Statement by
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Hearing on
Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy

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2141 Rayburn House Office Building

Subcommittee on the Constitution, Civil Rights, and Civil Liberties
United States House of Representatives

Good afternoon, Chairman Nadler, Ranking Member Sensenbrenner, and members of the Subcommittee. I appreciate the opportunity to share with you my observations on racial profiling and the use of suspect classifications in law enforcement policy.

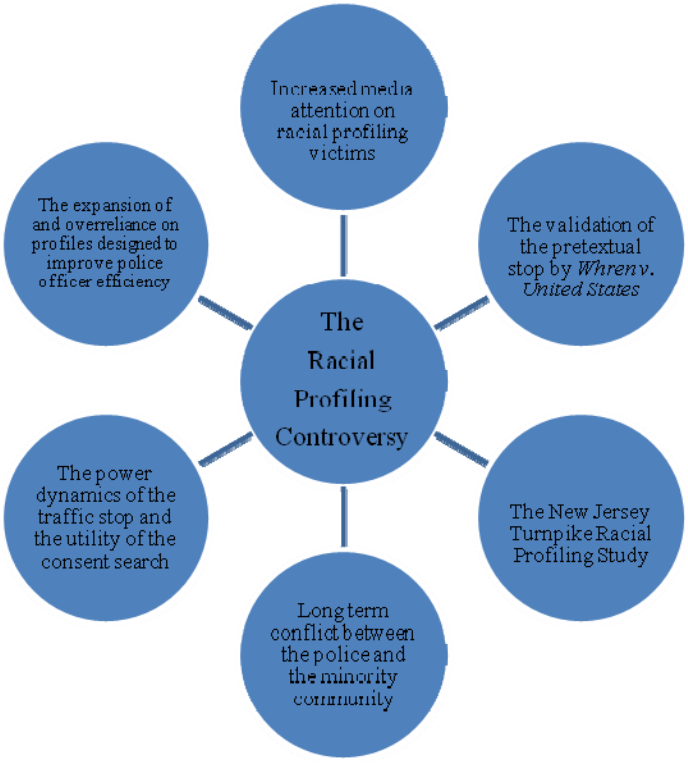
For the past 29 years it has been my privilege to work in the Criminal Justice industry. As a police practitioner and scholar I have witnessed, and in some cases participated in, enormous transformational change in American policing. Throughout this entire time, however, one thing has remained constant. Issues relating to race and ethnicity are as salient today as they were in 1981, when I took the oath of a Texas State Trooper, and I suspect as they were in 1959, when my father took the oath of a Dallas Police Officer.

The Status of the Racial Profiling Controversy

In the mid-1990's six seemingly unrelated factors coalesced to become what we now refer to as the racial profiling controversy (see Figure 1). Prior to this time when a police department was accused of racial bias it could legitimately respond that there was no evidence supporting such an accusation. They were right. There was no evidence at all. Prior to racial profiling research American policing simply did not have the information to respond to even the most rudimentary questions about the possible disparate impact of routine law enforcement programs.

It is different now. Hundreds of racial profiling and police stop studies conducted throughout the nation in all sorts of police departments provide an unprecedented body of literature. Indeed our understanding of routine police systems and practices has expanded more in the past fifteen years than at any other time in the history of American policing. We owe this to the racial profiling controversy.

Figure 1 – Factors contributing to the racial profiling controversy.



Yet, the more we know, the more we don't know. There is still more work to be done. The most important question in racial profiling research continues to be;

To what extent does an individual's race or ethnicity affect the probability of being stopped by the police?

Analytically, responding to this racial profiling research question is deceptively simple. There are only two numbers involved. These two numbers are presented in a fraction. The numerator is the percentage of individuals, by race or ethnicity, who are actually stopped by the police. The denominator is the percentage of individuals, also by race or ethnicity, who are available or likely to be stopped by the police (see Figure 2).

Figure 2 - The analytical structure of racial profiling research

Percentages of individuals
by race or ethnicity
who are actually stopped
by the police

Percentages of individuals
by race or ethnicity
who are available to be stopped
by the police

If these two percentages are equal then a researcher might conclude that no racial profiling is occurring. For example, if 12 percent of the drivers stopped by the police are Black and 12 percent of the drivers available to be stopped are Black then a researcher might conclude that police officers are not targeting Black drivers.

If on the other hand, 24 percent of the drivers stopped by the police are Black while only 12 percent of the drivers available to be stopped are Black then a researcher might conclude that Blacks are twice as likely to be stopped.

Either way, this researcher is likely wrong.

Racial profiling data are not able to measure discriminatory intent at the individual police officer level. Police stop data, the numerator, does not record the police officer's perception of the driver's race or ethnicity ***prior*** to the stop. With one notable exception[i], no researcher has collected information on whether police officers are able to accurately observe a driver's race or ethnicity prior to initiating a stop. This particular research confirms what police officers have told us anecdotally for many years. In the vast majority of enforcement contexts, particularly at night, it is exceedingly difficult for a police officer to know the race or ethnicity of a driver prior to the stop. Succinctly, it is not possible for us to conclude that an individual was stopped because of his or her race or ethnicity unless we can first establish whether the police officer was actually aware of this information prior to the stop. Furthermore, even if we were able to capture this information I am aware of no test that can look into the heart of a police officer to find a discriminatory intent.

