

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Racial Profiling

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House Judiciary Committee
Subcommittee on Crime and Corrections

Room 140
Main Capitol Building
Harrisburg, Pennsylvania

Tuesday, December 14, 1999 - 10:05 a.m.

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BEFORE:

Honorable Jerry Birmelin, Majority Chairperson
Honorable Pat Browne
Honorable Scot Chadwick
Honorable Lita Cohen
Honorable Stephen Maitland
Honorable Albert Masland
Honorable Harold James, Minority Chairperson
Honorable Frank Dermody
Honorable Babette Josephs
Honorable Kathy Manderino
Honorable Joe Petrarca
Honorable James Roebuck
Honorable Don Walko
Honorable LeAnna Washington

ALSO PRESENT:

Brian Preski
Majority Executive Director

Judy Sedesse
Majority Administrative Assistant

Beryl Kuhr
Minority Counsel

Mike Rish
Minority Executive Director

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The Honorable John Morganelli
District Attorney - Northampton County

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Written Testimony Submitted by:

Reverend Robert P. Shine, Sr.
Philadelphia Clergy

Representative James R. Roebuck
Chairman - Pennsylvania Legislative Black Caucus

1 CHAIRPERSON BIRMELIN: Good morning. I want
2 to welcome all of you this morning to the House Judiciary
3 Subcommittee on Crime and Corrections hearing. Today's
4 topic is the topic of racial profiling. There is a packet
5 that we have compliments of Representative James that has
6 some legislation that we may be referring to throughout the
7 day dealing with this issue.

8 We have a distinguished panel of several folks
9 who are going to be giving their testimony today, and we
10 don't want to hold any of them up. We want to keep the
11 hearing moving as long as -- as quickly as we can, but we
12 don't want to rush anybody.

13 I would also ask all those who are testifying
14 if, after their testimony, they would be willing to sit for
15 some questions by the panel that is up here at the desk.
16 The first thing I want to do, however, is introduce myself.
17 I'm Representative Birmelin. I Chair the Subcommittee. I
18 represent Pike and Wayne Counties.

19 And I want to ask the other members of the
20 Committee who are seated with me to introduce themselves,
21 and I will start to my immediate left with Representative
22 James.

23 REPRESENTATIVE JAMES: Harold James,
24 Democratic Subcommittee Chairman, Philadelphia,
25 Pennsylvania.

1 REPRESENTATIVE DERMODY: Frank Dermody,
2 Allegheny County.

3 REPRESENTATIVE WALKO: Don Walko, Allegheny
4 County.

5 REPRESENTATIVE COHEN: Lita Cohen, Montgomery
6 County.

7 REPRESENTATIVE JOSEPHS: Babette Josephs,
8 Philadelphia County.

9 CHAIRPERSON BIRMELIN: As is usually the case
10 with our public hearings, members will be coming in and
11 leaving. And I will do my best to introduce those who come
12 in that are not here presently. We're going to begin our
13 hearing this morning with opening remarks from my
14 counterpart, the Democratic Chairman of the Subcommittee on
15 Crime and Corrections, Representative Harold James.

16 REPRESENTATIVE JAMES: Thank you, Mr.
17 Chairman. I'd like to take this opportunity to thank the
18 House Judiciary Committee, especially Chairman Thomas
19 Gannon, Subcommittee Chairman Jerry Birmelin, and their
20 staff for convening this important hearing today.

21 I'd also like to thank the leadership in the
22 House Democratic -- and the House Democratic Policy
23 Committee, especially the Chairman, Victor Lescovitz, and
24 his staff along with our legislative research office. Not
25 just in Pennsylvania but throughout the nation, African

1 Americans, Latinos and other minorities are frequent
2 targets for traffic stops simply because of their race.

3 This is an issue that demands serious
4 examination and warrants swift action. In May 1998, the
5 Pennsylvania Legislative Black Caucus alerted the General
6 Assembly to this growing problem. The House Democratic
7 Policy Committee followed efforts with three public
8 hearings in Pittsburgh, Philadelphia and Harrisburg.

9 It is rewarding to see the General Assembly
10 now is taking a hard look at this issue. Highly publicized
11 events in places like New Jersey have made us more aware of
12 how widespread racial profiling is, not to mention how
13 accepted the practice is among many officers.

14 New Jersey made serious changes to their law
15 enforcement department after a long history of
16 controversial stops. It is time for our Commonwealth to
17 step up and become a leader in showing our residents that
18 Pennsylvania police officers will not violate civil rights
19 in their zeal to make arrests.

20 There are a number of measures before the
21 House. And I'm hopeful that this hearing focuses on at
22 least the four bills I've introduced. The first measure,
23 House Bill 2156, would require the Pennsylvania State
24 Police to give law enforcement candidates instructions and
25 course work on how to prevent racial profiling in traffic

1 stops.

2 The second, House Bill 2157, would apply the
3 same requirements to the Municipal Police Officers
4 Education and Training Commission. I believe proper
5 training can prevent racial profiling and restore the
6 public trust in law enforcement and ensure the protection
7 of every resident.

8 The third bill, House Bill 1649, would require
9 police departments across the state to fill out a detailed
10 report that would include the racial breakdown of people
11 stopped by police. And finally, my fourth measure, House
12 Bill 873, would require the State Office of the Attorney
13 General to conduct a study of routine traffic stops here in
14 Pennsylvania.

15 And as policymakers in Pennsylvania, we have
16 the responsibility to find out if racial profiling is a
17 problem here. This breakdown would comprise the number of
18 people stopped, their race, age, traffic infraction which
19 led to the stop, whether there was a search and the reason
20 behind it, and whether there were any warnings, traffic
21 citations or arrests.

22 And as a retired Philadelphia police officer
23 who was wounded in the line of duty, I can assure you that
24 this is not an attack on the brave men and women who make
25 up Pennsylvania's law enforcement agencies. This is an

1 attempt for policymakers to make -- take a leadership role
2 and research a potential problem and take action before
3 anything happens similar to those events in New Jersey and
4 Maryland and throughout other states.

5 A comprehensive study can answer long-ignored
6 questions. If the study shows Pennsylvania justice is
7 blind to race, then African Americans, Latinos and other
8 minorities can be assured that they are treated fairly.
9 And if the study shows a broad discrepancy in traffic stops
10 among white and minority motorists, then it is up to us to
11 take action to eliminate this discriminatory practice.

12 These efforts have broad support. At the
13 National Black Caucus of State Legislators in Baltimore
14 earlier this year, I sponsored a resolution that encourages
15 states to adopt legislation to prevent injustices caused by
16 racial profiling. The resolution, which cited the need to
17 educate officers, improve collection of data relating to
18 the racial breakdown of routine traffic stops, was adopted
19 unanimously.

20 Both North Carolina and Connecticut already
21 have enacted legislation dealing with this practice.
22 Pennsylvania should do the same thing. The fact that we
23 don't know how many people are being stopped or how many
24 law enforcement officers are encouraging -- are engaging in
25 racial profiling is a serious problem.

1 The need to get a handle on these numbers is
2 important to ensure equal protection under law. And in my
3 legislative district and many communities throughout
4 Pennsylvania, the implied crime of driving while black or
5 brown or being a young male minority and driving with a
6 white woman has become a sad reality.

7 And if you fit any of these categories, you
8 should be prepared to be pulled over and questioned. It is
9 unfair that races of people are scrutinized with suspicion
10 in the eyes of justice. Racial profiling appears to be a
11 real problem. All we know for sure is that there are too
12 many questionable incidents of routine traffic stops and
13 racial profiling.

14 Many have escalated into civil rights
15 violations. Others, such as the Johnny Gammage case in
16 Pittsburgh, have turned violent. And I hope these hearings
17 lead to effective policies that will prevent this
18 discriminatory practice in Pennsylvania.

19 Every citizen, regardless of race or gender,
20 deserves equal treatment under the law. And I look forward
21 to working with all of you to make sure that we guarantee
22 this basic right. Thank you, Mr. Chairman.

23 CHAIRPERSON BIRMELIN: Thank you, Mr. James.
24 The first testifiers that we have with us today are
25 Attorney Paul J. Evanko, Commissioner of the Pennsylvania

1 State Police. And I see he has some gentlemen with him.

2 And I would appreciate it, Mr. Evanko, if you would
3 introduce those who are with you and then begin.

4 COLONEL EVANKO: Mr. Chairman, thank you very
5 much. Members of the Committee, with me today are
6 Lieutenant Colonel Joseph Wescott, who is Deputy
7 Commissioner of Operations. He's responsible for all the
8 operational components of the Department from control
9 operations, criminal investigations, liquor control
10 enforcement, Bureau of Criminal Investigation, organized
11 crime, drug law enforcement, our emergency response team
12 operations, all of our bomb dog operations, arson dogs,
13 drug dogs, any operational component of the State Police,
14 our air services.

15 To my right is Lieutenant Colonel Tom Coury.
16 He's the Deputy Commissioner of Administration. He's in
17 charge of all of our personnel, all of our discipline
18 system, our inspection system, our internal affairs
19 processes, our training and education, our equal employment
20 office, among a number of other things.

21 And to my far left is Lieutenant Colonel Bob
22 Hickes, Deputy Commissioner of Staff. He's responsible for
23 all the data management systems in the Pennsylvania State
24 Police, all of the existing and emerging technology systems
25 that we are in the process of acquiring, as well as all of

1 our labs and all of our research and development.

2 Thank you very much for the opportunity to be
3 here and testify today. The scope of today's hearing as
4 set forth in my invitation, quote, is to focus upon the
5 issues surrounding policies and procedures of the law
6 enforcement community within this Commonwealth with respect
7 to traffic stops and the issue of racial profiling.

8 It is the duty of the Pennsylvania State
9 Police to faithfully and impartially enforce the laws of
10 this Commonwealth without considering a person's race,
11 color, ethnicity, gender or creed. The Pennsylvania State
12 Police do not and will never condone troopers stopping an
13 individual based on those characteristics.

14 Every Pennsylvania State Police Trooper takes
15 an oath of office that they will serve the citizens of this
16 Commonwealth honestly and faithfully by discharging their
17 duties with honor and fidelity. Troopers also pledge an
18 oath of office known as our "Call of Honor."

19 This 70-year-old oath commits troopers to,
20 quote, obey the law and to enforce it without any
21 consideration of class, color, creed or condition. These
22 oaths serve as the basis for the education and the training
23 of each trooper.

24 The Department's policies, regulations and
25 training are derived from them as well. Cadets and

1 troopers are instructed to conduct every traffic stop based
2 upon articulable probable cause or reasonable suspicion
3 that a traffic violation or criminal activity has taken
4 place, is taking place, or is about to take place.

5 When the issue of racial profiling became
6 prominent earlier this year, I decided to reinforce that
7 training. We issued in June a Department Special Order to
8 every trooper in the Department reminding them that, quote,
9 members shall not initiate traffic stops solely on the
10 basis of race or ethnic profiling and such conduct will not
11 be tolerated by the Department, end quote.

12 In addition, I directed that our mandatory
13 in-service training continue to include cultural awareness.
14 This program not only provides departmental instruction on
15 cultural diversity but also addresses the illegalities of
16 race or ethnic-based selective traffic enforcement.

17 Department regulations and the training and
18 the supervisory review of each member serves to ensure the
19 lawful exercise of their limited discretion under the law
20 to execute a traffic stop. To further ensure compliance
21 with the law and the oaths that we take, I ordered
22 Department staff to examine all policies, regulations and
23 training programs. They were all found to comply with the
24 law and the Special Order.

25 However, the review revealed that current

1 forms relating to traffic stops do not include race or
2 similar notations that are necessary to allow for analysis.
3 To provide this information, I recommend that the current
4 traffic citation form be changed to include a block that
5 will capture the race and ethnicity of the operator of a
6 motor vehicle.

7 The traffic citation form is developed by the
8 Administrative Office of Pennsylvania Courts. I am sending
9 a letter to AOPC asking them to include the collection of
10 race and ethnicity in a block on the traffic citation form.
11 Collecting this information would enable the Department to
12 better monitor the effectiveness of our policies and to
13 report publicly to Pennsylvanians on what we find.

14 As we implement the Department's developing
15 Traffic Safety, Criminal Investigation Incident Information
16 Management System and Program, which will allow troopers to
17 electronically read and capture information to assist with
18 the issuance of a citation or a warning notice, this new
19 data would be preserved for collection and analysis. The
20 data will give us another quantitative management tool to
21 further access -- assess our efforts to ensure that
22 troopers' practices reflect the Department's policy.

23 In addition, I ask for this Committee's
24 continuing support in amending the Electronic Surveillance
25 Act. Current law prohibits videotaping, but it is

1 unclear -- current law permits videotaping, but it is
2 unclear as to whether audiotaping is permitted.

3 This recommendation would clearly permit law
4 enforcement to audiotape each traffic stop. This
5 combination of video and audiotape will better enable
6 Department supervisors to ensure that all troopers properly
7 exercise their informed discretion in accordance with the
8 law and Department regulations when executing a traffic
9 stop.

10 In the end, this information could prove to be
11 an even more important management tool than the
12 quantitative data. If these changes are implemented, they
13 will provide a basis for an accurate statewide study of
14 traffic enforcement efforts of all law enforcement
15 departments in this Commonwealth.

16 This information would enable any department
17 and my department to further evaluate the effectiveness of
18 our traffic enforcement practices, regulations and
19 policies. I realize these measures will not only impact
20 upon the Department but also affect all 24,000 members of
21 Pennsylvania's law enforcement community.

22 The Department will work in concert with the
23 Pennsylvania State Troopers Association, the Pennsylvania
24 Chiefs of Police Association, and the Fraternal Order of
25 Police in reviewing and pursuing these recommendations.

1 We are a department consisting of 4,168
2 troopers. I cannot state that no single member of this
3 department has ever engaged in the repugnant practice of
4 selective traffic enforcement based solely on an
5 individual's race, color, ethnicity, gender or creed.

6 However, the command staff and I and the
7 Department's supervisors insist and attempt to ensure that
8 Department members adhere to the law and Department
9 regulations in exercising their discretion when stopping
10 vehicles on the roadways of the Commonwealth.

11 We have taken strong steps to ensure that our
12 practices reflect our policies. I believe the additional
13 steps I have outlined today will do even more. I would
14 like to thank the Chairman and the members of the Committee
15 for the opportunity to address you today on this critical
16 issue.

17 I believe that it is essential to maintaining
18 the integrity of law enforcement in Pennsylvania. And I
19 welcome the opportunity to respond to any questions or
20 comments that you have.

21 CHAIRPERSON BIRMELIN: Thank you, Colonel
22 Evanko. And for the benefit of the members of the
23 Committee, what I am going to be doing with each of our
24 testifiers is giving Representative James, who is the
25 sponsor of the bills that are under discussion today, I'm

1 going to give him the first opportunity to ask any question
2 of our witnesses.

3 And while he's doing that, if you would
4 indicate to the Chair or to Chief Counsel Preski your
5 desire to ask a question so that we can do this in an
6 orderly fashion, that would be helpful to us in making sure
7 that each member gets the opportunity to ask questions.

8 And we will begin with that questioning period
9 with Representative James.

10 REPRESENTATIVE JAMES: Thank you again, Mr.
11 Chairman. And I want to thank you, Commissioner and all of
12 your staff for agreeing to testify. Just before I ask you
13 a few questions, I neglected to mention the packet that my
14 staff had put together at the table for us.

15 And I just want to make sure that in the
16 packet that we have all of the legislation that we're
17 discussing and the amendments -- no -- the legislation and
18 the cosponsorship, which explains -- if you read the
19 cosponsorship, that explains the bill. You don't have to
20 read the legislation. It will tell you what it's about.

21 Also, we also in the bill, House Bill 873,
22 which is the -- asking the Attorney General to do the
23 study, we have an amendment which is attached to that. And
24 also, we have a resolution from the Council of State
25 Governments against racial profiling from the Pennsylvania

1 District Attorneys Association and the NBCSL.

2 Again, thank you for testifying. And I see
3 where you show good leadership because you said that you
4 had heard about profiling and you started to inquire with
5 your department about whether or not it might be done there
6 or whether or not you need to reinforce the training. And
7 I want to commend you for doing that.

8 COLONEL EVANKO: Thank you.

9 REPRESENTATIVE JAMES: So I think that shows
10 good leadership. And the fact that you said that you want
11 to recommend that you include a box or something on the
12 citation that would include the race?

13 COLONEL EVANKO: Yes, sir.

14 REPRESENTATIVE JAMES: When do you think that
15 would be done?

16 COLONEL EVANKO: I'm going to send the letter
17 as soon as possible to the AOPC, and it would depend on
18 their response.

19 REPRESENTATIVE JAMES: And in changing that,
20 do you know how long that process usually takes?

21 COLONEL EVANKO: No, I don't. I'm not
22 familiar with how long the process will take. I will urge
23 it to be done expeditiously.

24 REPRESENTATIVE JAMES: Okay. Because I
25 imagine you -- you've been in law enforcement a long time

1 because at one time, wasn't it included?

2 COLONEL EVANKO: Yes, it was. From my past
3 nearly 30 years as a trooper, it was included up until
4 December of 1990. It was changed by the AOPC on December
5 1st, 1990. And the ethnicity and the race were taken off
6 of the traffic citation then.

7 REPRESENTATIVE JAMES: So one thing I see, you
8 also support videotaping in the cars and the cameras. And
9 I think most of us support that, too, because we think that
10 would be a valuable asset and tool to help law enforcement
11 as well as helping the people that, you know, that we stop
12 or whatever, we protect, serve and protect.

13 You said that you also work with the Troopers
14 Association, the Chiefs of Police and FOP. I would also
15 hope that you would work with our committee in terms of as
16 we work to develop better police relationships and better
17 understanding and communication.

18 COLONEL EVANKO: Yes, sir. Absolutely.

19 REPRESENTATIVE JAMES: All right. Thank you.
20 Thank you, Mr. Chairman.

21 CHAIRPERSON BIRMELIN: Representative Dermody.

22 REPRESENTATIVE DERMODY: Thank you, Mr.
23 Chairman. Commissioner, I was just wondering if you knew
24 why the AOPC took the racial information off the citation
25 in 1990?

1 COLONEL EVANKO: No, we couldn't find that
2 out. I had our Heritage Affairs Officer -- that's a
3 captain that monitors and trains on hate enforcement and
4 ethic intimidations and assists communities around the
5 state in addressing those types of situations -- I had him
6 check. And I couldn't find justification for the removal
7 of the race and ethnic blocks in 1990.

8 REPRESENTATIVE DERMODY: If for this next
9 request you find out there may be some discussion, would
10 you let us know, please?

11 COLONEL EVANKO: Yes, sir, I will.

12 REPRESENTATIVE DERMODY: Thank you. Thank
13 you, Mr. Chairman.

14 CHAIRPERSON BIRMELIN: We want to thank you,
15 Colonel Evanko, and for your assistants who weren't pressed
16 too hard today to answer any questions for you. But we
17 want to thank you gentlemen for being here. Appreciate it.

18 REPRESENTATIVE JOSEPHS: Sorry. I was
19 waiting. I wasn't sure I would have --

20 CHAIRPERSON BIRMELIN: Representative Josephs.

21 REPRESENTATIVE JOSEPHS: Thank you, Mr.
22 Chairman. I think the idea of the box checkoff -- good
23 morning -- is a good idea. I'm not sure that it's entirely
24 adequate, however. And I don't drive. So I've never seen
25 one of these forms. Do they also give a reason for the

1 stop?

2 COLONEL EVANKO: They would include the actual
3 violation that was observed by the trooper, the
4 specific -- either the specific Title 75 traffic violation
5 which the trooper stopped the individual, yes.

6 REPRESENTATIVE JOSEPHS: Do they say anything
7 about who the passenger's perhaps?

8 COLONEL EVANKO: No, they do not list
9 passengers.

10 REPRESENTATIVE JOSEPHS: So from my point of
11 view, I'd be interested in some way to collect that data as
12 well. If we were -- if you and we are successful in having
13 the form changed, which I assume we could change by
14 legislation as well as by asking the court, do you have any
15 idea or any feelings about how that information should be
16 analyzed and who should analyze it?

17 COLONEL EVANKO: My recommendation would be
18 that the Pennsylvania State Police analyze their own
19 internal data. I don't have a recommendation for the other
20 1,210 police departments in Pennsylvania. And I'll supply
21 you with a copy of the traffic citation form that we use.

22 REPRESENTATIVE JOSEPHS: Thank you. Is the
23 same form used by local police?

24 COLONEL EVANKO: Yes, ma'am.

25 REPRESENTATIVE JOSEPHS: So it's uniform

1 across the state for court orders?

