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Racial Profiling Studies in Law Enforcement: Issues and Methodology

Many communities have undertaken racial profiling studies to examine if and how someone's race and ethnicity plays a part in stops by law enforcement. This information brief describes the central concepts, issues, and methodological challenges involved in studying racial profiling in law enforcement.

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Introduction

The concern about racial profiling is erupting throughout the nation. Many cities and states have decided to study racial profiling, or how race and ethnicity may play a part in stops by law enforcement in their jurisdictions. Minnesota is no different. Efforts are underway to begin racial profiling studies of traffic stops in Minnesota, including separate studies by the Minnesota State Patrol, the Minneapolis Police Department, and the St. Paul Police Department.[1] A larger study is also being planned by the Minneapolis-based Council on Crime and Justice to evaluate the role of race in the broader justice system in Minnesota. That study reportedly will have a three-year, $3 million budget, and will be funded with grants from the Minnesota Department of Public Safety and other sources, including private contributions.[2]

Generally, the announcement of a racial profiling study by police and/or other public officials typically includes a denial that racial profiling exists "within this jurisdiction," but also an acknowledgment that it would be helpful to study the pattern of police stops within the jurisdiction. The very act of undertaking such a study reaffirms the general public policy goal that policing decisions should be race-neutral. However, it also signals to law enforcement officers that extra caution may be needed to ensure that the data they collect while performing their duties should reflect a lack of bias in their own performance. Officers and their unions may publicly accept the political need for such a study, provided that such data will not be used to monitor or discipline individual officers. Simultaneously, they may feel that their integrity is being questioned, that their exercise of judgment is being limited, and that their ability to fight crime is being eroded.   Finally, the announcement of such a study provides hope to many communities of color that help may finally be at hand, that something is being done about the problem that they have long claimed to exist and which, they may feel, the data will surely reveal.[3]

It seems unlikely, given this rather disparate set of perceptions and desires, that any racial profiling study will ever be able to satisfy all interested constituencies. The experience of other researchers in this area suggests that, more than likely, the results of the study will be at least somewhat ambiguous, with much of the resulting debate perhaps centering on data integrity and the selection of appropriate baseline measures for comparison.

The purpose of this information brief is to describe some of the central concepts, issues, and methodological challenges involved in law enforcement racial profiling studies generally, borrowing heavily from the rapidly developing literature on this topic. It is intended that this overview be useful to legislators and other public officials who may be considering whether to

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[1] "Police to Gather Race Data: St. Paul, Minneapolis Addressing Question of Bias in Traffic Stops." *St. Paul Pioneer Press* 14 April 2000: 1A.

[2] "Justices's Disparities in Race Draw Scrutiny: Minorities Locked up in Disproportionate Numbers." *Minneapolis Star Tribune* 9 April 2000: 1A.

[3] For an example of the expression of these conflicting viewpoints at the start of a racial profiling study, see: Barovick, Harriet. "DWB: Driving While Black: Incidents in New Jersey and Maryland Heat up the Issue of Racial Profiling by State Highway Patrols." *Time* 15 June 1998: 35.

fund or undertake such a study, or who may need to understand and critically evaluate the findings of such studies. The information brief may also be useful to police administrators contemplating or conducting a racial profiling study, as well as to community advocates involved in monitoring or using the study's findings.

It is important to note that this information brief does not contain a legal analysis or constitutional review of the underlying issues involving search and seizure, equal protection, and so on. Such an analysis and review will be forthcoming from other House Research Department analysts.

Part I: Issues Relating to Racial Profiling Studies

Competing Definitions of "Racial Profiling"

The term **"profiling"** refers to the police practice of viewing certain characteristics as indicators of criminal behavior.[4] Profiling is reportedly an established law enforcement practice throughout the nation, having evolved during the past few decades with the incorporation of social science theory and statistical methodology into law enforcement's crime solving and crime prevention strategies.   Although not a panacea, profiling has been shown to be a successful supplement to older and more fundamental policing strategies.[5]

The term **"racial profiling,"** on the other hand, is a relatively new term and, thus, there is not yet a clear consensus on its meaning. It is partly because of this ambiguity that discussions about racial profiling are often so confusing and controversial.[6] In the literature to date, there appear to be at least two clearly distinguishable definitions of the term "racial profiling:" a narrow definition and a broad definition.[7] In both cases, the term relates to the behavior of law enforcement officers in engaging members of racial and ethnic minority groups for police scrutiny.

The Narrow Definition

Under the narrow definition, **racial profiling** occurs when a police officer stops, questions, arrests, and/or searches someone **solely on the basis of the person's race or ethnicity.** Critics typically use this definition when condemning racial profiling, as do law enforcement agencies when denying the existence of racial profiling.

At least some legal authorities equate this type of strict racial profiling to racial discrimination itself—which is both unconstitutional and widely scorned in this nation—and they feel that it is relatively rare among law enforcement officials. That is, they assert that it is rarely the case that

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[4] Barovick, op. cit.

[5] See for example: Douglas, John, and Mark Olshaker. *Mind Hunters: Inside the FBI's Elite Serial Crimes Unit*. New York: Simon and Shuster, Inc., 1995.

[6] Cole, David, and John Marcello. "Symposium: Opposing Views of Racial Profiling." *Insight on the News* 19 July 1999: 26. Cole is a professor at Georgetown University in Washington, D.C., and the author of *No Equal Justice*. Marcello is a former DEA agent who in the early 1970s developed the DEA's drug-courier profiles.

[7] See, for example: Kennedy, Randall. "Suspect Policy." *The New Republic* 13 Sept. 1999: 30.

police stop and subsequently investigate a person based *only* on that person's race or ethnicity; rather, they believe that other factors typically come into play.[8]

The Broader Definition

Under the broader definition, **racial profiling** occurs when a law enforcement officer **uses race or ethnicity as one of several factors** in deciding to stop, question, arrest, and/or search someone. An example of racial profiling under this broader definition would be a police stop based on the confluence of the following factors:

- age (young);
- dress (hooded sweatshirt, baggy pants, etc.);
- time of day (late evening);
- geography (in the "wrong" neighborhood); and
- race or ethnicity (black or Hispanic).[9]

Under this broader definition, then, **racial profiling occurs whenever police routinely use race as a factor that, along with an accumulation of other factors, causes an officer to react with suspicion and take action.**

Application of the Concept to Traffic Stops and Other Policing Contexts

Racial profiling is often discussed in the context of traffic stops by local or state police officials. However, it appears from the literature that the term is gradually being generalized to apply to other types of stops or checks by any type of federal, state, or local law enforcement official or other authority.[10]

The literature mentions the following examples:

- traffic stops by the highway patrol or local police;
- police questioning and searching of pedestrians in public places in urban areas;
- immigration status checks by INS officials of persons either driving or walking across the nation's borders;
- airport checks or searches of people or luggage by drug enforcement (DEA) officials; and
- ID (age) checks of bar or club patrons by bouncers.

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[8] For example, Kennedy wrote, "Not even Mark Fuhrman was known to detain elderly women who happened to be black." Kennedy, op. cit., 35.

[9] Kennedy, op. cit., 35.

[10] In a recent town meeting in Oakland, Calif., for example, one African American woman said: "All of my four sons, who are in their 40s, have been hassled by police. And we have filed three complaints... in Oakland and Berkeley. It's not only about 'driving while black,' but also 'walking while black' and 'bicycling while black'." *Oakland Tribune* 31 March 2000.

Varying Viewpoints on Racial Profiling

As noted in the introductory section of this information brief, there are widely differing viewpoints on racial profiling, which are likely to be expressed by one or another constituency for any given racial profiling debate or study. This section summarizes the most prominent of those alternative viewpoints.

Claims that Racial Profiling is Widespread: Growing Evidence

Many members of minority groups across the nation have long claimed that police commonly use traffic violations as a pretext to stop a vehicle to investigate other possible crimes, such as drug and/or weapons violations. For example, one of the earliest scholarly articles on this issue states:

> "The stopping of black drivers, just to see what officers can find, has become so common in some places that this practice has its own name: African Americans sometimes say they have been stopped for the offense of 'driving while black'....I have heard this phrase often from clients I represented in Washington, D.C., and its surrounding Maryland counties; among many of them, it was the standard way of describing the common experience of constant stops and harassment of blacks by police....Profiling is not the work of a few 'bad apples' but a widespread, everyday phenomenon that will require systemic reform."[11]

In several recent incidents, empirical evidence supports claims of the existence of significant racial profiling, at least in the few jurisdictions in which data are available to test these assertions. For example, a New Jersey study reported that while black and Hispanic motorists made up only 13.5 percent of the drivers on that state's highways, they represented 73.2 percent of those stopped and searched by the New Jersey State Patrol. Similarly, a recent study of traffic stops in Maryland from 1995 to 1997 revealed that, though black motorists made up only 17.5 percent of the drivers on certain roadways, they composed more than 72 percent of the motorists stopped and searched by the Maryland State Police. Yet another study in four large Ohio cities revealed that black motorists are two to three times as likely to be ticketed as white motorists.[12] Yet another study, by the American Civil Liberties Union in Illinois, showed that, although Hispanics make up less than 8 percent of the state's population, they were 27 percent of those stopped and searched by a highway drug interdiction unit.[13] Finally, the U.S. General Accounting Office (GAO), a congressional research agency, recently reported finding that, of the passengers returning to U.S. airports on international flights during 1997 and 1998 who were selected by

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[11] Harris, David. " 'Driving while Black' and all other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops." *The Journal of Criminal Law and Criminology*, vol. 87 (2), 1997.

