anticipate that Freedom Of Information Act (FOIA) requests or lawsuits will expose them to the same kind of publicity, and possibly adverse civil judgments, "just for doing my job."

Massachusetts experiences dramatic population fluctuations due to tourism in summer and winter (Cape Cod, the Berkshires, and the seacoast); year-round tourism attracting visitors to colonial heritage sites in Plymouth, Boston, Salem, Sturbridge, Gloucester, and Deerfield; and semi-annual influxes of students (and their families) to its many colleges and preparatory schools. Traditional urban-core manufacturing cities compete with Edge City conglomerations (Garreau, 1990) for workers, creating long streams of pass-through traffic as residents of one town drive to work in another, sometimes passing through several communities en route. Wealthier communities see a daily influx of lower income workers who staff the retail and service parts of the local economy. Some officers working in the densely populated core cities patrol areas dominated by minorities and immigrant groups, and street interactions are largely composed of those involving residents. Because they expect the statistics to look at individual-level performance, officers express fear of being singled out as a racist for trying to protect—and respond in good faith to complaints from—the law-abiding citizens of the same group their stats will accuse them of harassing.

Aggregate statistical analyses such as those presented in the *Soto* and *Wilkins* cases will not be sensitive to nuances such as these. Being able to survive the racial profiling microscope (if such indeed it becomes) depends on being able to rebut the gross statistics that will be presented in

accusation. This was the court's message in the *Soto* decision when it spoke of the state's failure to rebut the prima facie case presented by the defendants. Although subsequent revelations in New Jersey strongly suggested an agency-wide commitment to targeting by race, that need not be a foregone conclusion everywhere. The background factors that explain racially disparate patterns can only be captured at the local level, and they are dependent in part on information supplied by the officers themselves.

Candidly, the suggestion that officers record more information than the minimum absolutely required by law or policy is an extremely tough sell. It was a tough sell to supervisors in training, even with the exhortation that "the only way to defend against bad statistics is to do a better job with statistics." Those without a solid background in statistical analysis have an inherent distrust of the numbers, embodied in the twin adages of "figures don't lie, but liars sure can figure" and Clemons's condemnation of "lies, damned lies, and statistics."

MANAGING UP (RESOURCES)

Managing up is a mixed bag of responsibilities and hope. It is a private-sector phrase embodying the ability to anticipate the needs of one's superiors, and understand what issues and language they respond to, to obtain the resources needed at one's own level and for one's subordinates. In the instant case, it contains a recognition that line officers may not be the only individuals interested in doing the minimum required under the law. Inherent in that is the need to sell a program of more insightful analysis to the higher ranks, who may understand the concepts even less than rank-and-file officers (though not every police command staff will be so limited, of course).

In most of the training sessions, the suggestion that municipalities should not rely on the state's analysis of aggregate data but conduct their own analysis was met with skepticism. So, too, was the suggestion that the agency should present its own statistics and analysis in advance of the release of the state analysis. The assertion that the first (positive) headlines are what people remember was countered with a belief that any admission or weakness would be seized upon and wielded as a weapon by the department's enemies. Moreover, there was a strongly voiced belief that people would be more willing to believe the negative about the police rather than the positive.

Within this “us-against-them” mindset, candor is a difficult commodity to market (both within the agency and within a training class). Nevertheless, command staff may be more receptive to the idea, particularly if they can identify any problem areas themselves and go to the public saying that “we are taking X, Y, and Z steps to correct the problem.” The alternative is to do so in a defensive mode, after the headlines have implied that the agency is racially profiling citizens of color. The endeavor still carries risk and is most likely to be efficacious in jurisdictions where existing relationships are good. Where the department is already under fire, it is likely there will be a reticence to announce (i.e., “admit” to so volatile a practice). Still, it is better for those agencies to have the knowledge, and whatever internal corrective measures they undertake, as an “ace in the hole” against challenge or other exposure from outside.