2 COLONEL EVANKO: Yes, ma'am.

3 REPRESENTATIVE JOSEPHS: Oh, I would just say
4 that my recommendation is when we have this information,
5 let some other agency look at it because that just makes it
6 more credible. Not that I doubt your information would be
7 credible, but it would remove all doubt if it were a third
8 party neutral organization that looked at it. Thank you.
9 Thank you, Mr. Chairman.

10 CHAIRPERSON BIRMELIN: Thank you, again. I
11 want to thank you, Colonel Evanko, and for your members for
12 being here.

13 COLONEL EVANKO: You're more than welcome.
14 Thank you very much for the opportunity.

15 CHAIRPERSON BIRMELIN: Our next testifier is
16 Attorney General Michael Fisher. He's the Attorney General
17 of the State of Pennsylvania. He has just come in. I'm
18 going to give him a few seconds to collect his thoughts, I
19 guess. But welcome, Attorney General Fisher.

20 Meanwhile, we are going to introduce some
21 other members of the Committee who have come in since we
22 began and my first introductions were made. And second to
23 my left is Representative Kathy Manderino from the City of
24 Philadelphia. And Representative Maitland is second to my
25 right from Adams County and Representative Chadwick to the

1 far right in the back row from Bradford and Susquehanna
2 County. Did I miss any other members? Oh, Representative
3 Petrarca sitting incognito amongst the audience. Feel free
4 to join us.

5 General Fisher, we want to welcome you.
6 You've been a regular visitor to some of the House
7 Judiciary Subcommittee and Committee meetings. And we
8 appreciate your input at all times. And we want to thank
9 you for coming and want to hear what you have to say this
10 morning.

11 MR. FISHER: All right. First of all, I'd
12 like to thank you, Chairman and the members of the
13 Subcommittee, which by the way, I chaired at one time
14 during my career in the House, in believe, 1979 and 1980.

15 CHAIRPERSON BIRMELIN: Don't entice me.

16 MR. FISHER: But thank you for allowing me to
17 give my remarks on traffic stops and racial profiling.
18 Joining me is Troy Beaverson, Deputy Attorney General in my
19 office, who's in charge of our Office of Legislative
20 Affairs.

21 This is an important issue, and I commend the
22 Subcommittee for giving it the attention it deserves. We
23 live in a society which is governed by a framework of laws.
24 This framework is designed for the protection and benefit
25 of all members of our society.

1 We, as policymakers and law enforcement
2 officials, must do everything within our authority to
3 ensure that the laws are enforced in a manner that provides
4 this protection to every member of our society. Our
5 criminal laws must not become tools for persecution.

6 Race is never an acceptable justification for
7 the selective enforcement of the law. As Attorney General
8 throughout my public and private career, I've had the
9 opportunity to work with both local and State Police
10 throughout Pennsylvania.

11 These dedicated professionals put their lives
12 on the line every day to protect the citizens of this
13 Commonwealth and perform their jobs courageously and
14 honorably. Anyone who engages in racial profiling
15 tarnishes the reputation of those members of the law
16 enforcement community who work hard to safeguard everyone's
17 rights.

18 As you know, there are a myriad of traffic
19 laws on the books today that, when violated, give a police
20 officer the authority to stop a vehicle. Any perception
21 that law enforcement officers act with bias or prejudice in
22 conducting those stops undermines the authority and
23 effectiveness of law enforcement and threatens the rule of
24 law.

25 Gallup recently released a study which was

1 done this fall detailing the perception the public has of
2 racially motivated traffic stops by police. In a telephone
3 poll of over 2,000 people, 56 percent of whites and 77
4 percent of African Americans believe that this practice is
5 widespread.

6 Moreover, three quarters of young black men
7 who participated in the poll feel that they have been
8 pulled over by police solely because of race. Obviously,
9 the fact that so many Americans believe that the practice
10 is widespread leaves us, as elected officials, with the
11 task of determining if racial profiling is occurring in the
12 Commonwealth; and if it is, to what extent?

13 This brings me to House Bill 873, which is
14 sponsored by Representative James and others and is
15 currently before the Judiciary Committee. The bill is
16 aimed at quantifying the motivation behind traffic stops
17 made by Pennsylvania State Police and municipal police.

18 As it's currently written, the bill would
19 require the Office of Attorney General to compile very
20 detailed statistics surrounding traffic stops made by any
21 law enforcement officer in the state. The information to
22 be compiled would include identifying characteristics of
23 the individual stopped, the violation which provided the
24 basis for the stop, and whether a search of the vehicle was
25 conducted as a result of the stop.

1 Within two years of the effective date of the
2 act, the Attorney General would be required to report
3 statistics to the General Assembly. Whether or not this
4 legislation becomes law is, of course, a decision that will
5 be made by you. If enacted, I will certainly carry out the
6 mandates of this law as efficiently as possible and in a
7 timely fashion.

8 One concern our office has at this time
9 is -- with requirements of 873 -- is that the information
10 required to be collected is not necessarily recorded by
11 police officers in the field now. The ability of the
12 Office of Attorney General to complete a meaningful
13 statistical study of traffic stops in Pennsylvania which
14 will be of any value to the Legislature will depend on
15 every police officer recording the information needed.

16 If the relevant data is not available to us,
17 the intent of the legislation obviously cannot be achieved.
18 I realize that House Bill 1649, a companion bill, is
19 designed to require law enforcement community to begin to
20 record that data in connection with traffic stops,
21 particularly that which is relevant to the statistical
22 study required by House Bill 873.

23 But this represents a departure from what is
24 now normal police procedure. I believe this Committee and
25 the General Assembly has to consider what the burden will

1 be of such a requirement if such a requirement is placed on
2 police forces across the Commonwealth.

3 Another consideration is, of course, the scope
4 of this study. In addition to the State Police, there are
5 1,131 municipal police forces in the Commonwealth. A
6 two-year study of every traffic stop made by every police
7 officer would be a massive undertaking.

8 The General Assembly may prefer our office to
9 randomly choose a representative sampling of police forces
10 to audit. The legislation in its current form is ambiguous
11 as to the scope of the study and should be amended to
12 clearly define the size of the project to be completed.

13 I would also like to bring to the attention of
14 the Committee that there will be costs, obviously,
15 associated with conducting a comprehensive study of police
16 traffic stops. The Office of Attorney General does not
17 currently have the staff in place to do those kinds of
18 studies and would not have the staff currently in place to
19 properly collect and analyze the information required to
20 make a proper report.

21 Moreover, because the legislation calls for a
22 onetime study to be completed over a two-year period, it
23 may not be cost-effective to hire additional employees to
24 do the work. Our Management Services Division is currently
25 in the process of estimating the cost of conducting such a

1 study. And we will make that information available to the
2 Committee as that estimate is completed.

3 Finally, as the chief law enforcement officer
4 of the Commonwealth, I believe it's time to call on all
5 state and local law enforcement authorities to adopt
6 policies, procedures and recordkeeping practices to ensure
7 that racial profiling does not occur in Pennsylvania.

8 This is consistent with the resolution adopted
9 by the Pennsylvania District Attorneys Association this
10 past July. If there are decisions being made that
11 undermine the confidence that everyday citizens have in
12 their police forces here in Pennsylvania, we need to know
13 what it is so that we can work to change those practices.

14 Again, the Office of Attorney General stands
15 ready to perform any duty given to it by the General
16 Assembly. We've been working with various members on this
17 Committee and outside this Committee on this issue. We'll
18 continue to do that. And I thank the Subcommittee for
19 giving me the opportunity to share my thoughts and views
20 with you at this time.

21 CHAIRPERSON BIRMELIN: Thank you, General
22 Fisher. We appreciate your testimony. Representative
23 James.

24 REPRESENTATIVE JAMES: Thank you, Mr.
25 Chairman. And thank you, Attorney General, for testifying.

1 I just wanted to say that when the issue came up earlier in
2 the year, we had a meeting. And you met with some of our
3 leadership, and we talked about some of your concerns.

4 And you expressed some of these concerns in
5 your -- in your testimony. So as a result of that, working
6 with your staff -- I believe it was the gentleman there
7 that worked with our staff -- we came up with an amendment
8 to House Bill 873. I don't know if you've had a chance to
9 see that. Have you had a chance to review that?

10 Well, the amendment -- what the amendment
11 does -- and it is attached in our package that we have to
12 873 -- what it does, it narrows the scope of the study to
13 several areas in the state. And also, that doesn't have an
14 amount but includes that you need, of course, an
15 appropriation. I'm sure you wouldn't mind that.

16 But I just don't have the amount at this time.
17 So is that what you're doing now in terms of trying to
18 figure out how much it may cost?

19 MR. FISHER: Well, I think, obviously, if the
20 bills -- if the scope of the study is narrowed -- and I am
21 familiar with the fact that you're talking about the larger
22 police departments, the State Police and a few random local
23 police departments -- that would give us a better handle on
24 trying to get an estimate of the approximate cost for the
25 study.

1 So I think that's the right direction to go in
2 trying to look at the larger departments and some smaller
3 departments to get a good cross-section. And at that
4 point, we can give you a better estimate as to what is
5 needed.

6 REPRESENTATIVE JAMES: Do you have any idea of
7 when that may -- you may be able to do that, some
8 projection in terms of time?

9 MR. FISHER: Cost-wise?

10 REPRESENTATIVE JAMES: When you would be able
11 to tell us, yes.

12 MR. FISHER: We could probably get that for
13 you within the next month.

14 REPRESENTATIVE JAMES: Okay. Now, what is
15 your view of video cameras in police cars?

16 MR. FISHER: I think video cameras in police
17 cars are a wise investment. I think they're beneficial to
18 not only the law enforcement, but they're beneficial to the
19 people of the Commonwealth.

20 REPRESENTATIVE JAMES: Okay. Well, I want to
21 thank you again for allowing the staff to work with us in
22 trying to determine a narrative scope of the study. And we
23 have come up with an amendment for that. And hopefully, we
24 can get that to the Committee. Thank you for your
25 testimony. And I hope that you will continue to work with

1 us.

2 MR. FISHER: We certainly pledge to.

3 CHAIRPERSON BIRMELIN: Representative Josephs.

4 REPRESENTATIVE JOSEPHS: Thank you, Mr.

5 Chairman. And thank you for being here. Is there anything
6 in current law, Mr. Fisher, that prevents you from doing
7 such a study? I know the practical considerations. But
8 are there legal impediments?

9 MR. FISHER: Well, let me say, Representative
10 Josephs, we have not looked at the impact that the Criminal
11 History Information Act may have on this study if attempted
12 to be done with that law. But there could be some
13 questions there.

14 There are practical reasons why the study
15 would be difficult for our office to do in that we do not
16 supervise directly any of the various police departments.
17 We're not like the New Jersey Attorney General's Office
18 where the State Police come under the Office of Attorney
19 General in New Jersey.

20 And looking -- I know you've heard from
21 Colonel Evanko about the different practices that are
22 followed across the state. There is nothing legal other
23 than potentially the Criminal History Information Act. But
24 there are a lot of practical hurdles that would make it
25 difficult for us to gather any meaningful data, not the

1 least of which is some of the issues -- some of the facts
2 requested in the study are not currently compiled by the
3 officers who are writing citations.

4 REPRESENTATIVE JOSEPHS: Well, if we could, as
5 Colonel Evanko suggested, get at least in the beginning the
6 simple change on the form, we'd at least have a part of the
7 information that we want. And I assume that your office is
8 looking into the Criminal History Records Act to see
9 whether that's an impediment.

10 I'd be interested to know what your
11 conclusions might be because speaking for myself only as a
12 member of the Appropriations Committee, I would be happy to
13 work with you and I think others would as well because it
14 seems that most of what you've talked about here, what's
15 keeping you from doing the study is a lack of
16 appropriations.

17 There's some way we can get an appropriations
18 to you if we had this change in the summons, if we knew
19 what the Criminal History Records Act said, I would be
20 willing to go ahead just based on that -- those.

21 MR. FISHER: Representative Josephs, I also
22 believe that it's important that, as I said and as the
23 District Attorneys' Association said, it's important for
24 law enforcement to adopt policies, procedures and
25 practices. One of those maybe is, you know, what various

1 police departments do with records of stops where citations
2 are not given. Some departments require the reporting of
3 that, other departments don't.

4 That's a significant factor in any review of
5 what is taking place across Pennsylvania, across our 67
6 counties involved and 12 million people. So with so many
7 police jurisdictions, with, you know, over 1,100 police
8 jurisdictions that come under remarkably different
9 policies, this compilation to be meaningful is going to be
10 pretty difficult.

11 REPRESENTATIVE JOSEPHS: Thank you. Thank
12 you, Mr. Chairman.

13 CHAIRPERSON BIRMELIN: Representative James
14 has one more question.

15 REPRESENTATIVE JAMES: Thank you. Attorney
16 General, are you aware about the New York Attorney General
17 doing a study that just came out last week? Did you have a
18 chance to review that?

19 MR. FISHER: I have not had a chance to review
20 it, but I'm aware that there was some -- some study
21 completed in New York.

22 REPRESENTATIVE JAMES: In terms of your staff,
23 what is your -- in your staff, what is your African
24 American minority female staff complement?

25 MR. FISHER: I can't give you the exact

1 percentage. I can get you that figure, however. I know we
2 have tried very hard to, you know, recruit minorities
3 during the time that I've been Attorney General. And there
4 has been a percentage that I believe has risen slightly
5 during my tenure.

6 REPRESENTATIVE JAMES: Okay. Thank you.

7 CHAIRPERSON BIRMELIN: Thank you, General
8 Fisher. We appreciate you coming here this morning.

9 MR. FISHER: Thank you very much, Mr.
10 Chairman.

11 CHAIRPERSON BIRMELIN: Our next testifier is
12 Mike Lutz. He's the President of the Fraternal Order of
13 Police. Mr. Lutz, if you would come forward. And we have
14 copies of Mr. Lutz's testimony that we'll be distributing
15 in a minute.

16 Also for the record, I'd like to introduce a
17 couple other Representatives who have joined us. Off to my
18 far left is Representative Pat Browne from Lehigh County,
19 and seated at the table to my far right is Representative
20 Al Masland from Cumberland County.

21 Before Mr. Lutz gives his testimony, I'm going
22 to recognize Representative Petrarca for a question that he
23 would like to put before the Committee and ask for the
24 Committee's indulgence in finding the answer.
25 Representative Petrarca.

1 REPRESENTATIVE PETRARCA: Thank you, Mr.
2 Chairman. The only question I have -- and it's for the
3 State Police members that are still here. I realize that
4 the Colonel is gone or has left. I would like to know if
5 you can provide the Committee with information regarding
6 the racial makeup of your personnel, specifically the
7 troopers that are out on the highways making the stops.
8 Thank you, Mr. Chairman.

9 CHAIRPERSON BIRMELIN: Thank you,
10 Representative Petrarca. I've directed Chief Counsel
11 Preski to address that question to the State Police, which
12 I'm sure they will cooperate in giving us the answer. And
13 then we will distribute the answer to the entire Judiciary
14 Committee Members.

15 Mr. Lutz, welcome to the hearing today. We
16 appreciate your coming. And you may give your testimony
17 whenever you're prepared to do so. And introduce the
18 gentleman who is with you, if you would, please.

19 MR. LUTZ: Thank you. My name is Michael
20 Lutz. I'm President of the State Lodge of Fraternal Order
21 of Police. And to my left is Paul McCommons. He's the
22 Vice President of the State Lodge of Fraternal Order of
23 Police, and he's an active officer with the State
24 Trooper -- State Troopers.

25 Good morning, Mr. Chairman, members of the

1 Judiciary Committee, and guests. On behalf of the
2 Pennsylvania State Lodge, Fraternal Order of Police, which
3 represents 38,000 professional police officers in the
4 Commonwealth of Pennsylvania, it is my pleasure to address
5 you today.

6 I am Michael Lutz, the President of the
7 Pennsylvania State Lodge and a career law enforcement
8 officer, having spent 32 years of my life in law
9 enforcement. It is not my intention or purpose to address
10 the implementation of policies and procedures of the more
11 than 1,200 police departments across the Commonwealth on
12 the issue of racial profiling, as I do not have the
13 authority to do so.

14 However, it is my obligation as President of
15 the Pennsylvania State Lodge to express to you the concerns
16 of professional police officers regarding the issues of
17 racial profiling and the collection of data in traffic
18 stops as expressed in House Bill 873.

19 I first want to point out that the
20 Pennsylvania Lodge is adamantly opposed to racial
21 discrimination of any kind. This would include the
22 stopping of an individual based solely on his or her race.
23 I will begin by stating that police officers believe that
24 traffic enforcement is critically important to the success
25 of police work.

1 Some reasons for this belief are the terrible
2 tragedies in the way of death and destruction that have
3 been caused by drivers under the influence of alcohol and
4 drugs. The loss of life and property damage caused by DUIs
5 has been staggering.

6 Vigorous traffic enforcement by DUI
7 checkpoints and other law enforcement tools has made an
8 appreciable reduction in highway deaths. Even more
9 insidious than these type of driving violations are the
10 drug traffickers that pedal the poison that plague our
11 streets.

12 These traffickers are responsible for the
13 venom that pollutes the minds and bodies of our children,
14 deteriorates our neighborhoods, destroys the moral fiber of
15 our families and, over the years, has caused the dramatic
16 increase in crime in all areas.

17 The Legislature of this Commonwealth, as well
18 as the Congress of the United States, has sent strong
19 messages to the law enforcement community via their crime
20 bills and mandatory sentencing requirements that they want
21 this scourge on American society to be eradicated.

22 Therefore, police officers, in cooperation
23 with prosecutors and legislators, have dedicated themselves
24 to using all the tools necessary to fight these epidemics.
25 Vehicle stops based on reasonable suspicion is one method

1 that could be used to fight the free flow of drugs coming
2 into Pennsylvania.

3 Initially, I must note that the situations
4 which occurred in New Jersey do not have any bearing upon
5 or correlation to events in Pennsylvania. The reason is,
6 in New Jersey, the State Police perform random stops for
7 the purpose of conducting vehicular safety inspections.

8 The admitted use of racial profiling applied
9 to those random stops was later determined to be used in
10 fishing expeditions and not stops for cause. In
11 Pennsylvania, all stops must be for reasonable cause. The
12 use of only racial profiles to make stops on an interstate
13 highway, as was indicated in New Jersey, is clearly
14 unjustifiable.

15 The Pennsylvania State Lodge, Fraternal Order
16 of Police, is absolutely opposed to the stopping of
17 vehicles or pedestrians based solely on race or any other
18 socioeconomic condition. However, a statutory attempt to
19 regulate the use of racial policies may result in the
20 unintended restriction upon the use of profiles generally.

21 Normally, profiles are used to target certain
22 classification or types of behavior. The classic use is by
23 the US Customs Service, which applies profiles to
24 smugglers, drug couriers, et cetera. No criterion, which
25 experience has proven valid, should be disregarded under

1 the guise of political correctness. Nor should any factor
2 be overemphasized on the account of an individual's
3 prejudices.

4 In speaking of prejudices, in the event a
5 police officer did harbor any real or imagined racial bias
6 toward a particular group of people, the collection of data
7 on traffic stops as mandated in House Bill 873 would not
8 identify these type individuals as racial profilers.

9 The compilation of data will not do anything
10 other than, as indicated in House Bill 873, to take two
11 years to prove or disprove a point. I ask, What are you
12 accomplishing by initiating this type of legislation?
13 Where's the gain? The legislation is not going to root out
14 what you're looking for, which is racism.

15 Statistical collection of data never has
16 nor -- and never will stop racism. If anything, House Bill
17 873 would be interfering with over 1,200 police departments
18 for the actions of those few who may act irresponsibly. In
19 addition, I believe this type of legislation would suppress
20 police initiative to fight crime due to their being under
21 constant scrutiny.

22 I personally believe collection of data based
23 on race would divide races, not bring them together. I'm
24 confident with the collection of personal data, as required
25 in House Bill 873, many individuals would likely consider

1 the length of the stop and the line of questioning highly
2 offensive.

3 In many cases, the officer would be met with
4 resistance and hostility. More importantly, the officer's
5 life is placed at a higher risk. Traffic encounters are
6 one of the most dangerous encounters with the public. To
7 date, hundreds of law enforcement officers have died
8 violently during routine traffic stops.

9 The greatest percent of these fatalities were
10 a result of the police being shot to death. The lengthy
11 process of accurately collecting data will only make a
12 dangerous situation worse and escalate bad tempers by
13 bringing race into the discussion. These circumstances
14 will undoubtedly result in more complaints against police.

15 In continuing, this mandated collection of
16 data also indicates a perceived lack of confidence and
17 trust toward police by both the legislators and the public
18 they serve. Please remember, police, in their capacity as
19 law enforcement officers, are also victims of profiling
20 themselves.