[12] For a detailed discussion of these three studies, see: Harris, David. "The Stories, the Statistics, and the Law: Why 'Driving While Black' Matters." *Minnesota Law Review* Dec. 1999: 277-288.

[13] Cole, David. "The Color of Justice: Courts Are Protecting, Rather than Helping to End, Racial Profiling by Police." *The Nation* 11 Oct. 1999.

customs officials for personal searches, a disproportionate number of African American women were subjected to more invasive searches; i.e., strip searches and x-rays.[14]

In several situations, lawsuits have been filed claiming racial profiling in police stops. The list of defendants in these suits includes a wide range of law enforcement agencies, including but not limited to the following: the Maryland State Police, the New Jersey State Police, the U.S. Customs Service, the Philadelphia Police Department, and the police departments in three Illinois cities: Mt. Prospect, Highland Park, and Hillside.[15]

Finally, the growing publication of anecdotal information supports the assertion that racial profiling is widespread nationally. The following is a typical case:

> "In 1997, Charles and Etta Carter, an elderly African American couple from Pennsylvania, were stopped by Maryland State Police on their 40th wedding anniversary. The troopers searched their car and brought in drug-sniffing dogs. During the course of the search, their daughter's wedding dress was tossed onto one of the police cars and, as trucks passed on I-95, it was blown to the ground. Ms. Carter was not allowed to use the restroom during the search because police officers feared that she would flee. Their belongings were strewn along the highway, trampled, and urinated on by the dogs. No drugs were found and no ticket was issued by the state trooper. The Carters eventually reached a settlement with the Maryland State Police."[16]

Public Perceptions of Racial Profiling

A recent Gallup Poll—involving 2,006 telephone interviews with randomly selected U.S. adults and conducted during the period from late-September to mid-November, 1999—found that 56 percent of whites and 77 percent of blacks believe that racial profiling is a widespread practice in the United States. Only 6 percent of whites but 42 percent of blacks believe that they had been stopped by the police just because of their ethnic background.

Fully 72 percent of young black males (aged 18 to 34) surveyed felt that they had been previously subjected to racial profiling by law enforcement. Correspondingly, a greater proportion of young black males reported holding "unfavorable" views of their local police (54 percent) and their state police (35 percent), compared to older black males or whites. The study reported that young

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[14] *U.S. Customs Service: Better Targeting of Airline Passengers for Personal Searches Could Produce Better Results*, GAO Report [GGD-00-38] April 2000. Altogether, 102,000 out of the 140 million passengers (7 per 10,000) were selected for personal searching by customs officials; the report does not indicate whether the initial selection was itself race-neutral.

[15] See, for example: "Congressman Seeks Illinois Racial Profiling Probe: Suburban Cops Say They Were Told to Target Minorities." *Chicago Tribune* 27 March 2000; "Police Officers Charge Racial Profiling in Another Illinois Town." *Chicago Tribune* 10 April 2000; "Hillside Mayor Backs Cops: Seeks Probe." *Chicago Tribune* 11 April 2000.

[16] "'Driving while Black' is Not a Crime; So Why Are Incidents Like These Occurring Across the Country?" American Civil Liberties Union, 2 May 2000. See also: Harris, "The Stories," op. cit.

black females also disproportionately held unfavorable views of local and, to some extent, state law enforcement officials, compared to older black females or whites.

The Gallup Poll study defined the term "racial profiling" in the following way, intending to be as neutral as possible so as not to steer responses:

> "It has been reported that some police officers stop motorists of certain racial or ethnic groups because the officers believe that these groups are more likely than others to commit certain types of crimes. Do you believe that this practice, known as 'racial profiling,' is widespread or not?"

Denying the Existence of Racial Profiling

Some officials assert that their disproportionately higher stop rates and arrest rates for racial minority groups do not, in fact, reflect the factoring of race into their decision making regarding whom to stop, question, detain, search, and arrest. They claim to be focusing on factors other than race in their decision making—such as driving violations and suspicious activities—and assert that if their results are racially disproportionate, this is only because these other factors are present in disproportionate amounts among the various racial groups. In essence, these officials deny that racial profiling is occurring in their organizations.

For example, John Marcello, a retired Drug Enforcement Agency (DEA) official, who reports having played a key role in developing the DEA's airport interdiction program during the 1970s, notes that race is not on the list of common characteristics used by the agency to identify illegal-drug couriers.[17] He also claims that DEA agents themselves rarely, if ever, factor in a person's race when determining whether a person fits the profile of a drug courier. Nevertheless, he acknowledges that couriers arrested by the DEA do happen to disproportionately represent various racial or ethnic groups, which change from time to time. However, as revealed in his lengthy description below, he simultaneously highlights the perceived importance of race in drug smuggling patterns and DEA agent perceptions, while nevertheless denying that race enters into interdiction decision making.

> "In the mid-1970s the Colombians decided to eliminate the middleman and to control all aspects of the cocaine business from growing the plant, to processing it, to smuggling and finally to distribution on the streets of New York and Los Angeles. Most couriers arrested were Colombian. After the 'Mariel' boat lift of 1982, we started to see more and more Cuban couriers. In the early 1980s, in response to increased law enforcement pressure in Miami, we saw the Medellin cartel in Columbia and the Mexican Guadalajara cartels join in smuggling cocaine to the western U.S., and the courier mix came to include Mexican nationals. In 1985, the Colombian cartels started supplying cocaine to black entrepreneurs in the major cities, who would then convert it to 'crack' cocaine and distribute it across the U.S. There was a surge in arrests of young, black, male couriers. The Nigerian heroin smugglers in the 1980s carried the drugs themselves, and then they started recruiting

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[17] Cole and Marcello, op. cit., pp. 24, 26.

young, white females. In the early 1990s these traffickers were using older, white males and females.

Couriers come in all races, but the courier characteristics have remained rather constant during the years. The standard profile of drug couriers includes such key elements as: cities of departure and arrival; the method of payment; the trip itinerary; the trip route; and the trip duration. These elements, coupled with the trip reservation history and the telephone callback numbers...set one passenger apart from another."[18]

Arguments Acknowledging and Defending Racial Profiling

Some authorities acknowledge the existence of racial profiling under the broader definition, with race being only one of several factors used, but nevertheless defend it as appropriate given the different patterns of crime involvement by different racial groups. For example, Randall Kennedy, a professor at Harvard Law School and the author of *Race, Crime, and the Law*, has written:

"Defenders...of racial profiling maintain that, in areas where young African American males commit a disproportionate number of the street crimes, the cops are justified in scrutinizing that sector of the population more closely than others, just as they are justified in scrutinizing men more closely than women....For [some] cops, racial profiling is a sensible, statistically based tool that enables law enforcement to focus their energies more efficiently; it lowers the cost of obtaining and processing information...and [thus reduces] the overall cost of policing.... Racial profiling then...is good police work...empirically based, and above all, an effective tool in fighting crime."[19]

As is reflected in Professor Kennedy's statement, those who defend racial profiling generally do so on statistical grounds, by citing the empirical fact that, in certain jurisdictions, individuals associated with particular racial groups commit a disproportionate number of the crimes. National statistics could be viewed as supporting this assertion. For example, recent federal data reveal that in 1996 nationwide, blacks, who made up approximately 12.8 percent of the nation's population, represented 43.2 percent of the persons arrested for Part I violent crimes, and 32.4 percent of persons arrested for Part I property crimes.[20]

A related rationale for racial profiling is that it may help to deter some crimes. For example, one police officer noted in conversation that the tactic of assertively stopping, questioning, and

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[18] Cole and Marcello, op. cit.

[19] Kennedy, op. cit., p. 30.

[20] *Sourcebook of Criminal Justice Statistics*, published annually by the U.S. Department of Justice, Bureau of Justice Statistics, using data gathered for the FBI's Uniform Crime Report (UCR). According to the FBI/UCR classification schema, Part I violent crimes against persons include murder, rape, robbery, and aggravated assault; Part I property crimes include burglary, larceny-theft, motor vehicle theft, and arson.

identifying young males seen driving during evening and nighttime hours explicitly identifies those drivers at a given time and place, thus depriving any potential perpetrator among them of the anonymity that is necessary to avoid arrest for certain crimes like burglary, robbery, or rape. Thus, he noted, racial profiling might well deter some would-be criminals from following through with some planned crimes.