The estimates used to measure who does not get stopped (i.e. benchmarks) are neither valid nor reliable enough to evaluate the overall disparate effect of an enforcement practice. While we are relatively confident of the accuracy in our measures of who is actually stopped, we have little confidence in the accuracy of our measures of who is ***not stopped***. Most benchmarks are based on residential populations, field observations or accident records. None are either universally reliable or generally acceptable as valid measures of the actual population of individuals at risk of being stopped by the police. Unless and until we are able to accurately estimate the racial and ethnic proportions within the population of individuals that are at risk of being stopped it is impossible for us to ethically calculate the effect race and ethnicity might have on the probability of being stopped. Two related factors further hamper our ability to determine the overall disparate effect of an enforcement practice.

- Probability is based, in part, on the assumption of random selection. We know that a police officer's decision to stop is not random. Not all drivers have an equal and non-zero chance of being stopped by the police.
- The probability of being stopped by the police is largely influenced by how much a person drivers, how well a person drives, where a person drives and, most importantly, where a police officer is assigned to work. While some benchmarks account for a few of these factors, none consider them all simultaneously.

The second most important question in racial profiling research is;

When stopped, are individuals of a particular racial or ethnic group treated differently?

The evaluation of events occurring during and immediately after traffic and pedestrian stops (e.g. searches and arrests, respectively) is usually not hampered by the type of measurement problems discussed in the previous section. There is no externally developed benchmark. The stop data themselves measure the actual racial and ethnic proportions within this population. The most important challenges in this part of the research are caused by a lack of detail in the data and an uninformed analysis of routine police procedures.

A lack of detail in police stop data threatens our ability to evaluate the quality of police officer decision making. The most instructive example of this is our inability to correlate (associate) the ***dangerousness*** of a driver's alleged behavior with the ***harshness*** of a police officer's response to it. Ideally, the more dangerous the driver's behavior the more likely it is he will be stopped and the more punitive the officer's response should be. In racial profiling research it is important for us to determine the correlation between these two factors so we can be sure that the driver's alleged behavior, not his race or ethnicity, influenced the police officer's enforcement decision to either warn, cite or arrest.

We expect that a Black and White driver suspected of committing the same violation would receive the same response from a police officer. Unfortunately, the data do not allow us to conduct this type of analysis. The attributes for the variable describing the harshness of a police officer's response can be ordered logically on a scale from verbal warning – written warning – citation – arrest. The attributes we tend to use for the variable describing the reason for the stop (e.g. traffic violation, equipment, etc.) are overly broad and cannot be ordered logically with respect to their relative level of dangerousness.

In far too many instances the analysis and interpretation of racial profiling data does not account for subtle, yet important, distinctions in routine police practices. The most serious mistake many analysts make is to not differentiate between the motivations or justifications for the types of searches. Some searches (e.g. incident to arrest and inventory) are required by law or department policy. Other searches (e.g. plain view and warrant based) are predicated on some level of articulated proof that a crime has or is being committed. Some (e.g. *Terry* or pat down) are allowed to enhance officer safety.

Within the context of racial profiling, the most important type of search is the ubiquitous consent search. These searches require no level of proof. Most people, when asked, will readily consent to a search. This discretionary authority, along with a traffic code that provides thousands of legitimate reasons to initiate a pretextual traffic stop, create an important power dynamic in favor of the police officer. The consent search, or more accurately the police officer's unbridled use of this discretionary authority, should be the focus of the analyst's attention.

In summary, we have come a long way in racial profiling research over the past fifteen years; however, there is still a long way to go.

The Appropriate Use of Race and Ethnicity in Policing Policy and Procedure

I am often asked about the appropriateness of information relating to an individual's race or ethnicity in police officer decision making. To what extent should race and ethnicity influence the decisions criminal justice actors make on a regular basis? Should race and ethnicity be a part of a suspect profile? The answer lies on a continuum from ***identifier*** to ***indicator***.

As an ***identifier*** race and ethnicity are indispensible. Along with other physical, behavioral and demographic features, information about an individual's race and ethnicity (or skin color) is often essential to accurate identification. For good reason, racial and ethnic information are often included in published descriptions of criminal suspects, missing persons and potential witnesses. Such information enables police officers to be more efficient and accurate.

As an ***indicator*** race and ethnicity are, at best, a distraction. There is no evidence, at all, that race and ethnicity play any role in criminal propensity. The use of race and ethnicity in suspect classifications and profiles is counter-productive. Spectators of the racial profiling controversy point to arrest, conviction and incarceration rates as evidence that racial and ethnic minorities are more likely to be involved in serious criminal activity. While it is generally true that racial and ethnic minorities are over-represented in arrests, convictions and incarcerations, there is scant evidence that they are necessarily more likely to be involved in criminal behavior.