21 They are victimized by not only unscrupulous
22 citizens initiating deceptive civil suits, but profiling is
23 also evidenced by the high number of aggravated assaults
24 and killing of police officers. Today, police are the most
25 visible form of government in the United States. And as

1 such, they are also the most scrutinized and criticized.

2 With that in mind, police do not need more
3 scrutinization without a legitimate reason. Without
4 sufficient controls on the collection of data, the data
5 could very well be subjected to intentional
6 misinterpretation and misuse.

7 The State Lodge, Fraternal Order of Police is
8 not minimizing the need to make the police and the public
9 more aware of the dangers and injustices affiliated with
10 racial profiling. Racial profilers must be recognized and
11 weeded out. However, we believe education and training are
12 the keys.

13 To that end, the State Fraternal Order of
14 Police would take a leadership role in supporting the
15 introduction of a curriculum on racial profiling as part of
16 the instruction in municipal police academies, mandatory
17 annual MPO training, as well as a curriculum of the
18 Pennsylvania State Police Academy.

19 In addition, the State Fraternal Order of
20 Police, with your assistance, could develop a training
21 program that could be made available to all concerned FOP
22 leaders at our FOP conferences and conventions. In
23 closing, we cannot deny there is a tremendous amount of
24 crime being perpetrated against hundreds of thousands of
25 victims in Pennsylvania every year.

1 Many of these victims live in poor
2 neighborhoods. In law enforcement's zest to apprehend
3 those responsible, we cannot violate someone else's rights
4 in the process. By the same token, we must recognize the
5 magnitude of crime and drug problems in Pennsylvania. They
6 cannot be ignored.

7 We, as citizens and leaders in our community,
8 must support our police in their efforts to totally serve
9 those in need, support our police to those in need. And we
10 must have the trust and we must have the confidence of our
11 police to do the job. To do otherwise, would cause
12 resentment and isolation.

13 The law enforcement communities throughout
14 Pennsylvania have always shown great pride, duty and
15 sacrifice in the performance of their duties. To that end,
16 we would like to thank all our brother and sister officers
17 for their dedication to duty and for their many acts of
18 valor, bravery and heroism that are performed every day,
19 most of which go unrecognized.

20 Thank you very much again for giving me the
21 opportunity to speak. I'd be more than happy to respond to
22 any questions.

23 CHAIRPERSON BIRMELIN: Thank you, Mr. Lutz.
24 Representative James.

25 REPRESENTATIVE JAMES: Thank you, Mr.

1 Chairman. And thank you, President Lutz, for speaking. As
2 you know, Mr. Lutz, you and I go way back on the
3 Philadelphia Police Department. And you remember that in
4 the department, as we made stops, we never asked nobody
5 what race they were, right? Do you ever remember asking
6 anybody what race they were when you stopped --

7 MR. LUTZ: Well, we didn't have a form there.
8 But if I made a stop, I indicated it. And the people I
9 worked with indicated it. Yes, sir.

10 REPRESENTATIVE JAMES: Right. But you never
11 asked the individual what race they were?

12 MR. LUTZ: Did I ever ask them?

13 REPRESENTATIVE JAMES: Right.

14 MR. LUTZ: Well, sometimes it was obvious.
15 But to be quite honest with you, sometimes it wasn't.

16 REPRESENTATIVE JAMES: Okay. But did you ever
17 ask them when it wasn't obvious?

18 MR. LUTZ: When it was?

19 REPRESENTATIVE JAMES: When it wasn't. In
20 other words, when you ever stopped somebody as a police
21 officer and you wasn't sure what race they were -- because
22 you know in Philadelphia, we had to put race on -- on our
23 stops -- did you ever ask anybody what race they were?

24 MR. LUTZ: I don't recollect offhand. No,
25 sir.

1 REPRESENTATIVE JAMES: Right. Because I don't
2 remember ever doing it either. And I don't know of any
3 other officer that ever asked what race a person was
4 because --

5 MR. LUTZ: Well, the Hispanics are of the
6 white race. But a lot of times even if you didn't catch it
7 in their name, they may have looked -- have those
8 identities that may require you to ask. I mean, that could
9 very well happen.

10 REPRESENTATIVE JAMES: Okay. But what I'm
11 getting to the point is that, you know, in our careers as
12 police officers, we made a judgment. We made a judgment
13 when we put down on the form whether it was a white male,
14 black male, woman or female, whatever.

15 MR. LUTZ: That's your point, yes, sir.

16 REPRESENTATIVE JAMES: We just made a
17 judgment.

18 MR. LUTZ: Yes, sir.

19 REPRESENTATIVE JAMES: And so in terms
20 of -- and I know in your testimony, you talk about that you
21 might cause or incise someone because you want to ask what
22 race. And I don't think that we want to get into asking
23 people what race. We're just asking police officers to
24 continue their judgment that they were making, you know,
25 since inception in terms of stopping people.

1 MR. LUTZ: Well, wait a minute now. You have
2 to identify everybody in that car. And you're not going to
3 identify without asking them for identification because you
4 want to validate what you're putting down on that form.
5 And that means you also have to have a date of birth, and
6 that means you're also probably going to ask them for their
7 social security number.

8 So if I have six people in the car and they're
9 going someplace and they have to get someplace, now I have
10 to stop them. I have to inconvenience them. I mean,
11 that's difficult. That's very, very difficult to do.
12 That's what some people may perceive as a harassment stop.

13 And if you have the officer are two different
14 races, I can see -- I can very well see or foresee a
15 complaint coming against that police officer.

16 REPRESENTATIVE JAMES: Now, also, you heard
17 the -- I don't know if you heard the testimony of -- the
18 previous testimony. Were you here since we started?

19 MR. LUTZ: Not -- not totally in the beginning
20 but --

21 REPRESENTATIVE JAMES: Did you hear someone
22 talk about the perception of what the -- they took a study.
23 I think Gallup or somebody took a study talking about a
24 certain percentage of -- well, over 50 percent of whites
25 and around 70 percent of blacks thought that there was a

1 problem with racial profiling.

2 MR. LUTZ: Well, I didn't hear that. But I
3 may be able to respond to that with something else. The
4 Monday before Thanksgiving, I had the Auditor General Casey
5 down at the FOP. I had met him in Scranton, Pennsylvania.
6 And I told him about my work with the groups in the
7 communities throughout Philadelphia concerning antidrug
8 work because I volunteer my time.

9 There's definitely a problem there. So he
10 wanted to know more about it and what he could do because I
11 felt as though that a lot of these -- and you have
12 thousands of people that are volunteering their time on
13 town watches and antidrugs. And they're really not
14 supported.

15 These people are trying to bring a better
16 quality of life into the city. And when they have to live
17 in crime where they're depressed, very depressed areas,
18 abandoned houses, drug vials, graffiti, constant crime,
19 constant shootings, people walking around like zombies,
20 prostitution, filth. Who wants to live like that?

21 I had over 100 leaders, 100 leaders from
22 throughout the city and some of them from your area, Mr.
23 James. And I can tell you with much authority -- and I
24 would have no problem producing those people -- that racial
25 profiling was never, ever the issue.

1 The issue was, Please, please do something
2 that we can live in our neighborhood in peace without being
3 intimidated, without fear so we can -- so we can see our
4 children grow up. The problem's crime and drugs. That's
5 the problem. I know that's not for this.

6 But I want to -- my point is, that was never
7 the issue with these people to have to live under those
8 circumstances. And you know -- and you know very well that
9 despite my fact that I'm not being with the Attorney
10 General's Office anymore, I still go out there on my own
11 time and have initiated an antidrug campaign within the
12 State FOP.

13 And I'll go out to any place in the state to
14 put on a demonstration because I want people to know the
15 dangers of drugs because when you see drugs, this is the
16 kind of neighborhood you get. I grew up in Kensington, and
17 I know what Kensington is now. It's looks like Berlin
18 1945. And there's no doubt in my mind what did it. It's
19 drugs.

20 REPRESENTATIVE JAMES: Well, no doubt about
21 the fact that when you was with the Attorney General's
22 Office, that you did a good job working with communities in
23 Philadelphia in terms of helping in the antidrug movement
24 and that you still do volunteer work. And I agree with
25 that, and I want to commend you for that.

1 But this is not what we're talking about at
2 this point. What we're talking about is the perception of
3 racial profiling that is evident in fact throughout the
4 country in terms of different states that have enacted
5 legislation.

6 And if you would notice in the packet that I
7 handed out -- I want to make sure my staff makes sure that
8 you get one -- the various states that have enacted
9 some -- or there is some legislation. There is a concern.
10 I just saw a news release came off we just picked up
11 yesterday. Even in Great Britain, there's a problem.

12 So what I'm saying to you and what we often
13 said, sometimes there's a problem that we have to, as
14 officials, that we have to deal with. And the problem is
15 the perception that racial profiling is a problem. It's
16 been proven in Pennsylvania. It's been proven in New
17 Jersey. It's been proven in Maryland that there is a
18 problem.

19 Only a few police officers are doing it. What
20 I would ask you is, How would you suggest that we deal with
21 as -- because you had said that -- that House Bill 873
22 would be interfering with 12,000 police departments. Well,
23 how would you suggest that we get rid of the folks that are
24 acting irresponsibly?

25 MR. LUTZ: Well, I feel as though that I said

1 that because education and training is the key. Forcing
2 them to do something comes a lot of resentment because you
3 don't have these problems. I don't know whether, you
4 know -- you said we have a problem in Pennsylvania.

5 I've never seen any documentation of any
6 problems in Pennsylvania. You have a problem in New
7 Jersey. But in essence, what I think you're saying, Well,
8 if it occurred in New Jersey, now you're profiling the
9 police in Pennsylvania saying, Well, if it happened there,
10 then it must be going on in Pennsylvania. That's sort of
11 like profiling, isn't it?

12 REPRESENTATIVE JAMES: No. You know Judge
13 Means, right?

14 MR. LUTZ: I know Judge Means. Rayford Means?

15 REPRESENTATIVE JAMES: Yeah.

16 MR. LUTZ: Yes, sir.

17 REPRESENTATIVE JAMES: You remember him
18 because you worked with him --

19 MR. LUTZ: Yes, sir.

20 REPRESENTATIVE JAMES: -- in the Attorney
21 General. Well, you know he was a victim of racial
22 profiling in one of the counties right outside of
23 Philadelphia.

24 MR. LUTZ: Well, I'm sorry. I just mentioned
25 to you the police are victims of profiling also.

1 REPRESENTATIVE JAMES: And they may be.

2 MR. LUTZ: Yeah.

3 REPRESENTATIVE JAMES: All we want to
4 do -- and you can bring that up. If they are profiling, we
5 can look into that, establish whatever kind of policy to
6 help alleviate that. Right now we're trying to alleviate
7 what the problem is and what some of the people feel as it
8 relates to racial profiling. And we don't want it to
9 happen.

10 And you already agreed. You say that you
11 don't want it, that it's bad and that you're --

12 MR. LUTZ: We don't want it. I just
13 don't -- but where you have a flying nose, you don't chop
14 it off with an ax.

15 REPRESENTATIVE JAMES: No, we don't want to do
16 that.

17 MR. LUTZ: And what I'm concerned, it is an
18 issue. It's a big issue. It's already gone through
19 exploitation. It has every police officer's attention is
20 what I'm saying to you. So now instead of implementing
21 this stuff and putting everybody under the gun, which they
22 don't want to do, and what's going to happen -- I really
23 mean this, too, because what occurs here, despite the fact
24 that you said, Oh, nobody's ever going to know about it,
25 I've been around a long time. That's a fairy tale.

1 They'll know about it. And it will affect
2 people's promotions, and it will affect people's transfers,
3 and it will affect people's discipline. I know that. And
4 I know that because what's going to happen is, say, if I
5 stop too many people of one race in one night and I say,
6 Whoa, I got to back off.

7 And now some real legitimate, you know,
8 robbery or car stop that I feel as though I have a
9 reasonable suspicion to stop, I might -- I might just back
10 off because I don't need the complaint. You have to
11 remember, you have to remember -- I don't know about the
12 rest of the state. But in Philadelphia, out of all -- all
13 different agencies in Philadelphia, police are the most
14 disciplined of anybody.

15 REPRESENTATIVE JAMES: Well, are you aware of
16 the form that Philadelphia's using?

17 MR. LUTZ: 75-48.

18 REPRESENTATIVE JAMES: A.

19 MR. LUTZ: Yes.

20 REPRESENTATIVE JAMES: And what do you think
21 of that form if all the police officers were using them
22 throughout the state or most of them?

23 MR. LUTZ: Well, this is what I would do: I
24 think it's a good form, and I think it has probable cause.
25 And I think it answers who, when, where, why, what and how.

1 However, it's good for Philadelphia. It doesn't
2 necessarily mean it's going to be good for Lawrence County
3 or Susquehanna County or something like that.

4 I would -- you could -- and I would strongly
5 recommend it or suggest it. But I just want to say you got
6 to do it because what's happened here, their needs there
7 may be very different than your needs down in Philadelphia.
8 May very well. I don't know.

9 So to have a universal form like that -- I
10 think what should be done here, I think the legislators,
11 if -- and this is an issue -- I think they ought to go down
12 and ask the respective police departments, give them the
13 form and ask what they really think about it.

14 I'm not saying it's bad news. All I'm saying
15 is, you know, I think they deserve an opportunity to see
16 what it is because they're the people that's going to have
17 to be using them. Why keep them out of the equation? And
18 I think you should go back there, go to those police
19 departments or those legislators and see if they would be
20 interested in that form.

21 I think that's a reasonable and logical
22 request for something so important.

23 REPRESENTATIVE JAMES: What do you think about
24 the -- you said something about the need not to scrutinize
25 without a legitimate reason and without sufficient controls

1 on the collection of data. What would you suggest in terms
2 of some controls on the collection of data?

3 MR. LUTZ: Well, put it this way: You have to
4 do something like indexing. In other words, we'll say like
5 the 25th District. Are you familiar with the 25th
6 District?

7 REPRESENTATIVE JAMES: Yes.

8 MR. LUTZ: The 25th District --

9 REPRESENTATIVE JAMES: Just so that -- excuse
10 me. Just so that the -- everyone else can be familiar with
11 the 25th District --

12 MR. LUTZ: I was going to fill them in.

13 REPRESENTATIVE JAMES: -- the 25th District is
14 probably the highest crime rate and all of that in the City
15 of Philadelphia.

16 MR. PRESKI: In the state.

17 MR. LUTZ: So you have to have -- you just
18 have to have controls there. I mean, in every number, if
19 you go to school, you'd remember you have a numerator and a
20 denominator. And the top number -- what is compared to the
21 bottom number? All right.

22 You have to show what's compared to that
23 bottom number. Now, we'll say the 25th District, by the
24 way, is, like, infamous for widespread crime and drugs
25 there. I mean, it's just infamous. Now, if you went in

1 that district there -- and I had other parts of the 25th
2 District where they're not so bad maybe up around Juniata
3 or something like that. I'm just using that; but that's
4 bad there now, too.

5 But we'll just use that as an example. Now,
6 if I went in the 25th District and if you have more crime
7 in the 25th District, that means you have more officers in
8 the 25th District. If you have more officers and more
9 crime, that means you have more reasonable suspicion to
10 stop people because you're going to make more arrests
11 so -- or at least more stops.

12 So what I'm saying there, that would be higher
13 than maybe another district or another portion of a
14 district. In other words, that end of the district may be
15 much greater in their numbers that you're looking for than
16 the lower end of the district where there may not be as
17 much crime.

18 But you have to admit there is more crime, and
19 there's more officers. Or just like -- just like on the
20 Turnpike. If you're on the Turnpike, how are you going to
21 collect data like that? You have to have people in the
22 tollbooths, you know, saying how many people are going
23 through and their ethnic background to get a legitimate
24 accurate number, to get a good count.

25 How do you do that? I mean, how do you do

1 that to get accuracy? This is what I'm saying to you. But
2 what's the point? The point is to stop the racism, all
3 right, if there is any racism. That's the point. I've
4 always learned and I've always thought I was most
5 successful to do it by education, education and training.

6 And you know as well as I do because you came
7 on about the same time I did years ago. The police
8 department has improved dramatically, I feel has improved
9 dramatically as far as even the numbers in the Philadelphia
10 Police Department. It's almost 50 percent minorities or
11 maybe even more.

12 REPRESENTATIVE JAMES: Thirty percent.

13 MR. LUTZ: No, it's not that low. I'll argue
14 with you on that.

15 REPRESENTATIVE JAMES: Thirty-three percent.

16 MR. LUTZ: I'll still argue with that.

17 REPRESENTATIVE JAMES: All right. Well,
18 anyway, you also said -- one other point -- you said that
19 identifying -- even if we were to do this and we were to
20 take the data, that this would not identify the individuals
21 that are conducting racial profiling.

22 MR. LUTZ: That's the supervisor's job you're
23 taking away. They should be able to do that. All right.
24 This is a different police department than it was years
25 ago. They do that. I mean, they follow through on that.

1 As I said -- and I am only familiar with Philadelphia.

2 If you're going to take Philadelphia as an
3 example, I mean, they just -- discipline is the -- in the
4 police department in Philadelphia is really something. I
5 feel it's a -- you're taking away from the supervisor's
6 job. That's his job. That's the commanding officer's job.

7 Don't you think that's going to pop up? Don't
8 you think that's going to pop up and say, Wait a minute.
9 We have to talk to these guys. Let's sit down. We have to
10 scrutinize this guy or we got to do something with him or
11 fire him, whatever it may be.

12 REPRESENTATIVE JAMES: Well, that's true. And
13 that's if you have good leadership. And the leadership has
14 to start from the top. And that's what happened in Jersey.
15 What happened is that you didn't have good leadership, and
16 look what happened as a result of that.

17 So all we're saying is we're trying to
18 identify the officers that are conducting this type of
19 discriminatory practice. And that's why we say we need to
20 do a study to make sure that it's not happening. What's
21 wrong with doing a study?

22 MR. LUTZ: I think they've done enough
23 national exposure to this issue to bring a lot of attention
24 to it and to ensure that it's not going on. That coupled
25 with the necessary mandated training is going to solve your

1 problem.

2 REPRESENTATIVE JAMES: Are you in support of
3 video cameras in the cars as well as with the audiotape?

4 MR. LUTZ: I would support them if the officer
5 has control. In other words --

6 REPRESENTATIVE JAMES: You mean turn it off
7 when he wants to?

8 MR. LUTZ: Turn it off and turn it on when
9 he wants to. I don't want it 24 hours -- listen to
10 me -- 24 hours a day, 7 days a week. Let me ask you
11 something. You're --

12 REPRESENTATIVE JAMES: Wouldn't it come on
13 only when -- I thought only when they -- you know, they're
14 not going to listen to his personal conversations.

15 MR. LUTZ: What I understand, it's 24 hours a
16 day, 7 days a week. And then you have to tell everybody
17 that they're being recorded. Plus the fact this would be
18 used -- audios and video would be used for disciplinary
19 purposes. Plus the fact the guy gets out of his car
20 without his hat, the supervisor, once again he's going to
21 get him.

22 He's going to get him. And that's part of
23 that bill. And plus the fact I feel -- I feel we'll say a
24 brand new officer or any officer -- but I'm just saying a
25 brand new officer because he'd be more vulnerable -- that

1 he gets out and maybe he has a fellow in a car stopped.

2 And he wants to do everything right.

3 And he's so worried, he's so worried that he's
4 going to get disciplined or doing something wrong, he's not
5 going to be paying attention to what he should be paying
6 attention to. So -- and plus the fact you have, you know,
7 it's bad enough that they took police officers off the
8 beat, all right, to communicate with the public. Now
9 somebody approaches the car, You're being recorded. I have
10 to inform you you're now being recorded.

11 Let me ask you something. Do you really think
12 you're going to get a network of information? And you know
13 any good investigator is only as good as his information.
14 That's all he is. He's only as good as his information.
15 In other words, what I'm saying to you is if -- you could
16 be out there three weeks trying to find out something.

17 But if I know that person in that neighborhood
18 and I have a rapport with that person in that neighborhood,
19 they know what's going on. They know who lives there.
20 They know what car they drive. They know who comes and
21 goes. And they can tell me in three minutes what a good
22 investigator may take three weeks or three months to do.

23 So what you'd be doing is inalienating -- or
24 alienating the public from getting the job done. And we
25 need that. We need that network, and we need that

1 community. We need that. Don't scare them away because
2 somebody came up to me, I'm not being recorded. Man, what,
3 are you crazy? See-ya. And then it gets around the
4 neighborhood.