Arguments Against Racial Profiling

Arguments against racial profiling include both constitutional concerns and practical considerations. In Professor Kennedy's view, one of the strongest arguments against racial profiling is based on the equal protection clause (Fourteenth Amendment) of the U.S. Constitution.[21] Kennedy explains as follows:

> "The argument begins with an insistence upon the special significance of racial distinctions in American life and law. Racial distinctions are and should be different from other lines of social stratification. That is why, since the civil rights revolution of the 1960s, courts have typically ruled—pursuant to the Fourteenth Amendment's equal protection clause—that mere reasonableness is an insufficient justification for officials to discriminate on racial grounds. In such cases, courts have generally insisted on applying 'strict scrutiny'—the most intense level of judicial review—to the government's actions. Under this tough standard, the use of race in governmental decision making may be upheld only if it serves a compelling government objective and only if it is 'narrowly tailored' to advance that objective. Strict scrutiny embodies the recognition, forged in the difficult crucible of American history, that the presence of a racial factor in governmental decision making gives rise to the presumption that officials may be acting in violation of someone's civil rights." [22]

Nevertheless, Professor Kennedy acknowledges, "Even some courts are suggesting that decisions distinguishing between persons on a racial basis do not constitute unlawful racial discrimination when race is not the sole consideration prompting disparate treatment." He notes, for example, that in a key court decision upholding a DEA agent's stop and search of a young black man at the Kansas City Airport in the early 1990s—a case in which the agent admitted considering the person's race, along with other factors, in making the stop—that "The court... declined to describe the agent's action as racially discriminatory, and thus evaded the requirement of subjecting the government's action to strict scrutiny." [23]

Without conceding the constitutional argument, Professor Kennedy goes on to argue against racial profiling based on its social costs. He asserts that racial profiling essentially alienates

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[21] For a related scholarly review of Supreme Court decisions related to racial profiling in police traffic stops, see: Harris, "Driving While Black," op. cit.

[22] Kennedy, op. cit., p. 32.

[23] Kennedy, op. cit., p. 32.

members of racial minority groups of every social stratum by adding to their resentment of the law enforcement establishment:

> "Alienation of that sort gives rise to witnesses who fail to cooperate with the police, citizens who view prosecutors as 'the enemy,' lawyers who disdain the rules they have sworn to uphold, and jurors who yearn to 'get even' with a system that has, in their eyes, consistently mistreated them. For the sake of law enforcement, we need to be mindful of the deep reservoir of anger toward the police that now exists within many racial minority neighborhoods. Racial profiling is a big part of what keeps this pool of accumulated rage filled to the brim." [24]

Critique of the "Rational Discrimination" Basis for Racial Profiling: Circular Reasoning

As noted earlier, officials who defend racial profiling often do so on the basis of a statistically based "rational discrimination" logic, citing statistics showing that certain minorities are often disproportionately arrested or convicted for crime. However, in his recent testimony before Congress, University of Toledo law professor David Harris articulated the circularity of this rational discrimination argument.

According to Professor Harris, the rational discrimination argument rests on the assertion that African Americans commit a disproportionate share of certain crimes in the United States and, thus, it only makes sense to focus law enforcement efforts on members of that group. He noted that, as a spokesman for the Maryland State Police has said, "this is not racism; rather, it is the unfortunate byproduct of sound police policies."[25]

However, Harris maintains that this argument fails because its underlying premise is wrong. He asserts that racial profiling (in traffic stops, at least) is primarily about drug enforcement, rather than other crime, and he cites statistics that purport to show little if any difference between black and white Americans in their rates of drug use or drug trafficking. He argues that statistics for drug crime, unlike those for most other types of serious crime, are largely "enforcement driven," since drug crime is seldom reported or statistically measured apart from situations resulting in an arrest. Nevertheless, he reasons, to the extent that law enforcement targets minorities by disproportionately stopping and searching minority drivers, flyers, and pedestrians, then there will be a disproportionate number of minorities among those arrested for drug crimes.

Thus, Professor Harris concludes, racial profiling is itself responsible for producing the skewed statistics that are used to justify its continue use.

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[24] Kennedy, op. cit., p. 33.

[25] Harris, David. "Data Collection: The First Step in Coming to Grips with Racial Profiling." Testimony. U.S. Senate Subcommittee on Constitution, Federalism, and Property Rights. Washington, D.C. 30 March 2000. See also: Harris, "The Stories," op. cit.

He notes that:

> "The belief that blacks are disproportionately involved in drug crimes will become a self-fulfilling prophesy. Because police will look for drug crime among black drivers, they will find it disproportionately among black drivers. This will mean more blacks arrested, prosecuted, convicted, and jailed, which of course, will reinforce the idea that blacks are disproportionately involved in drug crimes, resulting in a continuing motive and justification for stopping more black drivers as a rational way of using resources to catch the most criminals." [26]

As noted above, Professor Harris cites statistics purporting to show nearly equal drug usage rates by blacks and whites in the United States. Yet it would seem that his critique is not dependent on the accuracy of such statistics. That is, it would seem that to the extent that law enforcement efforts may be disproportionately focused on minorities, then minority drug violation arrest rates will be upwardly skewed, irrespective of their actual rate of drug usage and whether it is actually greater than, less than, or the same as for whites. This, however, begs the question of whether, in fact, law enforcement is or is not engaging in racial profiling. Professor Harris asserts that data collection is "surely the first step" in assessing and addressing racial profiling.

Levels of Police Discretion: An Important Distinction

In explaining how racial profiling may occur in police stops, Professor Deborah Ramirez, Northeastern University School of Law, explains that traffic and pedestrian stops can be viewed on a continuum based on the degree to which an officer has the discretion to choose whether or not to make the stop.[27]

Low-Discretion Stops

According to Professor Ramirez, low-discretion stops are those in which an officer has very little discretion not to stop the vehicle or person. Low-discretion stops, for example, often involve an externally generated report of a crime or suspicious activity, as when a victim describes a particular suspect and the officer spots a person resembling that description. A low-discretion situation in the traffic context, for example, might involve a motorist running a red light, or speeding by more than 8 to 10 miles per hour over the limit, or driving in a manner suggesting alcohol or chemical impairment. In these kinds of situations, good policing norms may compel an officer to make the stop. Professor Ramirez cites statistics indicating that currently only about one-quarter to one-third of police stops involve situations of this type.

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[26] Harris, congressional testimony, op. cit., p. 4.

[27] Ramirez, Deborah, Jack McDevitt, and Amy Farrel. *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned.* Draft. Northeastern U, 2000.

High-Discretion Stops

According to Professor Ramirez, high-discretion stops typically involve minor infractions, for which an officer has ample discretion to decide whether or not to make a stop. In the traffic context, this might involve a driver failure to signal a turn, or a vehicle with underinflated tires, an unlighted license plate, or something hanging from the mirror. An example in the pedestrian context would be when an officer sees a person who in some way "looks suspicious" but is not engaged in any specific criminal behavior.

Ramirez explains that high-discretion stops invite both intentional and unintentional abuse. She notes that:

> "Police, obviously, are just as subject to [society's] racial and ethnic stereotypes...as any other citizen. Unless documented, such stops create an environment that allows the use of stereotypes to go undetected." [28]

Broken Windows vs. Community Policing: The Context of Racial Profiling Studies

The recent concern over racial profiling in police stops can be viewed as part of a larger law enforcement debate, pitting the broken windows theory against the community policing approach to law enforcement.

Some experts maintain that the aggressive use of high-discretion police stops can deter crime, as when the stop results in detection of contraband like guns and drugs, or when it intercepts and frightens off a would-be criminal on the way to commit a burglary, rape, robbery, or other serious crime. Indeed, aggressive police stops of this type are a basic element of "zero-tolerance" tactics, a component of the "broken windows theory" policing strategy that was pioneered by New York City, and which has been adopted by numerous other jurisdictions throughout the country.[29] Though this theory of policing has been widely credited with much of the crime reduction seen

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[28] Ramirez, et al., op. cit., p. 18.

[29] Wilson, James Q., and George E. Kelling. "Broken Windows." *Atlantic Monthly* March 1982: 29+. While the theory of "broken windows" was developed by professors Wilson and Kelling, the theory was first implemented in the early 1990s by Bill Bratton, then director of the New York City transit police, who is widely credited in law enforcement circles with restoring order and lawfulness to the NYC subway system. Then in 1994, when Rudolph Giuliani was elected mayor of New York City, he appointed Bratton to the position of chief of the NYPD so that the broken windows policing strategy could be implemented throughout the city. Crime rates in New York City plummeted through the 1990s. See: Bratton, Bill, with Peter Knobler. *Turnaround: How America's Top Cop Reversed the Crime Epidemic*. New York: Random House, 1998.

throughout the nation during the 1990s,[30] it is increasingly being questioned as being overly harsh and subject to excessive use of force.