To accomplish that analysis, regardless of the public exposure issue, the agency needs more resources. A supervisor who proposes doing such an analysis internally is likely to find himself or herself saddled with the job regardless of whether he or she has the ability to do it. “Resources” then becomes an issue of identifying qualified individuals who can conduct the analysis in a confidential environment and help craft the presentation of the data in clear terms, terms that are supportive without resorting to “spin.” That assistance may come from the academic community, either fully credentialed researchers or advanced internship students, or it may come from volunteers. Support from the agency’s command is not necessarily a given: The fear of statistics is not limited to the rank and file, and it is possible that some chiefs will prefer to wait for the official, minimal statistics because they do not understand the alternatives. Additionally, city managers or mayors or councils may direct against the analysis, fearing that the existence of the information as a public record creates a certain liability for the jurisdiction (whereas waiting until court order or public opinion demands the analysis is only a potential risk).

Managing up may also mean interceding on the behalf of a good employee against knee-jerk administrative (or political) reactions to a complaint that may not be justified. Each unfair punishment compounds the morale problem, and the supervisors may bear the brunt of dissatisfaction from both camps. Nevertheless, it is a vital role and a necessary one both for the maintenance of personal credibility and for the preservation of organizational integrity.

ADDITIONAL SUPERVISORY DUTIES

In some jurisdictions, official responses to expressed concerns over racial profiling have taken additional steps. In spring 2001, for example, under the auspices of the Community Relations Service of the U.S. Department of Justice, the St. Paul, Minnesota, Police Department entered into a voluntary agreement with the NAACP in which the department committed itself to “having all of its officers identify themselves by name to the people they serve” (*Agreement*, 2001). Officers must provide the card to all persons stopped for a traffic violation, to all victims and complainants, and to anyone else who requests it. Such a move disrupts the relative anonymity of the police-citizen exchange (though individuals issued a summons usually have the officer’s signature and badge number, persons searched and released do not) and, in the minds of the officers, gives the criminals greater leverage against them. That leverage may take the form of either a “get-back” complaint (see, e.g., Chen, 2000a, 2000b; Hughes, 2001) or more direct retaliation.

Other imposed controls create an even greater burden on supervisors. In addition to identifying themselves, St. Paul officers are required to read a “racial profiling Miranda warning” at the point they request a consent search (*Agreement*, 2001).⁹ The California Highway Patrol declared a 6-month moratorium on consent searches (Pritchard, 2001; Zamora, 2001), and New Jersey state troopers must now obtain authorization from supervisors before initiating any consent searches (Hanely, 2001).¹⁰ Although this may act as a prophylactic against the most egregious abuses of officer discretion, it is time- and labor-intensive, pulling supervisors away from duties with equal importance and need. The theory has an intuitively sound foundation—officers forced to await supervisors will restrict their efforts to those prospects that demonstrate the greatest likelihood of success rather than engage in fishing expeditions—but the practice is fraught with the potential for unintended consequences. Robert Wilkins’s complaint would likely have been no less valid had he and his family been forced to wait for the arrival of a supervisor instead of a sniffer dog. Given the time to reconsider their consent, those with something to hide may withdraw their consent for a search prior to the arrival of a supervisor. Officers will likely conclude that the policy is unduly restrictive; that in turn can be expected to diminish morale. Because the officers do not wish to jeopardize their careers, even legitimate requests for consent may be quashed, to an unknown (and perhaps incalculable) detriment of society.

SUMMARY

On the surface, the requirements of the new racial profiling laws would appear to require a fairly simple adjustment for supervisors: ensure that the officers they command complete the race checkboxes on the records of the cars they stop. Beyond that “simple” act, of course, is a much more complex question of proper police actions in determining whom to stop. The resolution of the larger problem—the equation of race with criminality—does not lie on the shoulders of police supervisors alone. Education, recruiting, training, leadership, and supervision all must combine before a permanent resolution will be achieved. In the interim, however, states and agencies are demanding at least the capacity to analyze and account for the patterns of activity by their police officers.