5 So I think -- I think it has merit but only
6 under the circumstances that I -- that I related to you,
7 sir.

8 REPRESENTATIVE JAMES: Okay. Well, would you
9 be willing to work with the Committee as we continue to try
10 to develop legislation or policies in this area?

11 MR. LUTZ: You didn't even have to ask me
12 that. Of course I'd be very, very much willing to work
13 with you. I might not agree with you right now. I'll tell
14 you up front. But I'd be able to work with you. Hey, I'd
15 be more than happy to work with you. I'd consider it an
16 honor.

17 REPRESENTATIVE JAMES: All right. Thank you.
18 Thank you, Mr. Chairman.

19 CHAIRPERSON BIRMELIN: Representative Dermody.

20 REPRESENTATIVE DERMODY: Thank you, Mr.
21 Chairman. Mr. Lutz, I just want to clarify a couple of
22 points. Were you here for Commissioner Evanko's testimony?

23 MR. LUTZ: I didn't hear all of it, no, sir.

24 REPRESENTATIVE DERMODY: Okay. He testified
25 early on that he was requesting the AOPC to issue a new

1 form for citations that had a block for checking off the
2 race of the person who was stopped in, say, traffic
3 citations. Based on your testimony we just heard, you
4 would think that's a mistake, that there's a problem with
5 that?

6 MR. LUTZ: I think that if they want to put
7 race on there, they put race on there, just as long as
8 they're not using it for compilation of data.

9 REPRESENTATIVE DERMODY: That would be the
10 reason they're collecting it for.

11 MR. LUTZ: Then I'd be opposed to that.

12 REPRESENTATIVE DERMODY: Now, is that -- are
13 you familiar with what was done up until 1990 --

14 MR. LUTZ: In other words, we have
15 a -- everybody wants to colorblind society. Everybody
16 wants to colorblind society. But here we are asking race.
17 I mean, come on. How can you have a colorblind society
18 when you're asking everybody what race they are or putting
19 down or tabulating which race they are? People resent
20 that.

21 REPRESENTATIVE DERMODY: Are you familiar with
22 the problems they had in 1990 when they stopped doing that?
23 Do you have any comment on that?

24 MR. LUTZ: Sir, I'm not familiar. I didn't
25 know there was a problem.

1 REPRESENTATIVE DERMODY: You mentioned the
2 Philadelphia form.

3 MR. LUTZ: Yes, sir.

4 REPRESENTATIVE DERMODY: Does that
5 collect -- and you said that was a good form. Does that
6 collect racial data?

7 MR. LUTZ: I believe it does, yes.

8 REPRESENTATIVE DERMODY: Why is that used, and
9 why is it good in --

10 MR. LUTZ: Well, that's used for -- all I'm
11 saying is that's used for them. I don't know whether it
12 was used for collection of data. I said it's a good form.
13 If it's used for collection of racial data, you know, again
14 I wouldn't like it, all right, if it's used for collection
15 of data.

16 I think it's a good form because it's
17 very -- it's very definitive. It has everything there that
18 you want. But I just -- I'm opposed to the collection of
19 data. We should be getting away from that.

20 REPRESENTATIVE DERMODY: Thank you, Mr.
21 Chairman.

22 CHAIRPERSON BIRMELIN: Representative Josephs.

23 REPRESENTATIVE JOSEPHS: Thank you, Mr.
24 Chairman. Thank you, Mr. Lutz. Just an observation. You
25 seem to here be very applauding of the racial profilings

1 and other profilings --

2 MR. LUTZ: What do you mean by that,
3 applauding? What do you mean by that?

4 REPRESENTATIVE JOSEPHS: -- that the US
5 Customs Department uses. Your testimony sort of --

6 MR. LUTZ: Profiling --

7 REPRESENTATIVE JOSEPHS: -- seems to say to me
8 that --

9 MR. LUTZ: Profiling in general is a very,
10 very necessary part of police work. But profiling is
11 cumulative efforts of things that bring you to a
12 conclusion. So it's cumulative. It could be age. It
13 could be dress. It could be, you know, where, you know,
14 where the ticket is, whether they have cash in their
15 pocket, whether -- that type of thing.

16 REPRESENTATIVE JOSEPHS: My experience --

17 MR. LUTZ: Where the origin of their trip is
18 from.

19 REPRESENTATIVE JOSEPHS: My experience in
20 airports -- although, not directly with US Customs -- have
21 led me to believe that there could have been anybody
22 walking past me with any kind of contraband. But I was
23 stopped because I was with a person, I believe, who was not
24 of my race. And I don't think that serves law enforcement
25 at all.

1 But I want to go to -- I commend you for your
2 statements about training and education, which I do believe
3 are a necessary component of solving this problem, not the
4 only one, but certainly very necessary. And you do say
5 that with a little assistance, you would be happy to and
6 would like to do broad -- widespread training and
7 education.

8 MR. LUTZ: What I'm saying --

9 REPRESENTATIVE JOSEPHS: So I'm -- if you'll
10 let me finish, maybe you'll -- I'll be able to give you my
11 question, which is, What kind of assistance can we give
12 you?

13 MR. LUTZ: And I'm saying to you, if you
14 have -- we have our seminars and conventions. And when we
15 have those seminars and conventions, there are leaders, FOP
16 leaders from throughout the state, from throughout the
17 state. So what I'm saying, when you have a nucleus of
18 that, very receptive to put on training and get the message
19 out real fast.

20 So what I'm saying, if you had somebody come
21 in there and wanted to put on a seminar, I'd be very
22 receptive to that. I mean, it is an issue. You said it
23 gives attention, and they should be knowledgeable about it.
24 I have no problem for somebody coming in.

25 I'm not saying myself to do -- to do it but

1 for somebody to come in. Or if you wanted to have a
2 curriculum done, I would assign it to somebody. I mean, if
3 you -- if you or somebody from this Committee didn't want
4 to come in or you didn't have somebody assigned, give me
5 the curriculum. I give it to somebody else and let them do
6 something with it because what we do at those conventions
7 or what my plans are to do is educational.

8 I don't want anybody to go to a convention or
9 a board meeting and come back with not knowing anything or
10 not bringing anything back with them. I think knowledge is
11 very, very important. I think understanding is very, very
12 important. And that's what I try to implement.

13 This is a very, very important issue. I
14 recognize it's an important issue. And yes, I will
15 communicate that issue.

16 REPRESENTATIVE JOSEPHS: So I assume this is
17 an invitation for us to work together with you to develop
18 something.

19 MR. LUTZ: Ms. Josephs, I work with everybody.

20 REPRESENTATIVE JOSEPHS: Thank you. Thank
21 you, Mr. Chairman.

22 CHAIRPERSON BIRMELIN: Representative
23 Petrarca.

24 REPRESENTATIVE PETRARCA: No, that was my
25 question.

1 CHAIRPERSON BIRMELIN: Representative

2 Petrarca's question has been asked and answered.

3 Representative James has one more that hasn't been.

4 REPRESENTATIVE JAMES: Thank you again, Mr.

5 Chairman. How many -- as the State FOP President, how many

6 African Americans or minority FOP leaders are there in the

7 state? Any FOP presidents in the state?

8 MR. LUTZ: FOP presidents? There's just a

9 handful. There are on boards, but they're not as

10 presidents.

11 REPRESENTATIVE JAMES: So how many chapters or

12 lodges?

13 MR. LUTZ: We have about 100 -- I think

14 there's around 112.

15 REPRESENTATIVE JAMES: So there are no

16 presidents or vice presidents that are African American or

17 minority?

18 MR. LUTZ: There are people on the board. I

19 don't really know what capacity they are in. Whether

20 they're treasurers or vice presidents or trustees, I really

21 don't know. But yes, there are. And you have to remember,

22 all African American right here in Philadelphia, they have,

23 I think, four on the board with the Fraternal Order of

24 Police right here on our board. And they're vice

25 presidents. Two of them are vice presidents.

1 REPRESENTATIVE JAMES: That's in Philadelphia,
2 right?

3 MR. LUTZ: Yes, sir.

4 REPRESENTATIVE JAMES: Okay. All right.
5 Thank you.

6 MR. LUTZ: Thank you, sir. I appreciate your
7 courtesy very much.

8 CHAIRPERSON BIRMELIN: Thank you for coming
9 and testifying today. Our next testifier is not presently
10 with us. And I'm going to jump ahead of the schedule and
11 ask for Larry Frankel, the Executive Director of the
12 American Civil Liberties Union, to come and testify at this
13 point in time.

14 Mr. Frankel has distributed a packet. It
15 should be on the desks. Mr. Frankel, thank you for coming
16 to our hearing today.

17 MR. FRANKEL: Thank you, Chairman Birmelin,
18 other members of the Committee. Although, I must say, I'm
19 happy to jump ahead of schedule. Although, I would have
20 been also pleased to hear Police Commissioner Timoney
21 because at least -- although, I do not know what his
22 testimony will be today -- you will hear we have been
23 pleased with some of the steps he has taken in the City of
24 Philadelphia to combat this problem. And I certainly would
25 have enjoyed the opportunity to commend him directly myself

1 afterwards.

2 In addition, we are looking forward to
3 working with the Commissioner. I'm sure all of you
4 remember -- recall all too good at least some of what
5 occurred in Seattle recently. And we are anticipating
6 working with the Commissioner, because we have a good
7 relationship with him, to try and make sure people's rights
8 to exercise their first amendment rights are protected
9 during the convention but that it doesn't get out of
10 control as it did in Seattle.

11 In any event, I want to thank you again for
12 asking me here to testify today. The ACLU has had
13 considerable experience with the issue of discriminatory
14 law enforcement. In the mid-1980s, we represented a class
15 of approximately 1,500 persons who had been stopped,
16 searched, and in some cases arrested as part of Operation
17 Cold Turkey in the City of Philadelphia.

18 For a period of 72 hours, the Philadelphia
19 police targeted a number of intersections in the city. Any
20 person standing in or passing through those intersections
21 was presumed to be part of the drug trade. Almost all of
22 the intersections were in predominantly minority
23 neighborhoods.

24 And most of the people who were adversely
25 affected by Operation Cold Turkey were African American or

1 Latino. In only a very few instances were drugs actually
2 found. As a result of the court action we brought,
3 eventually the City of Philadelphia paid approximately one
4 half million dollars to our clients in damages.

5 In the 1990s, we represented a class of
6 African American and Latino motorists who were stopped on
7 Interstate 95 by the Tinicum Police Department. They
8 claimed that they had been detained solely because of their
9 race. The evidence showed that the class representatives
10 in that case had been stopped by the police as they were
11 passing the Philadelphia International Airport.

12 They were returning to their home from a
13 church meeting, and they actually had been dressed in
14 clothes that were appropriate for attending a church
15 meeting. At one point while they were stopped, one of
16 the -- one of the people we represented asked for further
17 clarification as to why they had been pulled over.

18 The police officer responded, "You are a young
19 black man driving a nice car." Again, that case did
20 settle. And Tinicum Township ultimately paid a quarter of
21 a million dollars to motorists who had been wrongfully
22 stopped because of their race.

23 Last year, our office reviewed enormous
24 quantities of records from the Philadelphia Police
25 Department. We found a disturbing pattern of what appears

1 to be disproportionate stopping of motor vehicles being
2 operated by African Americans as well as African American
3 pedestrians.

4 We produced a report that was provided to the
5 Philadelphia Police Department, and our analysis of that
6 data has already had a positive impact on police practices
7 in Philadelphia. The Department, to its credit, has
8 produced a training video addressing the issue of proper
9 stops of vehicles and pedestrians.

10 And I think this is a major step forward.
11 Having heard some of the testimony earlier today, certainly
12 education and training is key to eradicating the problem.
13 And we are -- and now that the Commissioner is here -- are
14 pleased that the Commissioner has taken steps to address
15 this serious problem in the City of Philadelphia.

16 Our experience is not limited to Philadelphia,
17 however. And we receive calls from all over the state
18 about people who believe that they have been stopped
19 because of their race. We also participated and heard the
20 testimony at the series of hearings conducted by the House
21 Democratic Policy Committee over the summer, hearings that
22 were in Philadelphia, Pittsburgh and Harrisburg, witnesses
23 from all over the state.

24 And there were many compelling stories from
25 all corners of the state about racially motivated law

1 enforcement actions. As already has been mentioned, the
2 New Jersey Attorney General has released a report on racial
3 profiling. The issue has become one across the nation.

4 Just this year, concerns over racial profiling
5 have produced significant and concrete actions on the part
6 of the federal government, state legislatures, and state
7 and local law enforcement agencies. In June, President
8 Clinton ordered all federal law enforcement agencies to
9 collect race data on their stop and search practices.

10 The states of North Carolina and Connecticut
11 have enacted laws intended to combat racial profiling.
12 Legislation has been introduced in states all across the
13 country. Law enforcement agencies are voluntarily
14 undertaking the collection of data on traffic stops and
15 searches.

16 And in response to some of what President Lutz
17 had to say, those agencies, to my knowledge, have not
18 encountered problems such as he speculated might occur if
19 that data collection occurred here in Pennsylvania. And,
20 as was also previously mentioned, the New York State
21 Attorney General had just completed a study on such actions
22 in the state of New York.

23 Even law enforcement organizations are now
24 calling for comprehensive data collection efforts.
25 Recently, the International Association of Chiefs of Police

1 went on record in support of the need for data collection
2 efforts. And I would note that just this last Saturday, it
3 was reported in a Detroit newspaper that next month, the
4 Michigan State Police will begin tracking the race of all
5 drivers pulled over for traffic stops.

6 It just so happens the Chief of the Michigan
7 State Police is the President of the International
8 Association of Chiefs of Police. The National Organization
9 of Black Law Enforcement Executives and the National Black
10 Police Association support data collection.

11 And as has been mentioned a couple of times, a
12 Gallup poll was released that demonstrated that there is a
13 national consensus that racial profiling is widespread and
14 wrong. And importantly, that poll showed that the majority
15 of Americans, both black and white, believe that racial
16 profiling is unfair.

17 We know that there will always be a few who
18 doubt that racial profiling is a problem. But we believe
19 that most people who look at and think about this issue
20 recognize that discriminatory law enforcement is a major
21 impediment to fighting crime in our society.

22 Racial profiling harms those individuals who
23 are arbitrarily stopped. Racial profiling also harms all
24 of us because it undermines the credibility of our criminal
25 justice system and the trust we place in that system. For

1 those who expressed concerns about jury nullification, I
2 don't think it's too far stretched that some people's
3 experience with racial profiling is part of the reason we
4 find some jury nullification, some distrust of what is said
5 on the stand.

6 The problem is pervasive. And to restore
7 trust and confidence, the issue must be addressed.
8 Therefore, the ACLU of Pennsylvania is not only calling on
9 the General Assembly of Pennsylvania to pass a law that
10 calls for the collection of race data with regard to
11 traffic stops and searches, we go further.

12 We are urging you to enact a statute that
13 explicitly declares racial profiling to be illegal and
14 explicitly creates a private right of action for
15 individuals who have been improperly detained because of
16 their race. Those who believe that racial profiling is not
17 a significant problem should not worry about such a law.

18 If racial profiling is not happening, then we
19 won't see cases. However, for those of us who believe that
20 discriminatory practices do occur, such a statute would
21 represent a real tool, both for deterring such conduct and
22 for remedying the injuries that occur as a result of racial
23 profiling.

24 Individuals who are harmed by this unjust
25 practice should not be left without a means for obtaining

1 compensation for the harm they have suffered. And while we
2 advocate for creating a private right of action as the best
3 means for achieving justice and while we support training
4 and education efforts, we are also supportive of the
5 collection of statistics.

6 Let me just go back. It has to be more than
7 the amendment of the form that Mr. Evanko referred to
8 because that would only apply to people who are actually
9 issued citations. You have to analyze the data of those
10 people who are stopped and let go because that has an
11 impact as well.

12 In some neighborhoods, it's known the reason
13 they're stopped is a way to send a message to stay out of
14 this neighborhood. You've got to take a look at the
15 overall pattern. We're also aware that those statistics
16 could be misused and abused.

17 And if out of today's hearing there comes a
18 consensus of moving forward with statistics, I think we
19 have to take a further look to make sure that they're not
20 used for commercial purposes, to make sure that, you know,
21 there's no construction of other kinds of data banks with
22 that data, to make sure that we don't have a result that
23 there are goals in quotas that police officers feel they
24 have to, I guess, detain and stop a certain number of white
25 people to make the numbers look, you know, good.

1 We don't want to have the use of the
2 statistics, which is to help correct the abuses, lead to
3 other abuses. But in general, we support the collection of
4 data because that's the only way that we know that you can
5 monitor the performance of law enforcement officials.

6 We think that it would be prudent for state
7 and local law enforcement agencies to try and determine if
8 they have a problem with racial profiling and whether
9 certain officers need further training. Failing to even
10 try to ascertain whether there is a problem could prove
11 rather costly if and when a lawsuit is filed against a law
12 enforcement agency.

13 An agency that has not even attempted to
14 evaluate its practices and procedures could find itself in
15 a difficult position of denying the reality of egregious
16 misconduct which the agency has never even tried to analyze
17 or monitor.

18 The ACLU encourages you to consider how to
19 remedy the issue of racial profiling. Society can little
20 afford toleration of discriminatory law enforcement
21 practices. I would also point out that I've attached to my
22 testimony a copy of the article from the Philadelphia
23 Inquirer about the Philadelphia police training video and
24 the stopping of pedestrians and motor vehicles and a short
25 statement that was written by a graduate student at the

1 University of Pennsylvania who was volunteering in our
2 offices this last semester.

3 I think she hopes to submit that to a
4 newspaper some day. But I thought I would attach it to my
5 testimony because I think it indicates at least yet another
6 person's perspective as to why this issue needs to be
7 addressed.

8 Thank you again for inviting us here to
9 testify today. I'll be happy to try to answer your
10 questions.

11 CHAIRPERSON BIRMELIN: Thank you, Mr. Frankel.
12 Chief Counsel Preski has indicated to me that the videotape
13 the Philadelphia Police Department has that Mr. Frankel
14 just alluded to is available for any of the members of the
15 Committee through his office.

16 If you would like to see that training video,
17 contact Counsel Preski; and he'll be glad to loan you the
18 videotape. Representative James.

19 REPRESENTATIVE JAMES: Thank you, Mr.
20 Chairman. And thank you, Mr. Frankel, for testifying. And
21 you can go ahead now and make your comments about
22 Philadelphia since the Police Commissioner is here.

23 MR. FRANKEL: I think he heard most of my
24 comments other than the ones I made -- and I don't know who
25 on the editorial board in the Philadelphia Inquirer

1 indicated. But we look forward to working with the
2 Commissioner with regard to the upcoming Republican
3 Convention as well.

4 He's been very much a pleasure to work with.
5 He's a new -- a breath of fresh air in Philadelphia. And
6 we found him very responsive to concerns that we've had,
7 including in particular on this issue of racial profiling.

8 REPRESENTATIVE JAMES: Well, also, Mr.
9 Frankel, I want to thank the ACLU because you've been doing
10 a lot of work on behalf of collecting information, putting
11 out reports. And you've done -- the ACLU has done a
12 national report as well in terms of the profiling.

13 As you see now, we have -- and I think Mike
14 Lutz has left. But what we have -- when the Council of
15 State Governments passed the resolution, there were five
16 governors that supported the resolution. That was the
17 Governor of Idaho, Virginia, Wisconsin, Kentucky and
18 Maryland who supported the need for statistical -- Traffic
19 Statistical Study Act.

20 So we just want to make sure that was part of
21 our record. And the other thing you mentioned -- and I
22 guess I failed to or didn't think to ask the State Police
23 when they were here. And Mr. Chairman, if we can get this
24 information because as Mr. Frankel pointed out, that even
25 though the State Police is making a request that race be

1 included in the citation, but what happens when they make a
2 stop of someone and there is no -- is there a form or
3 there's a record kept by the State Police?

4 We're not aware or not sure of that. If we
5 can find that out, Brian, I'd appreciate it.

6 MR. PRESKI: Okay.

7 REPRESENTATIVE JAMES: How do you think now,
8 Mr. Frankel, based on what has happened so far in terms of
9 what you -- what you see as an organization and in terms
10 of -- as racial profiling, different laws or different
11 bills in about over 15 states, where do you see it going
12 now?

13 Or do you see any improvement on it, and how
14 do you compare it to Pennsylvania?

15 MR. FRANKEL: I would say nationally, the
16 trend is toward considerable improvement. As I indicated
17 in my testimony, this last year has seen, you know, a large
18 amount of activity. It isn't just the number of bills that
19 have been introduced.

20 I think it's the voluntary steps -- and I'm
21 not talking about cases where courts are ordering or
22 they're involved in some kind of consent decree, but law
23 enforcement agencies that are voluntarily taking steps
24 to -- to collect more data, to engage in better education
25 and training.