The broken windows policing strategy has been criticized, for example, for its possible role in some recent mistaken shooting deaths[31] and other allegedly harsh behaviors by a few NYPD officers; incidents that have been widely publicized[32] and, which some say, may be unfairly targeting members of minority groups.[33] Some critics have suggested that such excesses of police force are an inevitable development under zero-tolerance policing tactics. Such critics claim that racial profiling in both traffic and pedestrian stops is yet another consequence of this policing approach.

Some who criticize the broken windows theory of policing instead advocate the community policing approach to law enforcement. They note that a number of the major cities that have implemented community policing—including San Diego, San Jose, and San Francisco—have experienced dramatic crime reductions during the 1990s that rival or even exceed the widely publicized reductions in New York City. They further assert that these crime reductions were accomplished without resorting to racial profiling that, they say, has become commonplace in cities practicing broken windows policing. One such critic is Joseph D. McNamara, who served on the New York Police Department prior to serving as police chief first in Kansas City, Missouri, and later in San Jose, California. McNamara has written:

> "During my 15 years as police chief of San Jose, California, I found that even the most valiant police work often failed to reduce crime. On the other hand, when neighborhood citizens organized and worked with teams of police officers, it was possible to drive out drug dealers, pimps, and prostitutes, reduce burglaries, and solve other problems resistant to traditional police methods. Strict enforcement was frequently part of the solution, but it was enforcement demanded by neighborhood people as opposed to the random arbitrary

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[30] For data reflecting the broad-based crime reductions since 1991, see: *Sourcebook of Criminal Justice Statistics,* published annually by the U.S. Department of Justice, Bureau of Justice Statistics.

[31] The most infamous of these actions has been the Amadou Diallo case in New York City in 1999, in which an unarmed black immigrant was shot and killed in a police fusillade when four white NYPD undercover officers working in an elite street-crimes unit approached Diallo in the dimly lighted vestibule of his apartment building and mistakenly judged that he was reaching for a firearm. The officers were subsequently tried and acquitted of all charges. See, for example: "Unarmed Immigrant Killed by Police is Mourned." *Washington Post* 13 Feb. 1999.

[32] *Newsweek*, for example, recently critiqued the "get-tough" policies of several U.S. cities, noting that New York City has just experienced "the fourth police killing of an unarmed civilian in a little more than a year." Cose, Ellis. "Cracks in the Thin Blue Line: Police are Under Fire from New York to Los Angeles to Louisville." *Newsweek* 10 April 2000: 33.

[33] Amnesty International, a human rights organization, describes the Diallo case as "one of more than a dozen incidents in the past five years in which unarmed racial minorities have been shot in disputed circumstances [by NYPD police officers].... In many cases, the bereaved relatives of New Yorkers shot by the police have told Amnesty they are convinced the officers would have responded differently had the victims been white. The perception remains that officers are able to act with impunity in these cases." See: "After the Verdict: The Diallo Case Should Prompt a Review of NYPD Tactics." *Amnesty Now*, Spring 2000: 19.

and repressive enforcement of 'Fixing Broken Windows'....The major flaw in the 'Fixing Broken Windows' philosophy is that it creates an 'enemy class' made up of minor offenders for cops to harass and attack based on the unproved theory that doing so prevents crime." [34]

Criminologist George Kelling, co-creator of the broken windows theory, has responded to such criticism by working to develop a set of guidelines for police discretion, while maintaining that officers should, and inevitably do, exercise discretion in their daily encounters with citizens.[35] In the conclusion to his guidelines publication, Kelling notes:

> "Viewing the police...as an administrative agency [that is] obliged to develop guidelines publicly that will shape its inevitable use of discretion offers one more way to develop community support and involvement in policing urban America. This viewpoint not only will improve the quality of policing but will also improve public understanding and support of police."

Race Data Collection Practices Among the States

Recent news reports suggest that most law enforcement agencies steadfastly deny that their officers engage in racial profiling. However, it would be difficult to prove whether or not that is the case, in part because relatively few state or local law enforcement agencies record the race of all the drivers they stop. DOJ recently surveyed all state police/highway patrol agencies to determine how many of them routinely collect race information at traffic stops.[36] It found that whether a state collects such information depends largely on the outcome of the stop. Generally, the more serious the action taken by the officer in a stop, the more likely that a given state's protocol requests the race information.

For example, as shown in the table on the following page (recreated from the federal report), only three of the nation's 49 state police/highway patrol agencies report that their officers are required under state law to record race/ethnic information on all their traffic stops. Twelve states require that race information of the driver be recorded when a written warning is issued; 15 states require it when a vehicle or occupant search is made; 31 states require it when a citation is issued; 37 states require that it be recorded when an arrest is made; and 32 require it when the stop involves use of force. However, the study notes that not all of the states collecting racial information are doing so electronically, as would also be needed to statistically analyze racial profiling.

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[34] McNamara, Joseph D. "The Secret War."
Internet: www.IntellectualCapital.com/issues/issues92/item2277.asp 12 June 1997.

[35] Kelling, George L. *Broken Windows and Police Discretion*. Washington, D.C.: National Institute of Justice, Office of Justice Programs, U.S. Department of Justice: October 1999: 57.

[36] *Traffic Stop Data Collection Policies for State Police, 1999.* U.S. Department of Justice, Office of Justice Programs.

Collection of Race Information by State Police/Highway Patrol Agencies by Type of Action Taken in the Traffic Stop 1999			
	Number of States Collecting Race Data		
Type of Police Action Taken in the Traffic Stop	**Total**	**Driver Only**	**Driver and Passengers**
Offer of Assistance, Verbal Warning, and/or Other Discussion	3	N.A.	N.A.
Written Warning Issued	12	9	3
Search of Vehicle or Occupants	15	6	9
Traffic Citation Issued	31	22	9
Arrest Made	37	20	17
Use-of-Force Encounter	32	N.A.	N.A.
N.A. signifies that the DOJ survey did not ask states about their policies in this situation. Source: *Traffic Stop Data Collection Policies for State Police, 1999.* U.S. Department of Justice, Office of Justice Programs.			

House Research Department

Despite the very recent publication date of the DOJ survey study (February 2000), it may already be somewhat out-of-date. At a March 30, 2000, hearing held by a U.S. Senate Subcommittee on a bill that would mandate race data collection by all state and local law enforcement agencies,[37] a witness testified that there are now a number of similar proposals under consideration among the states.[38] That testimony noted the following recent developments:

- In April, 1999, North Carolina became the first state to enact legislation to require its state police—the North Carolina Highway Patrol (NCHP)—to collect data on all its traffic stops in order to determine whether racial profiling may be occurring. The New

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[37] That proposed legislation is S.B. 821, the Traffic Stops Statistics Study Act, sponsored by Senators Coyners and Lautenberg.

[38] Harris, congressional testimony, op. cit.

Jersey state police are already collecting racial profiling information, but that is being done under a consent decree with the DOJ. This testimony seems to imply that in the other two states, reported by the DOJ survey to be collecting race information for all traffic stops (Nebraska and New Mexico) that the state police may be acting on their own volition.

- In June 1999, Connecticut became the second state to enact legislation mandating data collection in all traffic stops to assess racial profiling. This legislation is even more comprehensive than the North Carolina law, since it covers every police agency in the state.

- Bills mandating data collection for measuring racial profiling have subsequently been introduced or enacted in at least 15 other states, including: California, Florida, Illinois, Maryland, Massachusetts, Missouri, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Virginia, and Washington. According to the testimony, almost all of these state bills are variations on the theme of comprehensive data collection in the proposed federal legislation.

- Local police departments in San Diego, Houston, San Jose, Salt Lake City, San Francisco, and more than 100 other municipalities are reportedly beginning studies of racial profiling in their communities. Some of these cities—San Diego, for example—have already started data collection.

It is unclear from the congressional testimony and news reports viewed to date whether these state and local studies will be limited to traffic stops or will include other kinds of police intervention as well. What is clear from the extensive list of participating cities and states, however, is that the topic of racial profiling has caught the attention of law enforcement agencies and their governing bodies throughout the nation, and many of them are taking action to investigate whether it exists and how extensive it may be in their own jurisdictions.

As noted in the introduction, efforts are underway to begin racial profiling studies of traffic stops in Minnesota, including separate studies by the Minnesota State Patrol, the Minneapolis Police Department, and the St. Paul Police Department. These racial profiling studies are independent of a larger study which will evaluate the role of race in the broader justice system in Minnesota, planned by the Minneapolis-based Council on Crime and Justice.[39]

As with most other states and cities, it appears that, until now, racial data on police traffic stops have not generally been collected by law enforcement agencies within Minnesota. For example, the Violation Report Form used by the Minnesota State Patrol through 1999 does not include the race of the driver. Furthermore, unless a citation was issued or an arrest was made, the information on that form has not been stored electronically. For a state patrol traffic stop resulting in only a written warning, the officer has to complete the paper form, which routinely

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[39] See footnotes 1 and 2 for sources.

has been kept for only one year and then is discarded. If the traffic stop did not result in a written warning or other enforcement action, no information is logged or kept.[40] While House Research has not systematically inquired into local law enforcement reporting practices in Minnesota, it would appear from recent news reports that, like the state patrol, local law enforcement agencies in Minnesota generally have not previously collected the race information that would be needed for a racial profiling study.