Even the simple act of keeping records is fraught with baggage in the case of racial profiling, however. Police officers consider the new requirements unjust and potentially dangerous. Municipal officers make distinctions between their work and the highway interdiction efforts that in the eyes of the public substantiated the allegations of racial profiling. Police everywhere defend their practices as legitimate “criminal profiling,” with only incidental relationship to disparities by race, and consider the new scrutiny to be unfair, a politically motivated shackle. And officers anticipate that everyone they stop will attempt to manipulate the racial profiling issue to eviscerate the legitimate enforcement actions of the police.

Against such a backdrop, police supervisors face an enormous burden to maintain morale in the face of a law regarded as an insult and to maintain productivity while ensuring compliance with the law. In addition, the ordinary supervisory role of first response to citizen complaints takes on a new dimension, requiring new skills (or at least a new script) to resolve misunderstandings and soothe ruffled feathers. Perhaps most important, and especially so in those jurisdictions where data analysis can only produce gross statistics with little explanatory power, supervisors will need to be part of an agency-wide effort to relate vehicle and pedestrian stops to the larger palette of police activity, providing explanations from local knowledge.

Line supervisors are in a unique position to interpret the statistics in terms of the broader patterns of the street, but they also bear the onus of correcting problems and patterns that have no legitimate explanation. Even when the patterns are legitimately grounded, they have to be defended and interpreted to a variety of audiences, including the upper echelons of the agency’s own command structure, each of which may have a different slant

on and interest in the resolution. Many of these actions already lie within the traditional range of duties of a line supervisor, and in properly functioning agencies, they are shared throughout the chain of command. Nevertheless, the concerns over racial profiling place a new spotlight on activities at the line, and the primary responsibility for guiding and controlling those activities rests with the first-line supervisors: It is through their efforts that agency policy is reified. Under conditions of high visibility and potential risk, the racial profiling debate compounds the already-considerable difficulties of police supervision.

NOTES

1. Indeed, gang intelligence suppression tactics use vehicle-occupant identification extensively and in greater detail than that required by most racial profiling statutes (including street names or monikers, tattoos, names of associates and relatives, etc.). Identifying gang-involved persons helps illuminate the network of associations and allegiances, which in turn allows the police to decipher gang graffiti, solve crimes, and ultimately bring enhanced RICO (Racketeer Influenced and Corrupt Organization Act) and gang-suppression penalties to bear on criminal networks. Those activities, however, target “the bad guys,” whereas the racial profiling statutes (at least in the eyes of the police) target the work of the “good guys,” the police themselves.

2. The “dialogue at the driver’s door” is a phrase of art. In actual practice, particularly on the interstate highway systems, officers and troopers frequently make their approach on the passenger’s side of the vehicle. It protect officers from the “moth effect”: being hit by passing traffic that has drifted too close to the stopped vehicles (drawn toward the exposed police officer or into the back of the car “like a moth drawn to the flame,” the steering hand unconsciously following the driver’s gaze, fixated on the cruiser’s flashing lights). It also provides two tactical advantages to enhance officer safety: a different perspective on the driver’s area of the vehicle, including the center console; and the element of surprise, especially at night, as vehicle occupants expect the officer to appear at the driver’s side door. (The phrase “moth effect” is taken from an article published in the magazine of the American Automobile Association [AAA] in the mid-1990s; attempts to locate it for accurate citation have been unsuccessful to date.) And of course, in some jurisdictions, the actual dialogue takes place in the officer’s cruiser.

3. Anecdotal reports provided by supervisors attending the in-service training sessions on the Massachusetts law suggest that the Registry of Motor Vehicles once routinely recorded race on driver’s licenses until the practice was challenged as racially prejudicial (in a lawsuit supported by either the American Civil Liberty Union [ACLU] or the National Association for the Advancement of Colored People [NAACP], depending on which version one hears; this has not yet been confirmed by research, as none of the officers could provide a case name or even an approximate date). For the officers telling or hearing the anecdote, this goes beyond bitter irony to a “no-win” scenario wherein they are damned for doing, and

damned for not doing, in a situation created by the very people who are damning them for both.