1 I don't know of any statistical analysis of
2 what kind of discipline may be occurring. But I believe
3 that it is clear. And I think there's a witness later on
4 who can talk more about the national trend. But what we've
5 seen is certainly much more consciousness about it, a
6 greater desire to actually eradicate the problem that was
7 there before.

8 The Gallup poll, for those of us -- I'm always
9 a little sceptical of polls. And certainly, given our
10 support of minority viewpoints, probably shouldn't push
11 polls results as the reason to do anything. But I think it
12 does show that over the course of the year, that we've seen
13 a much greater understanding in the average American that
14 this indeed -- and if it doesn't affect them directly, it
15 affects the criminal justice system and law enforcement in
16 this country. And they care deeply about it.

17 In Pennsylvania, I think that some progress is
18 being made. Certainly, I don't want to confine it to
19 Philadelphia. That's probably where the most progress is
20 being made. To sit here today and hear both -- and I'm
21 sorry. I'm not good -- is it Colonel Evanko or -- Colonel
22 Evanko and General Fisher both speak, you know, in terms of
23 wanting to advance practices, procedures and policies that
24 will eliminate this problem, I think it's a great step
25 forward.

1 I don't think those steps would have been
2 taken without the kind of focus that you and other members
3 of the Legislature have placed on the problem. And I would
4 submit that you have to continue remaining focused on the
5 problem and not leave it to lawyers in the outside world to
6 make sure that the state does make the changes that are
7 necessary, that programs, policies, procedures, training,
8 education and remedies are all available so that this, you
9 know, five years from now we're not still talking about the
10 same issue.

11 REPRESENTATIVE JAMES: Well, again, I want to
12 thank you. And hopefully, that -- I know that you will
13 continue to work with us as we continue to improve and
14 enhance these communications, Mr. Frankel, on behalf of the
15 ACLU. Thank you.

16 MR. FRANKEL: Thank you, Representative James.

17 CHAIRPERSON BIRMELIN: Representative Browne.

18 REPRESENTATIVE BROWNE: Thank you, Mr.
19 Chairman. Thank you, Larry, for your testimony. Just a
20 couple of questions. You had mentioned in your testimony
21 regarding the -- the action that the ACLU took in
22 Philadelphia about gathering information and noticing a
23 disturbing pattern of disproportionate stopping of motor
24 vehicles and then positive implications that came from
25 that.

1 In addition to gathering the information, was
2 there any analysis done of that information in terms of
3 documentation or reasonable suspicion for the stops or
4 probable cause for the arrests and why they were done?

5 MR. FRANKEL: Well, one of the problems that
6 we found in reviewing the documents is that many -- much of
7 the paperwork that was supposedly supposed to be filled out
8 by the police where they would indicate the reason for the
9 stop was left blank; that it really -- that information
10 wasn't there.

11 And one of the other improvements that we've
12 seen since we documented that is that many more of the
13 forms are being filled out with that kind of information so
14 an evaluation can be done. Certainly, you can't evaluate
15 the reasonableness of the stops if no one's indicated the
16 reason for the stop.

17 And an improvement in completing that
18 information I don't think only helps us improve our ability
19 to analyze it, I think it helps the police do a better job.
20 We talk about the legal, you know, standards which are all
21 about being able to articulate a reason to stop and having
22 probable cause.

23 Well, it may be extra paperwork. But by being
24 forced to come up with something to write down, it's more
25 likely that there is an articulable reason for stopping

1 someone because you know you have to come up with it and
2 it's going to have to be followed.

3 And I remember last week, I think we had a
4 conversation about, Will the Supreme Court overrule
5 Miranda? And part of my response to you was that in many
6 cases, I hear many law enforcement officials saying Miranda
7 helped us improve our police practices.

8 We really, you know -- our jobs are done
9 better. And I think that's the same with having that kind
10 of documentation. The jobs will be done better. The stops
11 will have a real basis for them.

12 REPRESENTATIVE BROWNE: Based on the
13 information you found or the lack of information on the
14 reports, was there a definite trend towards what the
15 eventual result of that stop was? Regarding those cases
16 that had a lack of information, was the person eventually
17 released? Were there situations where there was lack of
18 information where they were convicted anyway?

19 MR. FRANKEL: Most of these stops were for
20 the -- you know, they were minor infractions. They might
21 be traffic ticket-type stops. Or they may just be an
22 investigatory stop, and they were allowed to go on. I
23 don't know I can answer you any further.

24 What I can provide the Committee with is a
25 copy of the report that was prepared by --

1 REPRESENTATIVE BROWNE: I'm just curious how
2 far the problem extends through the system in cases where
3 it actually is a problem. Is it just at the police level,
4 or has it perpetrated into the Judiciary? Even though
5 there's a lack of information there, somebody stopped them.
6 And eventually, they're charged with the minor offense or
7 the serious offense, whatever it is. And then regardless
8 of that lack of information, are they eventually convicted
9 I guess?

10 MR. FRANKEL: I'd have to provide you with a
11 copy of the report at this point. I can't give you any
12 further answer off the top of my head.

13 REPRESENTATIVE BROWNE: Just one last
14 question. You had mentioned a couple of states that have
15 enacted legislation. What's the ACLU's opinion on the
16 fundamentals of a good racial profiling statute? Does it
17 include the things you said about not only the data
18 collection but mandate that certain information be provided
19 on the citations? What does it include?

20 MR. FRANKEL: Our position is that there be a
21 comprehensive compilation of data that includes an
22 indication of, you know, the race, where it can be
23 determined, of the driver or pedestrian and occupants of
24 the vehicle; the reason for the stop; the results of the
25 stop; was there a search; what was found in the search; was

1 there a violation, you know, all of that information, with
2 some caution on my part really that that information could
3 be misused and we have to take a look further.

4 And I don't know that that was really
5 considered in these other states. Some of the other
6 suggestions or the other suggestion I had today about a
7 private right of action has not been enacted in any other
8 state.

9 REPRESENTATIVE BROWNE: Thank you very much.
10 Thank you, Mr. Chairman.

11 CHAIRPERSON BIRMELIN: Before I recognize the
12 next member for questions, I want to add a PS as to the
13 announcement I made earlier concerning the training tape
14 video that has been prepared for Philadelphia Police
15 Department. We've just received a couple copies of it.

16 It's entitled the Philadelphia Police
17 Department Vehicle and Pedestrian Stop Form 75-48A. We are
18 saying all that because we want to enter it into the
19 official record today. And a copy of this tape will be in
20 possession of the Chief Clerk's Office so that anyone,
21 either viewing or in the Committee meeting today or on this
22 Committee or a member of the Legislature, if they are
23 interested, they may so collect a copy of this tape.

24 I haven't seen it myself. So I'm just taking
25 the advice of Counsel that it's under ten minutes long. So

1 if you're worried about having to go through a long
2 training tape, it's not. It's rather brief. But if you
3 are interested in that, you will know that a tape is
4 available.

5 Representative James also has a copy of it.
6 So both Republican and Democrat members can contact their
7 committee staff to get a copy of that tape if they'd like
8 to see it. Representative Josephs has a question for you.

9 REPRESENTATIVE JOSEPHS: Thank you, Mr.
10 Chairman. Thank you, Mr. Frankel. I think you were here
11 when the Attorney General testified that perhaps the
12 Criminal History Procedures Act might stand in the way of
13 his conducting an investigation without authority from the
14 State, from the General Assembly. Do you have any comment
15 on that?

16 MR. FRANKEL: I remember hearing the statement
17 from the Attorney General. I was a little puzzled. I
18 didn't realize that the act might prohibit it. I remember
19 thinking I do want to go take a look at the act to see if
20 there's some basis in that.

21 If that is the problem and the Attorney
22 General is concerned about that being an impediment maybe,
23 heaven forbid, you know, my office would be happy to work
24 with the Attorney General in seeing if there's a way to
25 amend the law in a way that, you know, otherwise doesn't

1 offend our principles and not have that stand as an
2 impediment.

3 But I was a little surprised to hear that was
4 considered to be a problem. I always was given the
5 impression that the appropriation was the problem that
6 stood in the way.

7 REPRESENTATIVE JOSEPHS: I just ask that you
8 share whatever conclusion you and your office come up with
9 in that statute. And thank you for being here.

10 MR. FRANKEL: We will share our conclusion.
11 Our members are not shy about sharing our thoughts with the
12 General Assembly. Thank you for having me here today.

13 CHAIRPERSON BIRMELIN: Counsel Preski has one
14 question for you.

15 MR. PRESKI: One question, Mr. Frankel. It
16 follows up on a question Mr. James has been asking all the
17 witnesses. Does the ACLU have a position on the either
18 videotaping or audio recording of traffic stops?

19 MR. FRANKEL: Well, it's my understanding
20 videotaping can occur already. Yes, we have a position.
21 We really don't like all those videotaping and audiotaping
22 going on. You know, big brother doesn't need big eyes and
23 big ears. There is possible uses. Certainly, we wouldn't
24 dispute that.

25 Questions of who controls when the tapes,

1 either the video or audio, are turned on or off are very
2 important so that they don't become just vehicles for
3 promoting what one wants to promote but really do capture
4 the whole scene.

5 But set in the context of what is an alarming
6 growth in the amount of videotaping of all of us, not just
7 by law enforcement but by private individuals that seems to
8 be going on, I don't think we would ever find the ACLU in
9 support of expanding the use of that.

10 And with regard to the audiotape, we're
11 particularly concerned because it goes into the Electronic
12 Surveillance Act. And we spent an awful lot of time trying
13 to fight off other changes to the act, and this becomes
14 another means for those further changes to be made. So it
15 isn't -- it is not something we would support.

16 MR. PRESKI: Thank you.

17 CHAIRPERSON BIRMELIN: Thank you, Mr. Frankel,
18 for your testimony today. Our next testifier is
19 Commissioner John Timoney. He's the Commissioner of the
20 Philadelphia Police Department. And we welcome him to the
21 House Judiciary Subcommittee on Crime and Corrections this
22 morning.

23 Commissioner Timoney, we welcome you here. We
24 will provide not only water, but if you'd like a coffee or
25 something.

1 (Discussion off the record.)

2 CHAIRPERSON BIRMELIN: Commissioner Timoney,
3 again, I want to welcome you to our House Judiciary
4 Subcommittee meeting and thank you for coming. And while
5 you're waiting for your coffee, we'll also begin, if you
6 will. And we'll see that you're provided for. And if
7 there's anything else you need, you just let us know.

8 COMMISSIONER TIMONEY: Thank you very much.
9 I'm fine. Thank you very much. I'll begin, Mr. Chairman.
10 Good morning. I am Police Commissioner John Timoney from
11 Philadelphia. I want to thank the Committee for giving me
12 the opportunity to discuss the very important issue of
13 citizen stops and racial profiling.

14 It is my experience as Police Commissioner of
15 Philadelphia, and prior to that as the first Deputy Police
16 Commissioner in the New York City Police Department, that
17 smart assertive policing can reduce crime and improve the
18 quality of life of our citizens.

19 Pedestrian and vehicle stops are an important
20 part of policing. However, I firmly believe that
21 intelligent proactive policing and the protections of
22 individual civil rights are not mutually exclusive. I
23 categorically reject the notion that civil rights must be
24 sacrificed in order to lower the incidence of crime.

25 The law permits police officers to stop

1 individuals when they have a certain degree of suspicion.
2 I expect my police officers to look further when they see
3 something suspicious. I also expect my officers to stop
4 people they reasonably suspect are involved in criminal
5 activity.

6 One of the responsibilities I have as a chief
7 law enforcement officer is to make certain that my officers
8 understand when a stop is proper. A stop is proper if an
9 officer has reasonable suspicion that criminal activity is
10 afoot. Judges, lawyers and legal commentators often cannot
11 agree when reasonable suspicion exists; and they have the
12 luxury of deliberation and hindsight.

13 Police officers are often criticized for their
14 split-second determinations. Thus, we have an obligation
15 to train our officers to be the best prepared for
16 recognizing and articulating reasonable suspicion.

17 When I was appointed Police Commissioner in
18 Philadelphia by Mayor Rendell in March of 1998, I conducted
19 a thorough review of the police department and its
20 operating procedures. It quickly became apparent to me
21 that our officers were not properly recording pedestrian
22 and vehicle stops.

23 The stops were recorded on generic incident
24 reports that depended heavily on the officer to explain the
25 factors that led to reasonable suspicion. Without useful

1 documentation, it was unclear whether any of the stops were
2 unlawful or whether they were just poorly reported.

3 During my first year in Philadelphia, we
4 developed a new pedestrian and vehicle stop form. There
5 were several prototypes, and a trial program ensued. The
6 form was designed with the direct input and feedback of our
7 police officers.

8 This past spring, we rolled out the new form
9 for use by the entire department. The new form documents
10 the who, what, where, when of the stop. But most
11 importantly, it asks why a stop was conducted. The form
12 asks specific questions that require the officer to
13 articulate all the reasons a stop was necessary.

14 To support the new pedestrian and vehicle stop
15 form, we have given our officers extensive training on how
16 the form is to be used and what's expected of them. The
17 Philadelphia Police Department has also created a training
18 video that explains the form and provides example of the
19 escalating degree of suspicion.

20 In addition to depicting what constitutes a
21 proper stop, the training video also explains that there
22 are some completely unacceptable reasons for stopping a
23 motorist or a pedestrian. Every Philadelphia police
24 officer has been given a personal copy of this videotape,
25 and we have obliged over two dozen requests for videos from

1 police agencies across the country.

2 The Philadelphia Police Department does not
3 condone racial or ethnic profiling. We have taken enormous
4 steps to explain to our officers that it is illegal and it
5 is wrong to stop a person based on their race or ethnicity.
6 Our new form forces officers to explain why a stop was
7 conducted.

8 The form makes it plain to see if there was no
9 legal justification for a stop in the first place. The
10 reports are reviewed by the officers' supervisors and
11 commanders. We have also established an integrity control
12 unit that conducts regular unannounced audits of the stop
13 forms to ensure compliance.

14 To emphasize our new focus on the quality
15 rather than the quantity of stops, I have ordered that the
16 number of stops be eliminated as a basis for measuring an
17 officer's activity. To explain that, on an officer's
18 monthly activity report, they were given credit for the
19 number of people they stopped. That has been removed from
20 the monthly activity report.

21 Giving credit for stops misses the point that
22 the stop must be lawful and encourages either marginal
23 stops or even the reporting of nonexistent stops to pad an
24 officer's activity. Police officers are expected to
25 investigate those suspected of breaking the law.

1 I expect Philadelphia police officers to
2 conduct stops when the need arises. However, we must
3 operate within the law; and we must be mindful not to
4 unnecessarily intrude upon the rights of citizens. With
5 proper reporting, training and supervision, I am confident
6 that we can protect the rights of our citizens from crime
7 while also protecting their dignity and civil rights.

8 I thank you again for this opportunity to
9 testify before this Committee, and I'm prepared to answer
10 any questions you have.

11 CHAIRPERSON BIRMELIN: Thank you, Commissioner
12 Timoney. We'll start with Representative James.

13 REPRESENTATIVE JAMES: I want to thank you,
14 Commissioner, for coming up and testifying. I'm sorry for
15 all the unnecessary water out there, but we have no control
16 over that. But I just want to commend you for initiating
17 the form and for taking the leadership position in terms of
18 implementing it.

19 In fact, I got a copy of the form and then
20 have enacted, put a bill in suggesting that all police
21 officers across the state use the similar type form. And
22 you might have heard some or not have heard some of the
23 comment as a result of that. But we do have it in our
24 packet, and we can check to see whether it's been updated.

25 But I think I got it, you know, a

1 couple -- several months ago. As a result of that, I know
2 that there were some -- there's always been a question as
3 to some police officers have said that, Well, that means I
4 got to do more work, or I got to take longer in filling out
5 the paperwork.

6 COMMISSIONER TIMONEY: Right.

7 REPRESENTATIVE JAMES: You know, what has been
8 your reaction or response to those kind of comments?

9 COMMISSIONER TIMONEY: Well, the fortunate
10 part of myself starting out as a police officer when I was
11 19 and coming up through the ranks, I know police officers'
12 attitudes towards paperwork. And I knew there's going to
13 be a great deal of resistance, certainly initially.

14 And so I made it a point to go around at roll
15 calls explaining to police officers in very frank fashions.
16 You'd have to be brain dead not to see what's coming across
17 the landscape in American policing. The issue of race in
18 policing like race in society is there.

19 People that deny it, I think, are foolish and
20 have their heads in the sand. And I think it's about time
21 that there is acknowledgment of that fact and policies and
22 procedures put in place to at least minimize or mitigate
23 against police officers acting out on their -- on their
24 biases, prejudices, what have you.

25 We -- so I've explained to the officers

1 personally and then allow them to ask me questions at roll
2 call. We're doing it for a variety of reasons. One of
3 them is it's the right thing to do. Police officers
4 shouldn't be stopping people because of their race or
5 ethnicity.

6 But just as important from a very selfish
7 perspective -- and I make this case to the police
8 officers -- that if we don't correct the things we're doing
9 wrong, then the federal government will come in as they are
10 going to cities across America.

11 And when the feds come in, they come in for a
12 reason; but they don't often make things better. Sometimes
13 they create very onerous reporting requirements. So it's
14 much better for us if we got mistakes, if we're not doing
15 things right, to correct them, to set up procedures to fix
16 them, and then to reap the benefits selfishly. The benefit
17 in this case is keep the feds out of Philadelphia.

18 They're in places like New York, Chicago,
19 Washington, Los Angeles. And so purely from a selfish
20 perspective is a good reason to implement this new form.
21 And so what we've seen -- and that was to kind of break
22 down some of the resistance. And the resistance is still
23 there, although not as much as it was initially.

24 They're starting to get used to taking the
25 extra two or three minutes that the report requires. And

1 we have seen now, since the beginning of the year, a
2 dramatic reduction -- and we expected this -- we saw a
3 dramatic reduction in the number of ped stops and car
4 stops.

5 And that's a -- that's on the good side. And
6 we expect it to be a certain amount. But I still don't
7 think we have reached stasis yet as far as this form. And
8 it's only been up and running officially about five months
9 even though the practice has been in effect for a full
10 year.

11 The downside -- there is a downside. And I'm
12 not trying to be an alarmist -- we now see summonses way
13 down to the tune of about 22 percent moving violations.
14 When we look at accidents, the accident rate has increased
15 now over that same time period. It's too early yet to
16 start doing any in-depth analysis.

17 I think we need a good period of time, maybe a
18 full year. That doesn't mean we're waiting for a full year
19 to take any action. We are speaking to our officers every
20 week at Com-stat. But there is a downside to this that
21 we're seeing. We expected to see initial resistance, one,
22 to make a new form; and two, to actually stopping people in
23 the first place that probably should have been stopped,
24 whether it's for a moving violation or somebody that was
25 engaged in suspicious activity.

1 And so there was initially some resistance.
2 There's still some resistance. But by and large, by and
3 large, the vast majority of the police officers in
4 Philadelphia understand what's going on, understand what's
5 expected of them and really have -- have taken to this form
6 wholeheartedly. But there are still some pockets of
7 resistance.

8 REPRESENTATIVE JAMES: Now, when you talk
9 about resistance, you're talking about -- does there seem
10 to be like an organized resistance from the FOP --

11 COMMISSIONER TIMONEY: Oh, no.

12 REPRESENTATIVE JAMES: -- or just
13 individual --

14 COMMISSIONER TIMONEY: No. The FOP has been
15 quite supportive. No. In other words, the officers are
16 making the rational decision in his or her own mind, Oh, if
17 I've got to make out this form, then I'm not stopping
18 anybody, which is wrong also.

19 I mean, you're supposed to stop somebody if
20 they're engaged in suspicious activity, if they've broken
21 the law vis-a-vis the motor vehicle driving regulations.
22 And so we see some of that. The vast majority of police
23 officers have gotten on board.

24 The first month, yeah, there was a kind of a
25 wait and see. But the activities picked up. But there are

1 some officers that are -- you know, there will always be
2 some officers looking for an excuse not to do work; and
3 some have jumped on this.

4 REPRESENTATIVE JAMES: Well, I think that's
5 good because that's what happened in Jersey when the
6 officers -- State Police, when they first got caught, so to
7 speak, then there was some kind of an organized effort on
8 the number of State Police to wind down their stops and
9 have some form of resistance.

10 Also, I would like to -- you said that
11 the -- as a result now, your accidents went up, your stops
12 went down --

13 COMMISSIONER TIMONEY: Right.

14 REPRESENTATIVE JAMES: -- overall. When do
15 you plan or to kind of analyze your data? How long do you
16 want to --

17 COMMISSIONER TIMONEY: We analyze our data
18 quite literally on a weekly basis, and we use it at
19 Com-stat. And so when we have commanders before us every
20 Thursday at Com-stat, they are spoken to in regards to
21 activity, both arrests and summons activity, on an ongoing
22 basis.