Finally, race information is not recorded on Minnesota driver's licenses or in the Minnesota driver's license data base; thus, there appears to be no possibility for electronically linking existing traffic citation information in Minnesota to any other existing data base to obtain the necessary racial information for stopped drivers.

Thus, it would appear that in Minnesota—as has been the case in other states—any proposed study of racial profiling would need to be designed as a prospective, rather than retroactive, study. Part II provides a more in-depth discussion of a range of research design considerations for racial profiling studies.

Possible Behavioral Responses to Racial Profiling Studies

The racial profiling literature suggests that both police and criminals might well change their behavior in response to the implementation of racial profiling studies. It would seem possible that law abiding members of minority groups, as well, might also respond with behavioral changes. Each of these possibilities is discussed below.

The very implementation of a racial profiling study is likely to heighten police awareness of their stop patterns.[41] After all, the implementation of the study signals concern about the racial profiling issue. It is not unusual for the key decision makers (e.g., the governor and state patrol chief; or the mayor and police chief) to announce at the start of a racial profiling study that they expect to find no racial profiling among their officers' stops, but that if it is found, they will deal with it.

Officers might reasonably feel that they are expected to examine their policing behavior. To be cautious, they may decide to make fewer stops, particularly of minority drivers, in the less compelling (i.e., high-discretion) stop situations. Indeed, this outcome would be consistent with the goals of those advocating racial profiling studies—that racial profiling be reduced and eliminated from policing behavior to the extent possible.

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[40] This information is based on a phone conversation with a spokesperson from the Minnesota Department of Public Safety.

[41] The expectations about police responses presented in this section are described in more detail in the later section Potential Uses of the Data.

It would appear from the public announcements that in most of the racial profiling studies currently being planned and undertaken, the data will be analyzed only in the aggregate for use in evaluating the system itself, rather than on an individual basis for purposes of monitoring and disciplining individual officers. Nevertheless, in many of those studies officer identity will be recorded along with other stop information; thus, officers might feel there is always the possibility that the data could be used against them. This could have the effect of making officers exceptionally cautious and perhaps even unwilling to make stops involving minorities.

For example, Professor Ramirez relates the findings of a racial profiling study in Great Britain in which officer identity was recorded and the data were used to monitor and discipline individual officers for their stop practices.[42] That study found that police behavior was indeed affected, in part beneficially.

> "The volume of arrests has decreased. Indeed, the overall number of arrests and searches has dropped by nearly one-third among the selected pilot sites....[Nevertheless,] the new philosophy emphasized the quality rather than the quantity of searches. This meant focusing on the percentage of searches that resulted in arrests for serious offenses. As a result, the search productivity and arrest rates have improved."

However, it also found that the study negatively impacted officer morale.

> "At the same time, officers [who were] interviewed expressed the deep loss of morale that has influenced the effectiveness of the Metropolitan Police Department during and after the McPherson inquiry [i.e., the study]. FitzGerald indicates that 'many officers felt a deep sense of personal injustice, perceiving their integrity systematically and relentlessly being called into question and believing they each stood indicted individually of institutional racism.'...Many officers feel frustrated by the mounting paperwork and the barriers which constrain their professional judgment. Only part of this is due to the [study]....All of this is compounded by the demoralizing effect of the McPherson inquiry and report." [43]

Of equal concern in the long run is whether the changed policing practices resulting from racial profiling studies will impact crime rates. There is some fear that any reduction in police aggressiveness might result in increased crime. For example, the study in Britain argues that "there is a clear statistical relationship [i.e., a correlation] between the reduction in searches and the rises in crime [in London] during the spring of 1999." Nevertheless, FitzGerald cautions that this relationship might not indicate a causal effect, noting that "additional analyses are necessary to determine if the reduction of searches had any direct influence on the increased rise in crime."[44]

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[42] FitzGerald, Marian. *Stop and Search Interim Report*. London: Stationary Office, 1999.

[43] Ramirez, et al., op. cit., pp. 60-62.

[44] Ramirez, et al., op cit., p. 63.

It is conceivable that racial profiling studies might, instead, reduce crime in at least two possible ways. First, the focusing of police stops on the more compelling (i.e., low-discretion) stop situations could result in higher rates of arrest per stop, as was found in the British experience.[45] Thus, such policing may better target criminals. Secondly, as claimed by the community policing advocates, the elimination of racial profiling could result in improved police-community relationships that may lead to a more effective engagement of the community in assisting the police in solving and preventing crime.[46]

Finally, any widespread reductions in racial profiling and improvements in police-community relations could have other benefits for minority communities. For example, many of the accounts of personal experiences involving racial profiling, such as those cases in the recent congressional testimony, suggest that persons who have been subjected to race-based police stops often develop a deep-seated fear of traveling outside their immediate community, a realistic response under the circumstances.[47] It would seem, then, that the elimination of race profiling in policing would reduce such fears, and that the resulting increase in the freedom to travel could have many social, economic, educational, recreational, and other benefits. For example, a poor urban minority youth might feel more comfortable about enrolling in a college, applying for job, visiting friends, shopping, recreating, and pursuing other opportunities in suburban and outlying areas, even very distant places, and even when such opportunities might involve traveling in those areas after dark.

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[45] Ramirez, et al., op cit., p. 59.

[46] Taqi-Eddin, Khaled, and Dan Macallair. "Shattering 'Broken Windows': An Analysis of San Francisco's Alternative Crime Policies. " San Francisco: The Justice Policy Institute. Also see: McNamara, op. cit.

[47] See, for example: Fletcher, Michael A. "Driven to Extremes, Black Men Take Steps to Avoid Police Stops." *Washington Post* 29 March 1996: A22. Fletcher writes: "To cope, African Americans often make adjustments in their daily activities. They avoid certain places where they think police will 'look' for blacks. Some drive bland cars. 'I drive a minivan because it doesn't grab attention,' says Kevin. 'If I was driving a BMW'—a car he could certainly afford—'different story.' Some change the way they dress. Others who drive long distances even factor in extra time for the inevitable traffic stops they will face." Also see: Harris, "The Stories," op. cit., p. 305. Harris writes: "Many African Americans cope with the possibility of pretextual traffic stops by driving drab cars and dressing in ways that are not flamboyant so as not to attract attention. More than that, 'driving while black' serves as a spatial restriction on African Americans, circumscribing their movements. Put simply, blacks know that police and white residents feel that there are areas in which blacks 'do not belong.' Often, these are all-white communities or upscale commercial areas....Consequently, blacks try to avoid these areas, if for no other reason than that they do not want the extra police scrutiny."

Part II: Research Methodology for Studying Racial Profiling

Agencies and communities undertaking racial profiling studies are being assisted in part by DOJ, particularly through its sponsorship of the development of a soon-to-be-published racial profiling study design guide by law professor Deborah Ramirez and her colleagues at Northeastern University in Boston—hereafter referred to as the Ramirez-DOJ guide or the study design guide.[48] Much of the information presented in the following paragraphs is synthesized from that guide.

The authors note in their introduction to the study design guide that within the past year or so "there has been a flurry of activity in this area [of racial profiling studies] and that hundreds of jurisdictions have begun to initiate data collection efforts." They further note that many jurisdictions have undertaken these studies voluntarily, though others have done so under federal consent decrees or as a part of settlements with the ACLU. Whatever the impetus for the racial profiling study in any given state or community, the study design guide provides considerable methodological advice for collecting and analyzing the necessary racial and other information relating to the law enforcement stops within the jurisdiction.

Summary of Challenges in Any Racial Profiling Study

The Ramirez-DOJ guide notes that there are major challenges in any given racial profiling study, and it summarizes them as follows.[49]

- How can officers determine the race or ethnicity of the citizens they stop in the least obstructive manner and without increasing the intrusiveness of the stop?

- What budgetary, time, and paperwork burdens will data collection impose on police departments?

- Will data collection procedures result in police "disengagement" by leading police officers to scale down the number of legitimate stops and searches they conduct?

- How can departments ensure the accuracy of data collection procedures and be certain that reporting requirements are not circumvented by officers who fail to file required reports or who report erroneous information?

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[48] See footnote 27 for citation information.

[49] Ramirez, et al., op. cit., p. 24.

- How can departments ensure full compliance by line officers and deal effectively with any officer resistance?

- Will the data that is collected be used for research and training purposes or will it be used to discipline officers and facilitate lawsuits?

- Will the data be analyzed and compared to an appropriate measure of the statistically correct representative population? How can the parameters of that population be ascertained?