4. In the author's experience, a frequent point of confusion lies in the difference between the point of radar contact and the point at which the stop is made. A long line of cars doing the speed limit (or at least within the informal tolerance zone) will pass, and then a car hell-bent on qualifying for a pole position in the next Grand Prix appears on the horizon. By the time the cruiser has caught up to the speed demon, of course, he or she has been slowed by the law-abiding traffic ahead and will be doing the speed limit when the cruiser emergency lights are activated. Naturally, the first line of defense will be, "But I was just going with the flow of traffic" (doing the same speed as the cars ahead). Although officers may consider the excuse cynical—a defensive lie—it is also possible that the driver does not understand where the offense was recorded. Absent an explanation from the officer, the need to construct a reason for an otherwise legitimate stop might arrive at the conclusion that it was made solely on the basis of race, when in fact it was not.

That explanation affects cars at the end of the line; some of the anecdotes that citizens related to the author specifically identified their car's position in the middle of a line of cars, a line that had been traveling at the same speed for a considerable distance before the driver was pulled over. Assuming that those incidents are accurately recalled, the "caught up with traffic" explanation cannot be stretched to justify such stops. The mix of legitimate with illegitimate stops under the racial profiling umbrella operates as a form of Gresham's Law: Inevitably, the existence of questionable stops taints legitimate ones.

5. It is not exclusively related to race, either. The southern speed-traps of legend were notorious for targeting persons with out-of-state plates. Vacationers and business travelers are far less likely to contest the tickets in court because of the severe inconvenience of returning to the area. The standard-bearer from the author's own career, however, was the woman who accused me of stopping her because her vehicle had a Christian bumper sticker on the back (the car did indeed bear an IXOYE fish bumper sticker on the back; it also bore registration plates that were 3 months overdue for renewal).

6. "No, I stopped you because you're stupid"; or "No, I stopped you because you're driving like a fool" are mild examples. The classic retort is reported by Van Maanen (1978): "'Cause you're an asshole, that's why . . . but I didn't know that until you opened your mouth" (p. 228). Such attitudes and behaviors reflect an earlier era, however: Although many modern-day officers may still think it, and may air the opinion among themselves later, most do not verbalize their ire with the motorist (at least not during contacts observed by the author).

7. Two personal interests, both geared to officer safety, are served by the radio notice (beyond the creation of an official record of time, place, and vehicle information that pinpoints the stop in case of later investigations). The radio broadcast alerts other units to the location and triggers the near-automatic response of a backup unit cruising by the scene to verify that everything is all right (if the stopping officer anticipates no problem, backup can be "waved off" by a variety of methods; if there is reason to believe that the occupants of the car are up to no good, or if the officer needs to remove passengers from the car for a search, additional help is available quickly to help with control). Second, the call starts an informal clock, usually of five minutes' duration (or some other standard geared to the usual amount of time needed to complete a traffic stop), for a "check-on" call from the dispatcher. If the

officer has not notified the dispatcher that he or she is clear from the stop by the end of this time, the dispatcher radios to the officer for a status update; if there is no response, backup units are immediately en route to the location in case some harm has befallen the officer.

8. Searches based on legitimate probable cause are by definition not racial profiling, although the distinction may be lost on motorists (and others) who are predisposed to expect race-based police attention. Probable cause stems from a set of specific and articulable facts and circumstances; whenever officers have probable cause for a search, there is no need for them to obtain consent. "Consent" searches in racial profiling occur in the gray areas where such facts are absent or insufficient to establish probable cause, and race serves as a proxy for "criminality." The issue is less the legality of the consent search (which is well established at law) than the selection process: Because asking for consent is essentially a fishing expedition on the part of the state, who gets asked (and why) is of paramount importance.

9. The warning embodied in the consent agreement (*Agreement*, 2001) includes the following elements:

"I would like to search you (or your vehicle)."

"You should know that you have the right to refuse to allow me to search you or your vehicle."

"If you do grant me permission, you may stop the search at any time."

"If I find anything illegal, you will likely be arrested and prosecuted."

"Do you understand what I have just told you?"

"May I search you? May I search your vehicle?"

10. As unpalatable as this course of action is to many police officers, it represents a compromise between the governor and the attorney general. The State Senate Judiciary Committee had recommended that consent searches be banned entirely.

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