23 But as far as looking at this whole issue, I
24 think you need a full year's data of stops and then broken
25 down month by month because my sense is we saw, even our

1 first month, working with some monitoring groups, the ACLU,
2 the Integrity Control Officer and Jim Jordan, some
3 mistakes, obvious mistakes the first month.

4 The error rate or the mistake rate has dropped
5 as to become more proficient. There is still room for
6 improvement. So I think you need a full year's data. You
7 also need a full year's data on stops, on moving
8 violations, and then on crime, and then do a complete
9 analysis, and then do a job-by-job analysis.

10 It's going to require a variety of ways of
11 cutting at the data, looking at it month by month, district
12 by district before we draw any conclusions.

13 REPRESENTATIVE JAMES: Okay. Also, I have
14 indicated in two of the bills the -- to require police
15 education and training in the prevention of racial
16 profiling, one through the municipal police officers and
17 one through State Police. How do you feel about that?

18 COMMISSIONER TIMONEY: I have no problem with
19 that at all. I think officers should be trained in that.
20 I think the -- I think the message comes from the top, from
21 the leaders that it's not okay. We're looking at that.
22 And we're going to take measures to make sure that officers
23 do not engage in that type of behavior. And so I have no
24 objections to that whatsoever.

25 REPRESENTATIVE JAMES: Also, I want to commend

1 you because I see where you -- and I think this came out
2 when the Democratic Policy Committee met in Philadelphia.
3 And we -- and Deputy Commissioner Sylvester Johnson
4 testified. And I think they were looking at taking out the
5 measuring of activity because -- and I remember as being a
6 police officer that it was always measured by how many
7 stops you had and how many tickets you had, how many
8 whatever you had in terms of helping when you wanted to get
9 transferred or promoted and stuff like that.

10 So I think by you taking this out of that, it
11 would cause a lot of unnecessary stops and then would
12 concentrate more on stops that are reasonable suspicion.
13 So I just want to commend you for doing that.

14 COMMISSIONER TIMONEY: Well, thank you. I do
15 not want to mislead you. The stops themselves are taken
16 out. But if an officer -- you get credit for two things
17 basically, arrests and summonses. So you're still getting
18 credit for summonses and arrests.

19 But the idea that somehow if I just stop
20 people or I make up stops that I stop people, you're going
21 to get credit for that, that nonsense has stopped.

22 REPRESENTATIVE JAMES: Thank you. Thank you,
23 Commissioner.

24 CHAIRPERSON BIRMELIN: Representative
25 Manderino.

1 REPRESENTATIVE MANDERINO: Thank you. Thank
2 you, Commissioner Timoney, for coming. In your -- we do
3 have a copy of -- it's Form 75-48A --

4 COMMISSIONER TIMONEY: Yes.

5 REPRESENTATIVE MANDERINO: -- Draft F of
6 4/13/99, is that the --

7 COMMISSIONER TIMONEY: No, no. May 1 is the
8 final one. We'll make sure you get a copy of that.

9 REPRESENTATIVE MANDERINO: Okay. On the one
10 that we have, it's one side of 8 1/2 by 11. Has it gotten
11 longer, or is it still one --

12 COMMISSIONER TIMONEY: Two sides now. Two
13 sides.

14 REPRESENTATIVE MANDERINO: Oh, okay. And you
15 had mentioned that it's -- it's taking an extra two or
16 three minutes, but I don't really know what it used to
17 take. So to do one of these right, how long does it take
18 to fill out the form?

19 COMMISSIONER TIMONEY: The -- I've done it
20 myself a few times. And it's -- it will take about three
21 to five minutes, depending on how fast you write. In the
22 old form, the standard generic form, it could have taken
23 you three or five minutes, or it could have taken you a
24 minute because you're leaving half of the information out.

25 The idea here is that there are boxes, there

1 are four choices. You must fill them out, and then you
2 must articulate what was the basis for reasonable
3 suspicion. And so it will take between three and five
4 minutes. When officers first looked at it, it looks pretty
5 complicated.

6 Oh, my God. Do I have to fill this whole
7 thing out? No, you don't. And after you use it a few
8 times, you realize, Oh, no, there's only certain boxes that
9 are applied. Under the worst of circumstances, if I
10 stopped a car with five people, then it would require me to
11 fill out all captions.

12 But by and large, if I'm stopping one
13 individual on the street who was acting suspicious or one
14 driver, it's --

15 REPRESENTATIVE MANDERINO: First two sections?

16 COMMISSIONER TIMONEY: Exactly. And that's
17 it.

18 REPRESENTATIVE MANDERINO: It may be, again,
19 too early to tell. But when I was just looking at the kind
20 of information that the form kind of forces you to
21 articulate, I was wondering if there was a plus side
22 benefit that at least I hadn't heard articulated in this
23 context.

24 And that is with regard to when you get to
25 court and whether or not you're tracking or you know

1 whether -- or you plan to measure whether or not, because
2 of the information this requires you to record, whether or
3 not it's helping officers do their job better, for example,
4 when they are in court and have to testify in terms of
5 recollection, whether this ends up being a help or a
6 hindrance.

7 COMMISSIONER TIMONEY: The only way it could
8 be a hindrance is if you put information on that report and
9 then put contradictory information on the official
10 affidavit. It could hurt you. But if the information is
11 consistent, it shouldn't hurt you. As a matter of fact, it
12 should bolster the case.

13 But remember, the vast majority of these never
14 reach the court level. I mean, you know, the real basis
15 for a lot of these stops are quite innocent citizens that
16 have a full explanation of why they're there. They may
17 have been stopped because of a 911 call or somebody selling
18 drugs or some other report that the stop be -- other than
19 the self-initiated and they're stopped by a police officer.

20 And they may have perfectly legal explanations
21 for their conduct. That doesn't -- the vast majority do
22 not wind up in arrests.

23 REPRESENTATIVE MANDERINO: One last question.
24 It seems to have been long -- at least long practice in
25 Philadelphia that records were made of stops as compared to

1 earlier testimony we heard from our State Police that they
2 don't routinely make any kind of paper trail, if I
3 understood the testimony correctly, of just stops.

4 What is typical or is there anything that's
5 typical of most police office -- or police departments?

6 COMMISSIONER TIMONEY: Well, it's interesting
7 because when I -- I came to Philadelphia from New York.
8 And Philadelphia is much more rigorous in its reporting
9 than, for example, the Philadelphia Police Department --
10 I'm sorry -- the New York City Police Department.

11 The New York City Police Department, obviously
12 if you're doing a ped stop, a stop for frisk, that requires
13 making out a form similar to the one we have here. But if
14 you stop motorists, you can stop motorists all day long,
15 and there's no requirement there to prepare a motorist
16 stop.

17 Now, if you give somebody a summons, obviously
18 you prepare the summons. But you could quite literally in
19 New York stop 100 motorists without issuing a summons and
20 that would be recorded nowhere. So Philadelphia's
21 requirements prior to my getting there -- this is no
22 credit to Timoney -- was much more rigorous my sense than
23 most police departments.

24 REPRESENTATIVE MANDERINO: Thank you. Thank
25 you, Mr. Chairman.

1 CHAIRPERSON BIRMELIN: Representative Browne.

2 REPRESENTATIVE BROWNE: Thank you, Mr.

3 Chairman. Thank you, Commissioner, for your testimony and
4 your leadership on this -- on this issue. Of course, the
5 primary benefit of what we're trying to do here is to cut
6 down on unlawful stops. And the assumption being that, as
7 you had mentioned, any stops that are perpetuated by this
8 are eventually thrown out.

9 And you had mentioned some of the statistics
10 in Philadelphia regarding the drop in --

11 COMMISSIONER TIMONEY: Yeah.

12 REPRESENTATIVE BROWNE: -- stops and
13 citations, I guess, traffic citations.

14 COMMISSIONER TIMONEY: Let me just give them
15 to you quickly, sir. This is up to 12/2 of this year.
16 From 7/1, since the form began, from July 1 up to
17 12/2 -- and I can submit this if you need it -- vehicle
18 investigations are down 20 percent from 188,000 to 149,000
19 for the 5-month period.

20 Pedestrian investigations are down
21 82,000 -- from 82,000 to 44,000, down 46 percent. Moving
22 violations, which is the real concern for me, are down 22
23 percent. Now, when we look at accidents where there's
24 property damage only, the accidents are up 7.7 percent the
25 same period. Accidents with injury or death are up 12.2

1 percent.

2 And so that's a concern. And we have been
3 monitoring this closely to see if this is an aberration, is
4 it a result of this new form? Any decision you make in
5 life, there's always a balancing. And, you know, we
6 could -- we could have created the most onerous form in the
7 world, 15 pages, and then police officers can go out there
8 and do nothing but prepare this report and then make no
9 arrests and no summonses.

10 And so there's constantly a weighing of -- a
11 balancing, if you will, of not -- not making procedures so
12 onerous that work isn't accomplished but at the same time
13 recognizing that we live in a democracy. People have a
14 right to walk and drive the streets unincumbered by police
15 officers willy-nilly.

16 REPRESENTATIVE BROWNE: I understand what
17 you're saying. I think the argument can be made that if
18 the system is working properly and officers are stopping
19 people unlawfully, that once a system like you put in place
20 is in effect, it should not affect the number of
21 convictions that happen because some stops would be made
22 unlawfully.

23 Those that are being made unlawfully would go
24 all the way through the system to conviction anyway.
25 You're saying the number of traffic violations have gone

1 down. Does that mean the number of people convicted as a
2 result of your --

3 COMMISSIONER TIMONEY: No, no. There's
4 nothing to do with convictions here. This is the
5 initial -- giving the summons out to motorists for a red
6 light, speeding, whatever it would be.

7 REPRESENTATIVE BROWNE: Do you know if the
8 number of convictions -- convictions have gone down as a
9 result of your -- your --

10 COMMISSIONER TIMONEY: I have not looked at
11 that. I mean, that would all be part of the overall
12 analysis. I have not looked at that yet. There's usually
13 about a two-month delay anyway. And so I don't think we
14 can really jump to conclusions yet.

15 It's -- while we are monitoring it on a weekly
16 basis and speaking to commanders and making sure they're
17 looking at accident-prone locations, we're not -- in the
18 area of highway fatalities, we've got more highway officers
19 out there. We need to get a full year's data to do a
20 complete full-blown analysis and then do the full years,
21 then do it month by month and then break it down district
22 by district or unit by unit to come up with some -- some
23 real hard conclusions. And even then it may not be
24 perfect.

25 REPRESENTATIVE BROWNE: I'm just hopeful that

1 when these problems exist, that they only -- you had said a
2 lot of them get thrown out and when they do exist, they
3 don't -- in an unlawful circumstance, they don't go all the
4 way to conviction, when you have somebody who's stopped for
5 a lawful purpose with no documentation and is eventually
6 taken all the way through the system and is convicted as
7 well.

8 The other thing you mentioned -- and I think
9 it's outstanding that you've done this -- is take proactive
10 approaches and not providing officers incentives to
11 increase their own status within the department by the
12 number of arrests they have.

13 The ACLU had mentioned a deterrent form of
14 incentive for this in terms of a private right of action
15 against the police department or municipality for those who
16 engage in racial profiling. What would be your thoughts on
17 that?

18 COMMISSIONER TIMONEY: The -- I've done
19 quite -- quite a bit of reading and quite a bit of research
20 on this whole issue. And before I would commit to
21 any -- any type of legislation, I want to be real careful.
22 I would want to sit down with the advocates across, with
23 police advocates, antipolice advocates, a whole host of
24 folks for a couple of days to discuss some of the nuances
25 involved in policing before you make wholesale changes of

1 laws.

2 And some of them are really inside
3 baseball-type situations that if you relied strictly on the
4 data, for example, if you relied strictly on the data, you
5 may in fact rush to the wrong conclusion. You may. You
6 may rush to the right conclusion, but you also -- you're
7 just as apt to reach the wrong conclusion.

8 And my sense is you really have to treat every
9 stop individually, and we're doing that now. We have the
10 ACLU and some other monitoring groups are looking at our
11 stops. My concern -- and I know this -- some people don't
12 like when I articulate it. I'm really not overly concerned
13 with how many get stopped or disparate impact as much as
14 I'm concerned with the people getting stopped. Is there
15 legal justification?

16 I know there are some downsides to all of
17 this, but I think much more than they're hearing. There
18 needs to be a full-blown three or five-day symposium a year
19 from now on this whole issue. I'll give you one example.
20 And I have no way of proving this.

21 But if you're in the policing business -- and
22 I'm not even going to mention Philadelphia. We'll talk
23 about New York on how -- how police officers make career
24 choices and how they wind up being deployed. And most big
25 city police departments work this way and most police

1 departments I think in the world because I've had some
2 practice with them in Ireland and New Zealand.

3 Younger kids coming out of the academy,
4 younger police officers coming out of the academy most
5 often wind up working in the tougher areas. And they go in
6 there, and they're aggressive police officers. They're
7 doing their thing; they're giving their summonses; they're
8 making their arrests.

9 Police officers, as they gain in seniority,
10 most police departments recognize seniority. And you're
11 allowed to choose your assignments, for argument's sake,
12 after 10 years to work in so-called slower precincts or
13 districts. And they were moved to those areas.

14 Often, those areas are middle -- upper middle
15 class areas. Those officers by their very nature are
16 in -- I hate to say semiretirement, but that's the kind of
17 the mind-set. And they may not be as active as police
18 officers in a tougher area.

19 And so their lack of activity will make it
20 seem, if you look at the whole mackerel, make it seem like
21 there's a huge disparity here. And it may not be as much
22 of a disparity as there is a lack of productivity on the
23 part of officers in those slower districts.

24 All those issues need to be analyzed. That's
25 why I'm saying you deal with the mackerel, you break it

1 down month by month, and then you do it district by
2 district. And it really needs good impartial analysis by
3 people on either side that don't have an agenda.

4 And so maybe you want to bring in somebody to
5 take a look. I'm not sure what the answer is. But I think
6 if you move too quickly towards the regulations and
7 reporting requirements without having looked at the whole
8 thing, I think you may -- you may wind up creating other
9 problems.

10 REPRESENTATIVE BROWNE: Thank you,
11 Commissioner. Thank you, Mr. Chairman.

12 CHAIRPERSON BIRMELIN: Representative Josephs.

13 REPRESENTATIVE JOSEPHS: Thank you, Mr.
14 Chairman. Thank you, Mr. Commissioner, for coming here. I
15 think because of having to swim up the Turnpike, you
16 probably didn't hear President Lutz from the Fraternal
17 Order of Police.

18 COMMISSIONER TIMONEY: I did not, no.

19 REPRESENTATIVE JOSEPHS: He articulated some
20 feelings that I'm sure are shared by many police officers.
21 And I know it's early in your study. I want to commend you
22 on your changes as well, having been a victim of being
23 stopped on foot before your time, sir. So I want to say a
24 couple of things that he told us he feared.

25 And though it's early in your -- in your

1 analysis, if you don't have answers, I'd really appreciate
2 if you would keep them in mind because -- well, you
3 probably already have -- because they are concerns of I'm
4 sure most police officers.

5 He felt, I think, three main things: That
6 having a more complicated form in collecting statistics
7 would expose police officers to more danger; that it might
8 cause more racial animosity than we have already; and that
9 police officers might become even -- well, he said even
10 more -- but might become victimized by more citizens'
11 complaints and civil rights suits.

12 Do you see any evidence of that yet? Or
13 what's your comment?

14 COMMISSIONER TIMONEY: I wish I was here for
15 the testimony because I think I disagree with number one.
16 Number two and three I think we have to wait and see. It
17 reminds me when I was -- and sometimes, by the way, a form
18 can be unintentionally very damaging.

19 When I was a young police officer in New York
20 in 1967, when you stopped a motorist to give him a summons,
21 you also had to ask him their marital status. And that
22 used to cause more fights. And why? What would that have
23 to do with the price of vinegar whether you're married or
24 not? I mean, either you broke the law or you didn't.

25 And so people would get infuriated because you

1 were asking them, And by the way, are you married? So some
2 forms can do that to you. We've tried not to. Again, it's
3 a balancing. The issue of racial profiling, you'd have to
4 be brain dead not to recognize that this is, in my opinion
5 at least, just the next generation of a long line of civil
6 rights initiatives, improvements and policing. And so I do
7 not resist it.

8 But by the same token, I recognize that there
9 are two sides to an issue and that we have an obligation to
10 balance it. And I just think -- I'll speak to Mr. Lutz.
11 I've gotten a copy of his testimony, but I'm not sure. I
12 think I disagree with him on number one, but number two and
13 three I may. I'm not sure.

14 REPRESENTATIVE JOSEPHS: Thank you. Thank
15 you, Mr. Chairman.

16 CHAIRPERSON BIRMELIN: Representative James
17 has one more question.

18 REPRESENTATIVE JAMES: Yeah. Thank you.
19 Representative Josephs just reminded me of another
20 question. I just wanted to also acknowledge the presence
21 of Representative Roebuck, Chairman of the Pennsylvania
22 Legislative Black Caucus.

23 One of the questions that, you know, police
24 are, you know, any time you don't want to do something, you
25 come with a reason not to do it. And so some police

1 officers are now saying that, Well, we don't want to have
2 to ask the person what race they are because that's going
3 to cause some -- some reaction or that may not be positive.

4 But when I was a police officer -- and we
5 never asked what race nobody was. We just put down what we
6 thought they were. You know, it was either white male,
7 black male or Asian or whatever. And so now Lutz pointed
8 out that that's what's going to happen now and it's going
9 to cause some problems.

10 In your training and your -- now that you have
11 race on your new form, do you tell your police officers to
12 ask what race people are, or that's a judgment on their --

13 COMMISSIONER TIMONEY: No, it's a judgment.
14 And can you come across a person that, you know, may in
15 fact be black but looks white or may be white but looks
16 black? Yeah. And, you know, you got to make those calls.
17 But my sense is, those are -- those are such a minor issue.
18 I think to raise them is above this issue.

19 REPRESENTATIVE JAMES: Thank you. Thank you,
20 Mr. Chairman.

21 CHAIRPERSON BIRMELIN: Counsel Preski has a
22 question.

23 MR. PRESKI: One question for you,
24 Commissioner. The one existing measure that you do have at
25 your disposal to determine, I guess, racial profiling or if

1 it existed in the past were complaints against police
2 officers. Did your department take a look at any existing
3 complaints or prior complaints about officers or what the
4 numbers were there?

5 COMMISSIONER TIMONEY: No. What we've
6 seen understandably -- some of these things, by the way,
7 are predictable. And so when the issue of racial profiling
8 really hit the headlines at the beginning of this year,
9 there was an increase in complaints against police officers
10 regarding racial profiling. That's predictable.

11 Now there's been an evening off because people
12 react to what they see in the headlines, what they see on
13 television. The answer is no, we did not -- they would not
14 have been broken down that way. They'd be broken down as
15 complaints against police officers stemming from a family
16 dispute, from a confrontation with a motorist, or an arrest
17 situation, something like that. They wouldn't be that fine
18 a level.

19 But I read them every day. I get a copy of
20 complaints against police officers. And quite clearly, you
21 could see people making complaints against the police
22 officers who thought they got a summons that they didn't
23 deserve based on their race, whether it was white or black.

24 MR. PRESKI: Thank you. Representative James
25 has one question for you. What's your position on the

1 videotaping and audiotaping of traffic stops?

2 COMMISSIONER TIMONEY: I think the
3 audiotaping, the law in Pennsylvania is much -- much more
4 strict than New York. And so I think that's -- I don't
5 think it's worth the effort involved. The videotaping, I
6 happen -- I happen to agree with the fellow from the ACLU.

7 I think Americans should all take a deep
8 breath and take a time out and stop videotaping one
9 another.

10 MR. PRESKI: And one last question then,
11 Commissioner. We basically concluded up here that the 25th
12 was probably the worst district in the city; is that true?

13 COMMISSIONER TIMONEY: I don't know what you
14 mean by the worst.

15 MR. PRESKI: Well, most crime.

16 COMMISSIONER TIMONEY: The busiest would be
17 the 35th.

18 MR. PRESKI: The 35th? As a --

19 COMMISSIONER TIMONEY: It's also -- it's
20 also -- it's big geographically. It's got a huge
21 population. It's got some beautiful areas, but it's the
22 busiest. So be careful.

23 MR. PRESKI: As a resident of the second, how
24 does that fair?

25 COMMISSIONER TIMONEY: That's where you have

1 those people in semiretirement.