To these questions, one might add the following:

- Can the study's stakeholders collaborate sufficiently in planning and conducting the study that they will be in agreement in interpreting the findings of the study?

- Can the study's stakeholders work productively to strategize possible enhancements to the state or local justice system that could be pursued jointly following the study?

- Will the study itself bring about changes in crime rates or violation rates in the jurisdiction, and if so, will the stakeholders be able to anticipate, detect, and respond to such changes in an effective manner?

Many of these challenges are discussed in the following parts of this section.

Defining "Racial Profiling"

Professor Ramirez and her co-authors note that one of the first tasks in studying racial profiling is to define the concept, since the results of "any analysis concerning the nature and scope of the problem will depend on the definition of racial profiling used." In their study design guide, they provide the following definition:

> "We define 'racial profiling' as any police-initiated action that relies upon: (a) the race, ethnicity or national origin of an individual; rather than (b) the behavior of that individual, or (c) information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity." [50]

The study design guide notes that there is almost uniform consensus about two corollary principles that follow from adopting this definition of racial profiling:

1) that police **may not use** racial or ethnic stereotypes as factors in selecting whom to stop and search; and

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[50] Ramirez, et al., op. cit., p. 5.

2) police **may use** race or ethnicity to determine whether a person matches a specific
description of a particular suspect.[51]

Involving Stakeholders

By their very nature, racial profiling studies are likely to be controversial. The demand for such a
study by communities of color is typically accompanied by assertions that racial profiling is indeed
occurring in the community. Frequently, police officers take the community demand for a study
as an affront to their integrity or, at a minimum, may feel unappreciated for their previous crime
control efforts. Police administrators and other policymakers typically feel that racial profiling is
not occurring under their watch, but nevertheless may feel torn between the community demands
both to reduce crime and to avoid antagonizing communities of color and other constituencies.

It would seem predictable, then, that the results of nearly any racial profiling study will also be
controversial, particularly given the ambiguities that almost necessarily arise from the fact that
there is typically no perfect baseline measure against which to gauge police stop practices.

Given this strong possibility, it would benefit all stakeholders to collaborate in the study, from the
design stage through the data collection, analysis, and interpretation of results. Since control over
the study is typically in the hands of the law enforcement agency being studied and/or higher
public officials, then it is recommended that those officials extend an invitation to communities of
color and other possible stakeholders to participate in some way. Even if that involvement is
limited to a consulting role, such collaboration might serve to enhance the quality of the study
through improved decision making at every stage of the study, as police officials strive to
understand and respond in a proactive manner to the concerns raised about the study by
community representatives. Such collaboration might also help to enhance the mutual trust and
respect among the stakeholders, and thereby serve to reduce the potential controversy related to
interpretation of findings. Finally, such collaboration would help lay the foundation for
cooperative actions that might follow.

The Ramirez-DOJ guide expressed this need in the following way:

> "A critical first step to any data collection design process is to convene a task force
> comprised of representatives from law enforcement, members of the local community, and
> citizen group representatives....A local task force is best able to recognize the specific
> needs of community members and police within a particular jurisdiction." [52]

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[51] Ramirez, et al., op. cit., pp. 5-6.

[52] Ramirez, et al., op. cit., p. 65.

Including an Academic/Research Partner

The Ramirez-DOJ guide also recommends that outside professional research expertise be incorporated into the study from the beginning:

> "Additionally, we recommend that local jurisdictions develop a relationship (either through the task force or outside the task force) with an academic or research partner. During the data collection design phase, local jurisdictions should consider who is going to analyze the stop and search data. When possible, the local jurisdiction should include members of the analysis team into the data collection design process. Knowing how the analysis will be conducted and what is needed for analysis is a critical step in the data collection design process." [53]

Indeed, the design stage is the "make or break" stage of a research study. Mistakes and omissions at the design stage are often impossible to overcome later on during the analysis. Furthermore, it may be impossible to find a reputable expert willing to take on the data analysis in such a high profile study unless that person or research office has had some meaningful role in designing and conducting the study from the outset. Finally, such outside expertise may be necessary to establish broad credibility for a racial profiling study.

Deciding Which Police Stops to Study

Next, one must decide which law enforcement "stops" to study, including the geographic area(s) and time frames of interest. For example, the study might be limited to traffic stops by the state patrol on certain interstate highways on summer weekend nights, or it might include all traffic stops by the state patrol statewide on all types of roadways on an ongoing basis. Alternatively, the study might focus on all traffic stops by local law enforcement within a particular city or neighborhood. Yet another option would be to study all police stops—whether traffic or pedestrian—within a jurisdiction.

As a practical matter, perhaps, most racial profiling studies currently underway are focusing on traffic stops rather than pedestrian stops.[54] From a methodological viewpoint, it would seem that the highway traffic stop situation may offer fewer methodological complexities than either city traffic stops or pedestrian stops, given the difficulty of defining a "stop" and of determining relevant baseline comparison measures for pedestrian stops.

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[53] Ramirez, et al., op. cit., p. 65.

[54] For example, the planned or ongoing racial profiling studies by each of the following cities or states involve tracking only traffic stops: San Jose Police Department, San Diego Police Department, Houston Police Department, Philadelphia Police Department, North Carolina Highway Patrol, Maryland State Police, New Jersey State Police, Illinois State Police, Florida Highway Patrol, and Ohio Highway Patrol. See: Ramirez, et al., op. cit. Also see: Cole, "The Color of Justice," op. cit.

The Ramirez-DOJ guide deals only with traffic stops, and it offers the following definition:

> "A 'stop' is defined as any time an officer initiates contact with a vehicle resulting in the detention of an individual and/or vehicle." [55]

Whatever the decision regarding which stops to study, in order to avoid bias in case selection it is important that the study pertain to all stops of the selected type, irrespective of the action taken or the outcome of the stop. For example, a traffic stop may result in a range of actions or outcomes, such as providing assistance, a fix-it citation, a verbal warning, a written warning, a traffic citation, a search of the vehicle or person(s), arrest, use of force, seizure of contraband, and/or seizure of the vehicle itself. Only by focusing on all stops, irrespective of action taken or disposition, can racial profiling be reliably measured.

The necessity to focus on all stops of a given type, however, does not preclude the use of statistical sampling of those stops, provided the sampling is designed to yield a statistically representative sample of those stops. Nevertheless, from the recent literature on racial profiling, it would appear that statistical sampling is not being used in any of the studies to date; instead, the studies generally are being designed to gather data on all relevant stops of the selected type.

Self-Reporting by Officers and Data Integrity

There appears to be a consensus in the literature to date that the majority of data required for racial profiling studies should be collected by the law enforcement officers themselves. This practice is driven by practical considerations, since the alternative of assigning a ride-along observer for each squad car would likely be both intrusive and quite costly.

Nevertheless, one may anticipate perceived problems of data integrity developing out of this arrangement. For example, it might be alleged later on in the study that some stops of minorities have actually been self-coded by the officer as stops of whites. To guard against such a possibility, it would seem wise to build in some means for data checking, perhaps on a random basis throughout the study. This, of course, would increase the workload and cost of the study. And, to be meaningful, the officers would need to be kept prospectively unaware of the data checks until after they have been performed (i.e., a "single-blind" method).[56]

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[55] Ramirez, et. al., op cit, p. 64.

[56] One possible method of data checking, for example, would involve randomly selecting stop reports and comparing the race (and other) information reported on them to the race information reported on the drivers license record of the person to whom the vehicle is registered. The Driver and Vehicle Services Division data files would be needed for such a data check.

Potential Uses of the Data: Effects on Police Morale, Arrests, and Crime Rates

Any concern about data integrity depends, in part, on the intended and potential uses of the stop data. Most current and planned racial profiling studies to date intend that the stop data will be used only for research purposes; thus, the identity of the officer may not need to be recorded or, if recorded, need not be analyzed.

For example, the Ramirez-DOJ guide has noted of the racial profiling study design being implemented by the San Jose Police Department that:

> "In order to garner the support of the San Jose Police Officer's Association, the local police union, it was necessary to keep the identity of the citizen and the police officer involved in the stop anonymous. Thus, the data will not be used to discipline or analyze the stops of individual officers; instead it will be used solely to evaluate the department on a system-wide basis." [57]

However, it continues:

> "Of course, even though the data is [sic.] not tabulated by officer identification number, since the name of the officer, the time, and date of the stop and the computer on which the data was [sic.] recorded are potentially available, the identification of the officer is not truly anonymous. It could be obtained; however, it is not routinely collected and analyzed."