For example, the findings from two important measures of criminal behavior are in stark contrast. The National Household Survey of Substance and Drug Abuse (2000) finds that the same proportion of Blacks and Whites (12 to 13 percent, respectively) say they use illegal substances. This same survey finds that among actual users of crack cocaine; 71.3 percent are White, 17.3 percent are Black and 7.9 percent are Hispanic. The United States Sentencing Commission (2000) reports that arrestees for crack cocaine are 5.7 percent White, 84.3 percent Black and 9.0 percent Hispanic. The National Household Survey of Substance and Drug Abuse finds that among users of power cocaine, 81.3 percent are White, 7.7 percent are Black and 8.5 percent are Hispanic. The United States Sentencing Commission reports that arrestees for powder cocaine are 18.2 percent White, 30.2 percent Black and 50.5 percent Hispanic. These disparities may lie in where these particular drugs are bought, sold and consumed. [ii] (see Table 1).

Table 1 – Percentage of (self-reported) users and arrestees by race for crack and powder cocaine.

	National Household Survey		U.S. Sentencing Commission	
	Powder cocaine users	Crack cocaine users	Powder cocaine arrestees	Crack cocaine arrestees
White	81.3 %	71.3 %	18.2 %	5.7 %
Black	7.7 %	17.3 %	30.2 %	84.3 %
Hispanic	8.5 %	7.9 %	50.5 %	9.0 %

Note: Percentages will not necessarily total 100% because not all racial/ethnic categories are represented

The perception that minorities are more likely to be drug couriers is also not supported by the empirical evidence. The reason more Blacks are arrested (proportionally) is that more are being searched.[iii] There is no credible or objective data that legitimizes police attention on one racial group.[iv] Arrest and convictions rates are not measures of criminality, they are measures of police activity.[v]

What Racial Profiling Research Must do to Remain Viable as an Agent of Change

The continued improvement and expansion of racial profiling research is essential to the professional and ethical development of American policing. The contribution of this research agenda to our understanding of policing systems and practices is unquestionably valuable. Beyond this, however, the value of this research will someday lie in its ability to fully document and describe the policing function. To insure this outcome researchers like me must do two things.

First, it is essential that the data we collect be of sufficient detail and quality to fully explain how the contexts of a police/citizen interaction affect police officer decision making. Our ability to isolate the influence of race and ethnicity on police officer decision making is dependent upon our ability to discount plausible alternative explanations. Our comparisons of stop events must truly reach the point where *all things are equal*, except for the race or ethnicity of the driver, before we will legitimately be able to allege racial bias.

Second, when presented with new enforcement challenges we must insist on learning from our past. There has been a great deal of talk lately about Arizona's new immigration law. I for one am not inclined to join in this melee by making a prediction on whether or not this new law might lead to racial profiling. It is, however, important to remind ourselves that we have been down a similar path. In the late 1980's the United States Drug Enforcement Administration published a series of drug courier profiles and offered training to local agencies on how to interdict illegal narcotics traffic. They said that interdiction should occur as a natural extension of a local agency's routine law enforcement process. When a police officer stops an individual for a routine violation and that individual looks or behaves consistent with the drug courier profile then, and only then, should the interdiction process begin. Unfortunately, there is compelling evidence that a few police officers truncated these profiles and used pretextual stops as a means of targeting suspected drug couriers. This practice contributed greatly to the racial profiling controversy. The Arizona immigration law, despite its amendments, does not preclude an officer from doing the same thing upon observing a suspected illegal alien, thereby putting the officer at risk of relying upon an individual's ethnicity in making the decision to stop. Again, let me be clear. I am not predicting an increase in racial profiling in Arizona. I am far more confident in the police than that. I am merely suggesting that we should consider the potential for this and similar outcomes while developing criminal justice policy.

Conclusion

About two years ago I had come to the conclusion that the racial profiling research agenda had run its course. I was convinced that I should move on and focus my scholarship into other areas like police officer decision making. I now know that I was wrong.

Racial profiling is as relevant today as it was fifteen years ago. In fact, the controversy has expanded considerably. We now regularly hear the term in 'racial profiling' in contexts far removed from traffic stops; like airport security, immigration, shopping and even medical diagnostics. The issues are the same, only the context has expanded.

I am encouraged, however, at what has changed. Nearly every day I meet with policing leaders, prosecutors and criminal justice policy makers who are concerned about the racial profiling controversy. Gone are the days when a police administrator merely scoffed at a racial profiling allegation as the musings of a malcontented citizen. I am encouraged by the fact that they take this issue very seriously. These leaders are making a difference, and these leaders are in the majority.

Again, I appreciate the opportunity to appear before you this afternoon. I would of course be pleased to respond to any questions you may have at the appropriate time.

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