2 MR. PRESKI: Thank you, Commissioner.

3 CHAIRPERSON BIRMELIN: Thank you,
4 Commissioner. We appreciate you being here with us this
5 morning -- I'm sorry -- this afternoon as well. Because
6 the next testifier that I'd like to call has to catch a
7 flight out of Harrisburg and I assured him that he would
8 get out of here on time, I'm going to call Professor David
9 Harris next.

10 He's a Professor of Law at College of Law at
11 the University of Toledo. And I'm going to call on
12 Representative James to give him a better introduction than
13 the one that I was just able to do.

14 REPRESENTATIVE JAMES: All right. Thank you,
15 Mr. Chairman. Professor Harris is Professor of Law, as the
16 Chairman had said, from University of Toledo, College of
17 Law. He teaches criminal law and constitutional law. And
18 he did a study of race in search on seizure, also racial
19 profiling for the last five years. He's the author of
20 leading studies on racial profiling.

21 He also helped with Congressman Conyers, who
22 introduced a bill on Traffic Statistical Study Act two
23 years ago and maybe last year in Congress. And that
24 federal legislation did pass Congress but was held up in
25 the Senate. The Senate didn't act on it.

1 And then the new Congress, it had just been
2 recently introduced last year. And if you can add to that,
3 Professor Harris, okay.

4 PROFESSOR HARRIS: Thank you very much. Mr.
5 Chairman, members of the Committee, Representative James
6 especially, thank you for asking me to come. I'm delighted
7 to be here and hope I can provide you with some insights.
8 Racial profiling has become a topic of conversation not
9 only in legislative bodies across the country this year but
10 living rooms, television shows, pretty much everywhere.
11 And it is yet not a new thing.

12 If you talk to African Americans, Hispanics,
13 other minorities almost anywhere in the country, you talk
14 with them, it is nearly impossible to find an individual
15 who is either not -- who has not had this experience
16 personally or who does not have a friend or family member
17 who has had it.

18 It is a universal experience for blacks and
19 Latinos. Even until fairly recently, it has been almost
20 invisible to the rest of us. What I'd like to do today is
21 to explain to you a little of what I know about it from the
22 national perspective to give you some idea of what data is
23 out there other than what we've heard about it this
24 morning.

25 And I must say I was very impressed by the

1 Commissioner of Philadelphia's remarks and his efforts, his
2 department's efforts to collect data and analyze it. I
3 think they're way ahead of the curve on this. I will give
4 you a national perspective.

5 And from there, I will try to ask what I think
6 is the central question; and that is, Why do anything? And
7 certainly the question asked by Mr. Lutz earlier, What's to
8 be gained from this? And I think I have a couple of points
9 I can make there. So without more, that's -- that's what
10 I'd like to do for you today.

11 When I say racial profiling, I have I think in
12 mind a somewhat broader definition than some of what I have
13 heard here this morning. Racial profiling does mean the
14 incidence in which police officers stop, question and
15 sometimes search people based solely on their race. But I
16 would not limit it to that situation.

17 There's more to it than that. It is a
18 situation in which traffic stops are used as an excuse, a
19 pretext for stopping drivers for questioning them and
20 searching them when really the motivation is something
21 else. And when we look at the whole picture, who is being
22 stopped overall when we see that this practice is being
23 used disproportionately overall against people of one
24 racial or ethnic group?

25 When we see that they are treated differently

1 after the stop, that is part of racial profiling, too. So
2 with that in mind, I think we can look at some of the
3 national statistics on this that have been generated over
4 the past few years.

5 Several of the witnesses have commented about
6 New Jersey, about Maryland. I'll just tell you very
7 briefly what I know about those. Those were rigorous
8 statistical studies of data gathered as a result of
9 lawsuits. In both of those states, New Jersey and
10 Maryland, the statistician was a respective member of the
11 faculty of Temple University here in Pennsylvania.

12 And the conclusions drawn, I think, were both
13 conservative in the sense of very defensible and startling.
14 They were that there was only one factor that could account
15 for who was stopped on the highways in New Jersey and
16 Maryland, and that was the race of the driver.

17 For instance, in New Jersey, while 13 percent
18 of the drivers on the New Jersey Turnpike were African
19 American, they were almost 40 percent of all drivers
20 stopped and searched. In Maryland, while blacks were 17
21 percent of drivers stopped -- excuse me -- 17 percent of
22 the drivers on Interstate 95, they were over 75 percent of
23 all drivers stopped and searched.

24 Those studies were also able to isolate and
25 discount another probable explanation because one thing you

1 would ask is you would say, Well, maybe the driving
2 behavior is different. Maybe people are being stopped
3 because different groups drive differently.

4 And this was very interesting. What both
5 of these studies found without a doubt was that
6 basically -- I doubt this would surprise anyone in this
7 room -- everybody violates the traffic laws at some very
8 high rate, every ethnic group. There's no difference
9 between whites, blacks, Hispanics.

10 Everybody is breaking the speed limit,
11 forgetting to signal, changing lanes, all kinds of stuff.
12 So it's not the driving. It was the race. In my own study
13 in Ohio, I've looked at four Ohio cities: Toledo, Akron,
14 Dayton and Columbus, Franklin County.

15 And in those cities, I found that blacks were
16 roughly twice as likely to be ticketed as all nonblacks.
17 When I say nonblacks, I mean not only whites, I mean
18 Hispanics, I mean Asians. I put everybody together just to
19 isolate the single variable of African Americans.

20 When you factor in information from federal
21 studies like the fact that 21 percent of all black
22 households don't even own vehicles, which makes them less
23 likely to be driving, the numbers go up to two and a half
24 and even three times as likely to be ticketed as everybody
25 else.

1 These studies go along with some of the
2 numbers already quoted from Philadelphia that where it's
3 been measured -- it was measured in 1997, two different
4 weeks, thousands of stops were looked at, races identified.
5 In that study, they found that the percentages of
6 minorities who made up those stops were over 70 percent and
7 85 percent respectively.

8 So on the national level, this is all part of
9 one large picture, one large picture. Every study that has
10 been done, New Jersey, Maryland, Ohio, Philadelphia, North
11 Carolina, Texas, all done in different ways, all done in
12 different places, all done with different types of data,
13 but they all point in the same direction.

14 This is a real problem. It's a real
15 phenomenon. It is not simply a bunch of exaggerated
16 stories. This is not something that people are making up.
17 It is real. It's been measured. And every time I would
18 predict that we try to measure it again, we're going to see
19 it again. It's not simply going to go away.

20 That's the national picture. Now, why do
21 anything about it? Now, that may seem like a question
22 that's either too simple or too complex. I submit it's
23 neither. I think it's the most important question we could
24 answer here. Why do anything about this?

25 Mr. Lutz, as you'll recall, says there's no

1 benefit to be gained by collecting data. And I think
2 that's dead wrong. Here's why we should do something about
3 it: Number one is the damage to the individuals who are
4 stopped. Now, anybody who has ever had this happen to them
5 knows what I'm talking about.

6 But I can -- if this is -- if that's not you,
7 I can supply you with -- with a little information. I've
8 done a lot of interviewing of African Americans and Latinos
9 as part of my research. I picked out one or two quotes for
10 you, and I've picked them out not because they are
11 particularly egregious or particularly bad but because
12 they're typical.

13 Let me just read them. They're very brief.
14 This one comes from a gentleman in my home state. He is
15 the chief executive of one of our largest municipal
16 agencies. He's a man in his 40's. He's quite
17 well-accomplished, and he's had this happen to him any
18 number of times.

19 He said the following to me: "Each one of
20 those stops for me had nothing to do with breaking the
21 law. It had to do with who I was. It's almost like
22 somebody pulls your pants down around your ankles. You're
23 standing there nude, but you got to act like there's
24 nothing happening."

25 Here's one from a young woman. She's a social

1 worker in her 30's. She's a mother. She was stopped and
2 handcuffed one day on her way to work. She says, "I was
3 really upset. I was like, 'Why are you guys handcuffing me
4 about some tickets?' They had me standing outside with all
5 these people passing by. It was so humiliating."

6 This is the kind of damage that's done by
7 these set practices. It's very personal. It creates fear.
8 It embarrasses people. It angers people. And that is real
9 damage. It's long-lasting damage. So that's reason number
10 one. But you know what? I don't actually think that's the
11 most important reason to do something.

12 It's certainly important. And it's certainly
13 a very, very -- a kind of a problem that's almost too hot
14 to touch. But the more important reason is a systemic
15 reason because I see this problem of profiling and these
16 individual stops not just important in and of themselves,
17 but they are important because they are a symbol, a
18 symptom, a manifestation of all of the most difficult
19 problems that we now face as a country when we look at the
20 intersection between race and criminal justice.

21 In other words, profiling illustrates. It
22 helps us to understand and see a whole bunch of other
23 difficult problems. Now, I'm just going to pick one of
24 these out for us today, and that is the effect on the
25 entire criminal justice system. All right.

1 This is what I think the real key to the
2 discussion is. Whether this happens to us personally or
3 not, whether we regard the personal damage done to others
4 as significant or not, it is impacting in a very
5 significant way our entire system of justice. And I mean
6 policing, I mean courts, I mean prisons, everything.

7 Let's just start with how people think about
8 the system. It's already been mentioned a couple of times
9 this morning, the Gallup poll that came out just last week.
10 This is done obviously by an independent well-known
11 organization. And it concludes that a very high percentage
12 of all Americans believe that profiling is widespread and
13 that despite any justifications for it, they believe it's a
14 practice that has to be curtailed.

15 Now, what happens as a result of this
16 practice? Let's just ask ourselves that. Well, the first
17 thing that happens is it creates a corrosive cynicism about
18 the justice system. It creates damage to our beliefs in
19 our institutions and especially damage to our beliefs in
20 individual police officers.

21 And the very interesting thing about that
22 poll, it's not surprising at all that African Americans or
23 Latinos would feel this way. They have complained about
24 this for many years, and all the statistics show that
25 they've got a legitimate complaint. That's not the most

1 interesting thing about it.

2 The most interesting thing about it is that a
3 large majority of whites also believe that this is going
4 on. That's not interesting because whites are more
5 important. It's interesting because the perception that
6 there is injustice and unfairness involved here, that that
7 has now traveled from those groups most directly affected
8 to everybody else.

9 That's not good for anyone. That is not good
10 for anyone in this room or anyone in this country. That
11 will damage the entire system of justice. And when you got
12 a majority of people thinking that decisions in policing
13 are going to be made on the basis of race, that the court's
14 going to be treating people unfairly on the basis of race
15 and you can trace it back to this problem, that shows you
16 how important it is for this body to take the bull by the
17 horns and address this, to take a full face view of the
18 problem and do something because that justice system
19 belongs to everybody in this room and everybody in this
20 country.

21 We depend on it. That's one of the golden
22 threads that runs through our republic, and it's one of the
23 things that really makes us special and different in this
24 world. If that goes, something very significant of
25 our -- about our country goes. So that cynicism is

1 breaking down the entire system.

2 Now, let's get more specific. How does it
3 affect police in particular? Well, I think, you know, a
4 lot of the things we heard this morning, especially from
5 Commissioner Timoney, some very innovative things happening
6 in policing now.

7 The old model of the officer simply responding
8 to 911 calls, Is there a problem, okay, we'll go see what
9 it is, that's pretty much out the door. It still goes on,
10 of course. But forward thinkers in policing from
11 Commissioner Timoney all the way across all talk in terms
12 of solving problems.

13 They talk in terms of getting out there ahead
14 of them. They talk about community policing. Now, if I
15 went around this room and I asked people what's community
16 policing, what's problem solving policing, I'd probably get
17 as many definitions as there are people in here. And
18 that's -- it's probably not a fruitful exercise.

19 But we can probably agree on one thing,
20 community policing, problem solving policing, these things
21 depend on the existence of trust. They depend on a
22 partnership between police and the public. The public has
23 to trust the police, to the extent that they'll give them
24 information just like the gentleman earlier was saying,
25 that they'll help them identify the hot spots in the

1 neighborhood, the bad guys, tell them where the crack
2 houses are and what the problems are.

3 The public need the police because we know
4 that neither the public nor the police can make the streets
5 safe on their own. It has to be a partnership. And the
6 real effective policing that is going on these days like in
7 San Diego, California, a city which has reduced its crime
8 rate more quickly and more steeply than New York with
9 one-fifth the number of officers per 100,000 people that
10 New York has, that is community policing at work.

11 That's the real promise of policing from the
12 '90s and beyond. If we don't come to grips with this
13 problem, even if it's only a perception -- I think it's
14 more than a perception -- but even if it's only a
15 perception, community policing and efforts like it will
16 fail.

17 They will be damaged beyond repair because you
18 can't ask for the trust of the community at the community
19 meeting and then turn around and then pull out of the
20 parking lot and treat them like suspects. It simply will
21 not work. And this is showing up.

22 One of the witnesses earlier on referred to
23 the fact that there could be jury nullification that comes
24 from this. I know what he's talking about. I'm a former
25 prosecutor and a former defense lawyer. I'm still in touch

1 with many of my friends around the country.

2 I hear it all the time. We're going into
3 court with what should be slam-dunk cases, and we're not
4 getting the convictions we used to. How come? Because
5 those cases sometimes depend on the testimony of police
6 officers, and people are becoming reluctant to believe
7 them. That is a problem.

8 That's part of this problem. That is
9 intimately connected to this problem. So what I'm saying
10 is even if all we have is a problem of perception, we still
11 have a huge problem to deal with. And we'd be smart to get
12 out and start dealing with it now.

13 Now, what's the first step? The first step is
14 data collection. Despite the fact that some of the data is
15 coming in and it's pretty convincing and it is, you know,
16 it's coming from all corners and all points in the same
17 direction, as you can see from some of what went on here
18 this morning, not everybody is convinced that this is a
19 problem yet.

20 So that's the first thing we have to address.
21 And we have to show where the patterns are, where exactly
22 the extent of the practice? Is it just a few bad apples in
23 the barrel? Is it a system-wide problem? If I were a
24 police administrator, I want to know that. That's why
25 Commissioner Timoney has his department doing it. He wants

1 to know.

2 He can't run his Com-stat meetings, he can't
3 run his department without this kind of information.
4 That's why he and many other police chiefs support this.
5 Voluntary data collection is happening all across the
6 country now. There are over 40 departments in California
7 alone, Michigan State Police, Florida State Police, Rhode
8 Island State Police, Washington State's State Police.

9 This is happening everywhere. And the reason
10 is the police departments, police officials know that they
11 need the public's trust. That's why I would urge this
12 Committee and the Legislature to carefully consider the
13 bill that has been put forth by Representative James.

14 I think it makes a lot of good first steps
15 along this road. The first step is data collection.
16 That's what you have to do to get started to addressing
17 this problem of perception. I've put in my written
18 testimony some thoughts about the bill itself, some
19 thoughts about what a good data collection bill contains.

20 I won't go into that now. I know time is
21 getting short. I would just close this way: I think it
22 would be a mistake to consider racial profiling a black
23 problem or a Latino problem or a minority problem because
24 it's not any of those things.

25 It is a problem for every American who

1 believes in fairness and equal justice under law. Those
2 are the words that are carved into the stone above the
3 Supreme Court of the United States, and it's part of what
4 makes our country great.

5 Now, we know we do not always get to that
6 goal. We have not always lived up to that ideal. But this
7 legislation is part of the way that we can get ourselves
8 moving in the right direction.

9 I thank you for the opportunity to come and
10 talk to you today, and I'm prepared to answer any questions
11 you might have.

12 CHAIRPERSON BIRMELIN: Thank you, Professor
13 Harris. And first, I'll ask -- call on Representative
14 James for any questions that he may have.

15 PROFESSOR HARRIS: Yes, sir.

16 REPRESENTATIVE JAMES: Thank you, Professor
17 Harris. And thank you for taking the time out to testify.
18 If you can just say -- the material you have here, if you
19 can just tell us what we have --

20 PROFESSOR HARRIS: Yes, sir.

21 REPRESENTATIVE JAMES: -- so that everybody
22 will know, be aware of it.

23 PROFESSOR HARRIS: Yes, sir. I brought a copy
24 of my written testimony. It should be over there. It goes
25 into more detail than in my oral statement, including some

1 thoughts about what good state legislation should contain.
2 I base this on my own analysis of bills from all of the
3 almost 20 states that have had proposals either pending or
4 very recently in the hopper.

5 And I also have brought copies of my own
6 article, The Stories, The Statistics And The Law: Why
7 Driving While Black Matters. This is a copy of the
8 galley. I sent this -- I brought this along. The
9 finished product was published just yesterday, I'm glad to
10 say finally, in the Minnesota Law Review.

11 And I would be glad -- if there are
12 insufficient copies of either one, I would be glad to get
13 anybody who wants either one of those another copy.

14 REPRESENTATIVE JAMES: I think we have some on
15 the side there. And I'm glad that we can get that. I just
16 want to commend you for your testimony and your experience
17 and expertise in this area. I observed it in Washington
18 when you were testifying, both -- I saw you on television
19 and then I saw you at the Congressional Black Caucus when
20 they was dealing with the issue of racial profiling.

21 And I know that you had helped Congressman
22 Conyers in that bill. Do you know where that is now in
23 terms of the status? I understand it is in committee. Has
24 it advanced?

25 PROFESSOR HARRIS: Yes, sir. I do know. You

1 will recall that this is the second go-around for that
2 bill. It was introduced at the beginning of the
3 session, the session that began in January of 1997. And it
4 was passed, I should say, unanimously by the House of
5 Representatives in March of 1998.

6 Somebody called me one afternoon and said,
7 Flip on the TV, turn on C-Span real quick. And there were
8 John Conyers and Henry Hyde both standing up to praise the
9 bill and ask everybody to vote for it. That may have been
10 the last time the two of them exchanged a civil word.

11 After that bill passed, it was sent to the
12 Senate. And shortly thereafter, the clouds of impeachment
13 kind of gathered over the Capitol. And pretty much
14 everything that was on the docket at that point died. The
15 bill has been reintroduced by Congressman Conyers as H.R.
16 1443.

17 And that bill has the support of the
18 President. It has the support of the Department of Justice
19 which participated in the drafting of this version of the
20 bill, and it has the support of many of the organizations
21 that were mentioned earlier by other witnesses. It is now
22 in committee.

23 It has also been introduced in the Senate.
24 This time around, Congressman Conyers does not stand alone
25 as sponsor. There are, I believe, 12 other sponsors in the

1 House and three or four in the Senate. Senator Feingold is
2 one of them.

3 REPRESENTATIVE JAMES: Okay. Also, are you
4 aware of what the Attorney General of the United States is
5 doing as it relates to racial profiling now? And can you
6 briefly tell us about that?

7 PROFESSOR HARRIS: Yes, sir. The Attorney
8 General has convened two meetings in the last 12 months
9 about this topic, one last December just about this time
10 and another one in June. At those meetings, the issue was
11 discussed.

12 The meetings were sort of roundtables, leaders
13 in this area, mostly police officials, a handful of
14 academics, representatives of the ACLU. And the problem
15 was discussed from all sides. I think it's fair to say
16 that the discussion was frank.

17 By June, there was considerably more public
18 momentum -- this is June of '99 -- around this issue. And
19 there was another summit convened, and the President
20 attended this one. This was the one where he came out and
21 announced his own support and issued a directive to have
22 the -- all federal law enforcement agencies track their
23 data and report on it.

24 The Attorney General, as far as I know, is
25 still solidly in support of the bill. She feels that while

1 there are trade-offs involved, this is a good bill, the
2 Conyers bill. And she remains behind it, and it has her
3 full support.

4 REPRESENTATIVE JAMES: All right. Thank you.
5 Thank you. And again, I want to commend you for testifying
6 and for all your expertise and experience on this topic.
7 Thank you. Thank you, Mr. Chairman.

8 PROFESSOR HARRIS: My pleasure, sir.

9 CHAIRPERSON BIRMELIN: Representative Browne.

10 REPRESENTATIVE BROWNE: Thank you, Mr.
11 Chairman. Thank you, Professor, for your testimony and
12 your work on this issue. You had described this racial
13 profiling as a national systematic problem and that you've
14 done a lot of studies in Ohio.

15 And the Center of Crime, Communities and
16 Cultures -- and Culture might have done studies in other
17 cities throughout the country. I'm not sure of that. I'm
18 just curious, in places that have been studied, are there
19 any places that these statistics have been taken and
20 there's not a problem?

21 PROFESSOR HARRIS: Well, the results are
22 variable. And my study is a good example. I looked at
23 four cities in Ohio. Mine was a ticketing study. And what
24 I found was that while certain police departments were much
25 more likely than others to give tickets to blacks versus

1 nonblacks, there was -- there was a -- there was a solid
2 middle range.