The Ramirez-DOJ guide notes that the San Diego study takes a further step, in comparison to the San Jose study, to ensure that the stop data will be used only for research purposes:

> "The San Diego Police Department has ensured that during the data collection process neither the officer nor the motorist will be identified by name. The data will only be collected, used, and analyzed in the aggregate. The identification of officers was omitted from the data collection process in order to assure officers that the purpose of collecting the data was to assess whether the department as a whole was acting professionally, rather than to isolate or punish individual conduct." [58]

Likewise, according to the Ramirez-DOJ guide, the study underway by the North Carolina Highway Patrol (NCHP) will not be systematically collecting individual officer identification numbers, since the department plans to use the data only to assess the prevalence of any system-wide problems in traffic stops.

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[57] Ramirez, et al., op. cit., p. 32.

[58] Ramirez, et al., op. cit., pp. 45-46.

Apparently, the collection of data identifying the officer can be perceived as a serious threat by officers, enough to affect the outcome of the study. Ramirez relates, for example, that:

> "The Houston Police Department began data collection using officer identification. In response, officers began to write fewer tickets which, in turn, forced the agency to reverse its decision." [59]

However, as noted earlier, Great Britain provides one example in which racial profiling data was used for monitoring, supervising, and disciplining individual officers, in addition to studying system-wide trends. As discussed earlier, the British police officers expressed deep loss of morale and sense of personal injustice upon such perceived questioning of their professional integrity.[60]

It is possible that there may be a related behavioral response on the part of criminals to racial profiling studies (i.e., an increased willingness to engage in crime in the context of fewer police stops and searches). That is, due to a perceived reduction in the risk of apprehension stemming from fewer random police stops, some criminals may feel more emboldened to commit crimes. Indeed, as noted earlier, the British study found that "there is a clear statistical relationship between the reduction in [police stops and] searches and the increases in crime during the spring of 1999 [in the study areas]." [61]

Defining the Baseline Standard for Comparison

As noted earlier, it is often commonly assumed—though often falsely—that minorities are disproportionately involved in committing certain types of crime. Thus, what is one to conclude from a study showing that minorities are disproportionately subjected to police stops? Would such a finding then reflect: 1) good police work; 2) racial profiling; or 3) some other possibility? Obviously, the racial data on police stops cannot be analyzed in a vacuum. Ultimately, the data must be compared to other information in order to determine whether the stops of minorities have been comparatively excessive.

This comparative benchmark, or *"baseline standard,"* **is perhaps the most methodologically elusive feature in any racial profiling study**.[62] It refers to the **rates at which the various racial subgroups in any given population actually engage in unlawful behavior**.

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[59] Ramirez, et al., op. cit., p. 69.

[60] FitzGerald, Marian. *Final Report into Stop and Search.* London: Metropolitan Police, 1999.

[61] FitzGerald, *Final Report,* op. cit.

[62] Ramirez, et al., op. cit., p. 77.

Unfortunately, there is probably no direct, broad-based, reliable measure of violation rates (if studying traffic stops) or criminality rates (if studying pedestrian stops) that is applicable to racial/ethnic subgroups of the population. Clearly, one may not simply assume that police stops, arrests, or convictions are a valid measure of the baseline standard, since these statistics themselves are likely to reflect enforcement efforts—i.e., to be enforcement driven.[63]

A common approach in racial profiling studies is to use the area population breakdowns (by racial subgroup) as the measure of the baseline standard for comparison. Such a decision essentially assumes that the racial subgroups of area residents have equal or nearly equal rates of unlawful behavior. However, in any given area this assumption may be erroneous. In addition, in some areas, people from outside the study area might be responsible for much of the crime that occurs within it.[64] Either way, the study's findings may be invalid. Even mere skepticism about the validity of such an assumption may lead to controversy over or rejection of the study's findings by one constituency or another. This possibility has prompted researchers to consider other possible measures for use as a baseline standard in racial profiling studies.

In some studies focusing on traffic stops only, researchers have developed a baseline standard through systematic observation of the apparent racial composition of drivers using the specific roadways selected for study.[65] This approach is no doubt a marked improvement over the use of area population breakdowns for that purpose. However, its use nevertheless assumes that traffic and equipment violation rates and other causes for police stops are equivalent among the various racial/ethnic groups using the roadway, which might not necessarily be the case.

This measure of the baseline standard—i.e., the observed racial composition of drivers on given roadways—may be even more problematic for studies of traffic stops within urban areas and neighborhoods. For example, the racial composition of drivers in the city or neighborhood might vary considerably by hour of the day, day of the week, or even season of the year, and any given

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[63] Ramirez, et al., report that, despite the limitations of arrest data for use as a baseline standard, arrest data were nevertheless used for that purpose in a racial profiling study by the New York Attorney General. A variation on this approach was the use in the San Jose study of the rate of 911 calls to police from each area of the city. However, Ramirez notes that, "Such markers are already skewed or biased because the number of arrests may be the result of the disproportionate stop and searches of minorities which [they] are seeking to study" (p. 79).

[64] For example, statistics regularly show that white males are generally disproportionately involved in alcohol-impaired driving. In addition, arrests for alcohol-impaired driving often occur near popular bars and other entertainment facilities where alcohol is served (e.g., sports arenas), which are frequently located in or near the downtown areas of inner cities. To the extent that white suburbanites frequent those inner city entertainment facilities and are stopped for suspicion of impaired driving, their stops would statistically offset in a racial profiling study a number of other police stops of minorities, thus masking to some degree any racial profiling that might be occurring. See: *Sourcebook of Criminal Justice Statistics 1998,* U.S. Department of Justice, Bureau of Justice Statistics, tbl. 4.12, p. 346.

[65] For example, Professor Lamberth of Temple University, in a study of racial profiling on the New Jersey Turnpike, developed a baseline standard by determining through systematic observation the percentage of black drivers on the stretch of roadway under study. See: *State v Soto*, 734 A. 2d 350, 352 (N.J. Super. Ct. 1996) (discussing Lamberth Study).

racial subgroup might itself vary in its propensity for unlawfulness from one time period to another. For example, white motorists might be disproportionately drawn into inner city neighborhoods of color for such diverse activities as: a) daytime work (probably with low criminality); b) evening entertainment, such as to attend a professional sports event (possibly with somewhat greater criminality, such as drinking and driving); or c) explicitly to commit crimes, such as to purchase drugs or to solicit prostitution. Clearly, different methods of measuring the racial composition of drivers in the neighborhood (i.e., the baseline measure in this example) can impact the outcome of the study. However, it is not always so clear just which measure(s) ought to be used.

These challenges notwithstanding, to the extent possible any racial profiling study should attempt at the outset to define the baseline standard(s) that will be used for comparison during the analysis stage. There should also be a plan up front for acquiring the information needed for determining that standard.

Reasons for the Stop

Another approach that can be used to either complement or skirt the baseline standard issue involves measuring and comparing: a) the stated reason for the stop; with b) the outcome of the stop. The Ramirez-DOJ guide notes that measurement of the reason(s) for a stop is also methodologically perplexing, since officers typically consider several factors in making a stop and yet often have difficulty describing their decision making in any given case:

> "Many officers have spoken of the difficulty in quantifying the decision to stop. These officers have correctly noted that the decision to stop a vehicle is the result of a large number of factors, including: the behavior of the operator of the vehicle, the experience of the officer, the particular policies and procedures of the department...the crime problems faced by a particular neighborhood, and specific police tactics." [66]

Of course, the person's race or ethnicity may also constitute one of the factors being considered by the officer, whether consciously or subconsciously. It seems highly unlikely, in the context of a racial profiling study, that most officers would be willing to admit to this reason, perhaps not even to themselves.

A statistical comparison (using casewide matching) of the outcomes of police stops with the reason(s) for those stops, may help indicate whether the stops of any given officer or in any specific area involve racial profiling. The pattern most characteristic of racial profiling, perhaps, involves: a) the frequent stopping of minority drivers, followed by a vehicle and/or person search, without there being any citation issued or arrest made; coupled with b) the proportionately less frequent stopping of white drivers, but with a citation or arrest more typically resulting from the stop. Generally, such a stop and outcome pattern is interpreted as reflecting not that police are

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[66] Ramirez, et al., op. cit., p. 77.

treating whites more harshly, but that they are making proportionately more pretextual stops of persons of color.

As noted in an earlier section, the very existence of a racial profiling study provides an incentive for officers to minimize any stop behavior which could be interpreted as involving racial profiling. Unfortunately, it may also provide a perverse incentive for the officer to minimize the number of apparently unfounded stops of minority drivers by ensuring that those who are stopped do get cited or arrested. To the extent that officers act on that incentive, some minority drivers who might otherwise have received only a warning might now receive a citation. This possibility also highlights the difficulty of interpreting the data in a racial profiling study, since an increased citation rate for minorities could reflect either a reduction in pretextual stops associated with racial profiling or harsher treatment of the minorities who are stopped.

How to Record the Stop Information

There are at least three alternative methods for gathering and recording traffic stop information:

1) a paper form, to be filled out by the officer immediately following each stop;

2) police radio, with the officer immediately communicating the essential information for each stop to the dispatcher, who immediately enters it into an electronic data base; and

3) mobile data terminal or on-board computer, to enable the officer working in the squad car to electronically enter the data.[67]

Generally, the data entry strategy chosen for a given racial profiling study builds on the existing technology department or agency, so that new equipment requisitions and cost are kept to a minimum.

Deciding What Information to Record

Racial profiling studies vary considerably regarding which and how many data items are to be collected for each stop. In any given study, the decision regarding the scope of data to be collected may depend on such factors as: the cost of data collection; the method that will be used to code and transmit the data; the racial diversity of the jurisdiction; the particular questions of the stakeholders; and various political concerns.

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[67] Ramirez, et al., report the following: for the British study, a paper form is being used for data collection (p. 56); for the San Jose study, police officers have the option of entering the stop information via police radio to the dispatcher or via the mobile data terminal (MDT) located in each squad car (p. 26); for the North Carolina Highway Patrol study, the data are being electronically entered via pull-down menus using the MDT located in each patrol vehicle (p. 49); for the San Diego study, police officers enter data using laptop computers located in the squad cars (p. 38).

For example, in the study of traffic stops by the **San Jose Police Department**, only five data items are being recorded:

- driver's race/ethnicity (selecting one of eight possible codes);[68]
- driver's gender;
- driver's age;
- the reason for the stop (selecting from four possible codes);[69] and
- the disposition or outcome of the stop (selecting from eight possible codes).[70]

In the racial profiling study recently begun by the **San Diego Police Department**, on the other hand, the officer must record 14 data elements for each stop, including:[71]

- district;
- date and time;
- cause for the stop
  - moving violation
  - equipment violation
  - radio call/citizen complaint
  - personal observation/knowledge
  - suspect information
  - municipal/county code violation
- race (as perceived by the officer, using 18 possible categories);[72]
- sex;
- age;
- disposition
  - citation issued
  - oral warning
  - written warning
  - FI (this term is undefined in the source)
  - other

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[68] The eight race/ethnicity categories are Asian American, African American, Hispanic, Native American, Pacific Islander, Middle Eastern/East Indian, White, and Other. Ramirez, et al., op. cit., p.28.

[69] The four possible reasons for the stop are violations of the vehicle code, the penal code, the municipal code, or an APB (be on the lookout or an all points bulletin); see Ramirez, et al., op. cit., p. 29.

[70] Disposition or outcome of the stop is coded as: Arrest made; Warrant Arrest made; Criminal Citation issued; Traffic Citation issued, hazardous; Traffic Citation issued, non-hazardous; Field Interview card; Courtesy Service/Assistance; or No Report Completed; see Ramirez, et al., op. cit., p. 29.

[71] Ramirez, et al., op. cit., pp. 39-41.

[72] The categories used include: White, Black, Chinese, Cambodian, Filipino, Guam, Hispanic, Indian, Japanese, Korean, Laotian, Pacific Islander, Samoan, Hawaiian, Vietnamese, Asian Indian, Other Asian, and Other; see Ramirez, et al., op. cit., pp. 41-42.

- arrest (yes/no);
- search (yes/no);
- search type (vehicle/driver/passengers);
- basis for the search
  - contraband visible
  - odor of contraband
  - canine alert
  - inventory search prior to impound
  - consent search
  - fourth [amendment] waiver search (this term is also undefined)
  - search incident to arrest
  - inventory search
  - observed evidence related to criminal activity
  - other
- obtained search form (yes/no);
- contraband found (yes/no); and
- property seized (yes/no).

To further illustrate the range of possibilities for data collection, a study being undertaken by the **North Carolina Highway Patrol** will require that troopers collect the following information on each traffic stop made:

- initial reason for the stop;
- identifying characteristics of the driver (race/ethnicity, sex, and approximate age);
- type of enforcement action taken, if any, as a result of the stop;
- whether any physical resistance was encountered; and
- whether a search was conducted;

and, if a search was conducted:

- type of search;
- basis for the search;
- whether search was of vehicle, driver, and/or passengers;
- race/ethnicity and gender of each person searched; and
- description of any contraband found and whether any property was seized.[73]

Coding the Driver's Race/Ethnicity

The various studies also differ considerably regarding the level of detail being coded for driver race/ethnicity. In the study by the **North Carolina Highway Patrol**, for example, the driver's

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[73] Ramirez, et al., op. cit., pp. 48-49.

race/ethnicity will be recorded based on the officer's perception using the following five categories:

- White;
- Black;
- Indian;
- Asian; or
- Other;

in addition to noting whether the person appeared to be:

- Hispanic or Non-Hispanic.

The **San Diego study**, on the other hand, will use an 18-category schema to code the driver's race/ethnicity, including such narrow categories as "Laotian," "Cambodian," and "Vietnamese," as well as "Filipino," "Guam," "Samoan," "Hawaiian," and "Pacific Islander." It would seem that the use of such a complicated coding schema might be more time-consuming and error prone and yet, perhaps no more useful in analysis, than the simpler North Carolina schema. Nevertheless, the highly detailed coding schema developed for the San Diego study may indeed be optimal for that community, since the level of detail for race/ethnicity (and for any other data items collected) must be tailored to needs of local policymakers and should reflect the actual racial/ethnic diversity in the locality under study. In short, no single coding schema can be expected to fit everywhere.

This principle applies to all data items in any racial profiling study. The data collection protocol should be designed to be used as efficiently as possible to accurately gather only the data that will indeed prove useful during analysis. In addition, the data collection protocol should be tailored to the local or state situation, recognizing that no single study design will be optimal everywhere.

Perhaps the following six-category schema would be adequate for coding race/ethnicity in race profiling studies in Minnesota:

- White
- Black
- Latin American/Hispanic
- Asian/Pacific Islander/Native Hawaiian
- Native American/Eskimo/Inuit/Aleutian Islander
- Middle Eastern/East Indian/Mediterranean-North African

Most racial profiling studies base the identification of the driver's race/ethnicity on the officer's perception rather than employing any more direct method of inquiry. Not only is this approach less intrusive than a direct inquiry of the driver, but to the extent that racial profiling may be occurring, it is the officer's perception of the driver's race/ethnicity, rather than the person's actual race/ethnicity, that is the operative factor in the stop decisions. Nevertheless, it should be

anticipated that any perception-based, race-coding schema will be less than perfectly reliable, since astute officers might well occasionally disagree on the apparent racial identity of people whom they stop. Such measurement error will inevitably complicate the analysis to some degree.

Epilogue: Looking Beyond the Study

Given the inherent methodological limitations to even the best-designed racial profiling study—especially the difficulty of defining a suitable baseline measure for comparison of the stop data—it is unlikely that any given study will completely satisfy the competing expectations and desires of all the study's stakeholders or constituencies. For this and other reasons, it would seem advisable at the outset of a racial profiling study for the stakeholders to begin collaborative planning for justice system improvements to address the underlying goal of racial equality within the justice system. It may not be necessary to conclude that the system is broken and to assign blame before moving forward to enhance that system. The underlying rationale for such action might be more consistent with the assumption that no system is perfect and, thus, that there is always opportunity for improvement.

Presumably, race-neutral justice is a shared goal within communities throughout the nation. The very undertaking of a racial profiling study within a community is essentially a reaffirmation of this community value. Such a study focuses community attention on that goal and provides the community with an opportunity to work toward its attainment, even apart from the exact findings of the study itself.

One strategy for immediate system enhancement that arises often in the emerging racial profiling literature calls for enhanced training for law enforcement personnel to better sensitize officers to the subtle and unintended ways in which broad-based racial assumptions and stereotypes may lead to racial profiling and other racially skewed justice outcomes, just as they may lead in the larger society to racially skewed patterns in employment, housing, education, and other major societal activities. Convincing police officers and other public officials of the continuing need for such training may turn out to be one of the chief consequences of racial profiling studies.

Another strategy for the attainment of equal justice might involve redoubling efforts to recruit minority members into positions of responsibility throughout the justice system.[74] Of course, officials system-wide regularly note that their offices have long been pursuing the recruitment and retention of qualified minorities, and they bemoan the difficulty of attracting qualified and interested applicants. This experience would seem to suggest that broader strategies may be needed, as well, such as strategies aimed at the earlier preparation and encouragement of children of color for careers in the justice system.

These are merely two examples of strategies that might help to enhance race-neutrality within the justice system. Collaborating groups formed for the immediate purpose of conducting racial profiling studies could undoubtedly brainstorm other strategies and develop related specific

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[74] One example of the benefits that can result from such a strategy involves the recent recruitment by the Minnesota Department of Natural Resources of Hmong persons into conservation officer positions, resulting in increased awareness of and concern for state hunting laws by members of the Hmong community. Members of the Hmong community have also been recruited into the St. Paul Police Department to serve in a similar capacity as liaison officers.

methods for implementing those strategies, with the ultimate goal of enhancing race neutrality in the justice system. Perhaps they could save valuable time and avoid much unnecessary controversy by beginning that effort early on in the context of the study itself.