3 We were roughly twice as likely. Having said
4 that, for instance, the department in Columbus, they're
5 number I think was 1.6 times as likely. The department
6 in -- excuse me -- I believe Akron almost 3 times as
7 likely. So there's a great degree of variation.

8 When you get down to one point something times
9 as likely, 1.2, 1.3, you have to start asking yourself is
10 this really a variation that is worth -- that is
11 statistically significant? Where the studies have been
12 done, they've often been prompted by years of complaints.

13 And so it isn't actually surprising that most
14 of them point in the same direction. What would I think be
15 most interesting in the next generation of data collection
16 and analysis would be to do exactly what Commissioner
17 Timoney suggested, which would be to break down the data in
18 ways that make it much more useful.

19 For instance, I did a study in the City of
20 Toledo in all of the -- of the departments in the city, the
21 city police department, our sheriff's office, the State
22 Police that operate there, and so forth. And I would
23 really liked to have had the numbers given to me broken
24 down by precinct, broken down by census track or
25 neighborhood.

1 That way we could make comparisons that would
2 really tell us a lot more. So I'm hoping that the next
3 generation of data, when it becomes available perhaps
4 through these voluntary data collection efforts around the
5 country, will allow us to do better and more incisive
6 analysis and give police officials even more information
7 than the studies that have now been done.

8 REPRESENTATIVE BROWNE: You mentioned the next
9 generation of data. In terms of your current studies, when
10 you've done studies in the cities of Ohio and the different
11 variations amongst them, is there major procedural and
12 systematic differences between the police departments in
13 the different cities as far as how they perform their
14 operations that you noticed as a correlation between the
15 increased propensity for this problem? Or is it -- did
16 your studies go that far?

17 PROFESSOR HARRIS: No, not -- they were not as
18 finely tuned as that. What -- what we did was we
19 targeted -- we tried to get a number of different cities.
20 Ohio is unique in that it has a large number of fair size
21 population centers. Pennsylvania is another state like
22 that.

23 But Ohio has three very large cities,
24 Cincinnati, Columbus and Cleveland, and then a whole host
25 of mid-sized cities. So we went for cities that we could

1 compare to each other. Akron, Dayton, Toledo a good set of
2 comparisons. And then the original goal was Cincinnati,
3 Cleveland and Columbus.

4 Well, Cincinnati Police Department did not
5 cooperate. The Cleveland Police Department did not have
6 the computer facilities that allowed this to be done and,
7 in fact, had to get all the data from court systems instead
8 of police departments. So we were not able to get data on
9 that level.

10 The hope was that this could stimulate enough
11 discussion that the fact that data were all going in one
12 direction, the hope was that it could stimulate enough
13 discussion and policy analysis that the Legislature would
14 then go forward and get more data collected on a systematic
15 basis statewide.

16 REPRESENTATIVE BROWNE: And you used San Diego
17 as a model for --

18 PROFESSOR HARRIS: Yes.

19 REPRESENTATIVE BROWNE: -- community policing
20 and reduction in crime. Have studies been done in San
21 Diego on systematic studies of the relationship between the
22 police department and the citizens in regards to this issue
23 of racial profiling?

24 PROFESSOR HARRIS: It may not surprise you,
25 sir, that the San Diego Police Department was the very

1 first large city police department in the country to
2 announce that they would go ahead and collect data
3 themselves on this issue.

4 They announced this about ten months ago. So
5 their efforts are still fairly new. In fact, I don't know
6 how many months of data they would have by now because the
7 process of designing a system, designing the computer
8 filings, designing the analysis and so forth does take some
9 time.

10 I know that they had planned to, at the very
11 latest, have their data collection system up and running by
12 January 1st of 2000. So I doubt they have anything
13 produced at this point. But it was no surprise to me when
14 they were the very first big city to come out and say, Hey,
15 we want to know.

16 We realize what we gained by cooperation and
17 trust with our citizens by that partnership. We get a lot
18 out of that. That's why we've been able to do such a good
19 job for our citizens, and we want to keep that. And the
20 police chief's name is Jerome Sanders.

21 He came out and he just said, I need to know
22 this because I want to be able to tell my community, Look,
23 we know what you think. Based on the data, it's not
24 happening. Or if it is, based on the data, we've
25 identified where it's happening. We're going to take the

1 following steps because we want to work with you.

2 REPRESENTATIVE BROWNE: One point you made in
3 regards to that, which I don't think it's been made today,
4 in regards to this issue, it's more than a civil rights
5 issue. It's an issue of criminal justice as far as --

6 PROFESSOR HARRIS: Yes.

7 REPRESENTATIVE BROWNE: -- if it's properly
8 administered and there's trust amongst the community, the
9 amount of crime will go down. So it's a very important
10 point.

11 PROFESSOR HARRIS: I agree.

12 REPRESENTATIVE BROWNE: Thank you, Mr.
13 Chairman.

14 PROFESSOR HARRIS: My pleasure.

15 CHAIRPERSON BIRMELIN: Representative Josephs.

16 REPRESENTATIVE JOSEPHS: Thank you. I'll
17 pass.

18 CHAIRPERSON BIRMELIN: Representative
19 Manderino.

20 REPRESENTATIVE MANDERINO: Thank you. Thank
21 you for coming. With regard to the work that you did on
22 the federal level with the federal legislative proposal,
23 I'm wondering whether you have done any surveys or gathered
24 any information about what police departments locally,
25 statewide, et cetera, are currently gathering as the norm

1 in terms of information to see whether what you would be
2 requiring in this federal legislation is a lot more than
3 what people are currently doing, a little more than what
4 people are doing.

5 And when I looked at the list of stuff there,
6 I thought, Well, first after you get over the issue of do
7 they make a record of every stop -- and some apparently do
8 and some don't -- almost everything on the list, I would
9 think, is something that's already being recorded except
10 maybe for race.

11 I think your date of birth is probably on any
12 type of ticket or anything that you get because it's on
13 your license, the reason for the stop. I don't know
14 whether or not some of the search stuff is in there. But I
15 would think that if you searched the vehicle and found
16 something, you wrote it down somewhere.

17 So I guess I'm trying to figure out how much
18 are we asking folks to deviate from current practice? Is
19 it going to be a little change or a big change? What is
20 your experience?

21 PROFESSOR HARRIS: That's a great question.
22 My experience, I think, will -- will perhaps surprise you.
23 And I'll start with the work I did in Ohio. I thought,
24 like you, that it would be very easy to get most of this
25 data from police departments, setting aside questions of

1 wanting to cooperate or not. But it should just be there.

2 And it was a question of perhaps a data
3 search, setting up the correct kind of computer program,
4 and so forth. That did not turn out to be the case. And
5 we were a state that had at that time that I was asking for
6 the data, we had had in place a uniform citation, just the
7 kind that the State Police Commissioner was talking about
8 here this morning that included a box for race.

9 First place I went was the Department of
10 Public Safety, which handles all the state data, especially
11 the data from the Highway Patrol which hands out the bulk
12 of the tickets in our state. And I said to them, Can you
13 give me the breakdown of all your tickets by race and
14 location and so forth?

15 And the man said, Well, I'm sorry. No, we
16 can't. I said, Well, isn't that on your ticket? He said,
17 Yes. But lots of officers don't use it. Some of our State
18 Police units don't use it at all. I said, Well, what about
19 the ones that do, could you give me that? He said, Well,
20 we don't save it. The data comes in, and we save field X
21 and field Y and field Z but not that one.

22 I understand that that may now have changed.
23 So I was surprised myself by how little data was out there.
24 Other things that you mentioned like whether a search was
25 conducted and whether an arrest was made, those data would

1 be saved but only if contraband was found and an arrest was
2 made because then it would come in in the form of an arrest
3 report, probably no traffic citation given.

4 What this tells you, I think, is that probably
5 you need to standardize this to some extent. I don't mean
6 a one-size-fits-all solution from Washington. In many
7 ways, I think that's not the best answer. I would much
8 prefer to see it go state by state so it could fit the
9 individual police departments and police cultures.

10 But unless you call for those pieces of
11 information in one place, chances are very good that: A,
12 we don't have them now; and B, we'll never be able to pull
13 them together. As to I think an underlying issue, an issue
14 that underlies your question, what would that actually
15 involve, the departments that are doing this now in
16 California in San Diego and in San Jose and in Alameda
17 County, they're telling us that what they're talking about
18 is an additional 30 seconds to one minute per stop, per
19 stop because they are doing their data collection sometimes
20 on mobile data terminals.

21 They've been able to use hand-held things like
22 Palm Pilots. They've also just done it over the police
23 radio. They simply call into the dispatcher a series of
24 codes of letters for each field, and the dispatcher writes
25 them down. They go right into the computer system, zap.

1 It's not adding a lot of time and a lot of
2 expense to existing practices. But it is my sense that you
3 have to pull it together and have it collated for each
4 encounter, not just the tickets, as one witness pointed out
5 a few minutes ago, but for each time a person is stopped;
6 otherwise, you have an incomplete picture.

7 REPRESENTATIVE MANDERINO: Thank you. Thank
8 you, Mr. Chairman.

9 CHAIRPERSON BIRMELIN: Representative James
10 has one more question for you.

11 REPRESENTATIVE JAMES: Thank you again, Mr.
12 Chairman. Professor Harris, are you aware of the -- did
13 you have a chance to review the New York Attorney General's
14 report?

15 PROFESSOR HARRIS: Yes, I did, sir.

16 REPRESENTATIVE JAMES: Can you comment just
17 briefly about their findings on that?

18 PROFESSOR HARRIS: Yes. This --

19 REPRESENTATIVE JAMES: And we also have a copy
20 of the summary in my packet for those that are interested
21 in it.

22 PROFESSOR HARRIS: Excellent. The New York
23 State Attorney General was asked maybe 18 months ago to
24 undertake some kind of a study on stop and frisk practices
25 by the New York City Police Department. They analyzed

1 175,000 records of police citizen encounters because, as
2 Commissioner Timoney said, a record has to be produced for
3 each one of those encounters in New York City.

4 I'm sure it's not always done, but it's done
5 more often than not. 175,000 records over a period of 15
6 months. What they found was that even accounting for or
7 statistically correcting for the types of neighborhoods
8 that people were in, were they high crime or low crime
9 neighborhoods, even accounting for that, blacks were much
10 more likely, Latinos were much more likely to be stopped
11 and frisked and questioned and in an intrusive way than was
12 true for whites.

13 So this was a fairly comprehensive look at
14 this problem. They were working with police department
15 records. And they found that in making every effort to
16 account for the type of neighborhoods in which this went
17 on, they found that there was a significant and visible
18 racial bias in the stops.

19 REPRESENTATIVE JAMES: Thank you. Thank you
20 very much. And thank you for testifying.

21 PROFESSOR HARRIS: My pleasure, sir.

22 CHAIRPERSON BIRMELIN: Professor Harris, we do
23 want to thank you for coming. It's obvious to me and I'm
24 sure it is to the other members this is a subject about
25 which you have great knowledge and experience. And thank

1 you for your resource and being able to be here with us
2 today. And I hope you enjoy a safe and pleasant flight
3 back to Toledo.

4 PROFESSOR HARRIS: Thank you very much. Thank
5 you for inviting me. And thank you, Mr. Chairman.

6 CHAIRPERSON BIRMELIN: Thank you for coming.
7 Our next and last testifier is the Honorable John
8 Morganelli. He's the District Attorney for Northampton
9 County. And as Mr. Morganelli is taking his place here, I
10 want to alert the members to two things:

11 Number one, the last testifier was scheduled
12 to be Reverend Robert Shine from Philadelphia, but he's not
13 going to be able to be with us today. And he is going to
14 be faxing his testimony to Representative James. Well, we
15 have it. It's in our possession. We will distribute it
16 before you leave here today.

17 And also in light of that, all other members
18 who were not able to be present today for the entire
19 committee meeting will be given copies of the testimony.
20 And that will be disbursed throughout the different
21 members' offices.

22 District Attorney Morganelli, we want to thank
23 you for coming here. Thank you for coming, and you may
24 give your testimony.

25 MR. MORGANELLI: Thank you, Mr. Chairman.

1 Good afternoon. My name is John Morganelli. And I
2 currently serve as the Northampton County District
3 Attorney. I also serve as President of the Pennsylvania
4 District Attorneys' Association.

5 And on July 14th of 1999, the membership of
6 the Pennsylvania District Attorneys' Association at my
7 request unanimously passed a resolution condemning the
8 practice known as racial profiling. The resolution passed
9 by the Pennsylvania District Attorneys' Association
10 specifically noted that stopping motorists based solely on
11 the color of their skin or ethnicity not only divides law
12 enforcement from our citizens but is also constitutionally
13 flawed.

14 Pennsylvania district attorneys called upon
15 state and local law enforcement to adopt policies,
16 procedures and recordkeeping practices to ensure that
17 racial profiling does not occur. The action of the
18 Pennsylvania prosecutors is recognition that this issue
19 must be addressed.

20 As a District Attorney for Northampton County
21 for the last eight years and as President of the
22 Pennsylvania District Attorneys' Association, I have had
23 the opportunity to work with both local and State Police.
24 I've had the opportunity to come in contact with police
25 officials all across Pennsylvania.

1 And I have great confidence that the local and
2 State Police in this state are hard working,
3 well-intentioned and professional in their difficult job of
4 pursuing criminals and making our neighborhoods and cities
5 safe for all. But those of us in law enforcement also have
6 the responsibility to see to it that all of our citizens
7 are treated in the proper manner.

8 The evidence in states such as New Jersey,
9 Maryland and elsewhere have regrettably shown that whether
10 officially condoned or not, the practice of racial
11 profiling is prevalent on interstates across this nation.
12 One of the most startling revelations in states in which
13 racial profiling has in fact been established is that the
14 data suggests that the practice of targeting minorities
15 does not even yield more arrests, in effect undermining one
16 of the justifications sometimes given for the practice.

17 Moreover, as Attorney General Janet Reno
18 recently noted, there does exist a great gulf between the
19 criminal justice system and our minority communities which,
20 because of such issues as racial profiling, have come to
21 view police and law enforcement with mistrust and
22 skepticism. This is indeed unfortunate.

23 Many of our minority communities are
24 disproportionately victimized by crime and need to have a
25 trusting relationship with police and law enforcement. In

1 turn, law enforcement needs to have the respect and the
2 cooperation of all our citizens and particularly minority
3 communities in order to improve our neighborhoods and to do
4 a better job.

5 In a recent study, African Americans'
6 dissatisfaction with law enforcement outstrips whites two
7 to one or more in places such as New York and Chicago.
8 Many of our minority citizens clearly believe that they are
9 treated differently.

10 It is clear that it is imperative that law
11 enforcement officials show integrity and courage to not
12 only speak out against practices such as racial profiling
13 but also to take steps to determine whether such practices
14 exist and what steps can be done to end it if it does
15 exist.

16 Here in Pennsylvania, I believe we have a
17 great opportunity to assure our citizens that we are
18 treating our citizens fair. Earlier this year, State
19 Representative Harold James introduced legislation to
20 determine whether African Americans, Latinos and other
21 minorities in Pennsylvania are being singled out for
22 traffic stops by some law enforcement simply because of
23 their race.

24 This legislation was actually introduced by
25 Representative James in the last legislative session.

1 Essentially, it would require the State Attorney General's
2 Office to determine the racial breakdown for routine
3 traffic stops in Pennsylvania.

4 The breakdown would comprise of the number of
5 people stopped, their race and age, the traffic infraction
6 which led to their stop, whether there was a search, the
7 reason behind it, and whether there were any warnings,
8 traffic citations or arrests.

9 In short, Mr. James' legislation only requires
10 a study and collection of data. It is an effort to study
11 and collect information to assure all of our citizens that
12 everyone is being treated fairly and impartially. In my
13 view, the goals articulated by Mr. James, in some fashion,
14 should be undertaken.

15 I have been informed by Mr. James that the
16 Attorney General has met with members of the Black Caucus
17 and others and that there may be an agreement on the
18 language of the bill and the scope of the study. This is
19 encouraging. In New Jersey and other states, it was the
20 Office of Attorney General that took the lead in uncovering
21 the problems of racial profiling in those states.

22 It makes sense for the Attorney General's
23 Office to be involved and to provide leadership on this
24 issue which, if left unattended, can only further divide
25 our citizens in this state and divide law enforcement from

1 our citizens.

2 I do not believe it's in anyone's interest to
3 let this happen. As the Attorney General of New Jersey
4 stated, and I quote, some may view this as a negative day
5 for law enforcement, end of quote, but I see it as just the
6 opposite. Law enforcement becomes stronger, not weaker,
7 when we identify problems that may or may not exist.

8 A study conducted by the Office of Attorney
9 General would address a most difficult and complex issue in
10 a constructive way. We here in Pennsylvania have the
11 opportunity to undertake this study in a calm fashion not
12 pressed by lawsuits that I'm aware of, public
13 demonstrations, et cetera.

14 In the aftermath of such findings in New
15 Jersey and other states, Pennsylvania should not sit idly
16 by and allow whispering and allegations to carry the
17 debate. We need the facts. The House Judiciary Committee
18 must be commended for airing this issue.

19 We should not allow the goal of Mr. James'
20 legislation to die, but rather those goals should be
21 advanced. I commend the police department in Philadelphia,
22 who some time ago took their own steps designed to
23 safeguard against racial profiling.

24 Beyond the study, it is my hope that if
25 problems are identified, that they can be addressed. I am

1 convinced that as America moves into the 21st Century and
2 becomes even a greater melting pot than existed at the
3 beginning of the 20th Century, law enforcement needs to be
4 sensitive to these issues.

5 We need to provide leadership and support for
6 the effort that is being reviewed here today. The
7 Legislature, with the agreement of the Attorney General on
8 the scope of the effort, should enact this proposal so that
9 Pennsylvania can be proud to be taking the lead in assuring
10 equal and fair treatment for all of our citizens.

11 Thank you very much for considering my
12 comments, and I'd be very happy to answer any questions
13 regarding our position on the issue.

14 CHAIRPERSON BIRMELIN: Thank you, District
15 Attorney Morganelli. Before we do that, I just want to
16 make a note for the record that we have received comments
17 from Representative Roebuck, who is Chairman of the
18 Pennsylvania Legislative Black Caucus.

19 And we would ask that they would be entered
20 into the record today. And copies of it will be
21 distributed to members of the Committee who are not
22 presently here. We'll begin our questioning with
23 Representative James.

24 REPRESENTATIVE JAMES: Thank you again, Mr.
25 Chairman. And thank you, Mr. Morganelli, the Northampton

1 County District Attorney, for testifying. And also, thank
2 you for -- I understand you're the president or the chair
3 of the district. Can you just tell us --

4 MR. MORGANELLI: Yeah, I'm the President of
5 the Pennsylvania District Attorneys' Association.

6 REPRESENTATIVE JAMES: Right. And I want to
7 thank you for your effort in which you were able to get the
8 District Attorneys' Association to come up with a
9 resolution this -- this year in regards against racial
10 profiling.

11 MR. MORGANELLI: Thank you.

12 REPRESENTATIVE JAMES: I want to commend you
13 on that also. Now, do you think that as an Attorney
14 General that legislation is necessary? Because I remember
15 you saying something before about whether it is necessary
16 or not necessary. What's your view on that?

17 MR. MORGANELLI: Well, as you know, Mr. James,
18 I did have the opportunity to testify I think in May before
19 the Democratic House Policy Committee on this issue. And
20 lots of things have happened since that time. But it was
21 my view then -- and it still is my view today -- that
22 this study could be done without legislation.

23 I think that the Attorney General, as the
24 chief law enforcement of the state, could initiate this.
25 And I believe that most law enforcement in our state would

1 follow the lead of the Attorney General and cooperate with
2 the study. My understanding, however, is that one of the
3 issues that Attorney General Fisher raised was the issue of
4 funding and that the legislation -- that his concern was
5 that perhaps he would need the resources, additional
6 resources to undertake the study. And that may be.

7 I'm not privy to what his budget is and
8 what -- or his allocation of resources are. But it was my
9 view then that, you know, the Attorney General sets his
10 budget and could allocate those resources in his budget and
11 come to the Legislature for approval without, you know,
12 waiting for the Legislature to act and set the scope of the
13 study.

14 Now, I'm not opposed to legislative action.
15 And if that's what it takes to get this done, then I think
16 we should support your legislation. And we all have
17 agreement on it, and we move forward and we get the thing
18 done.

19 REPRESENTATIVE JAMES: Thank you. Also, what
20 is your view on the video cameras in police cars and
21 audiotaping?

22 MR. MORGANELLI: Well, this has been a very
23 difficult issue because it has not received, in my
24 understanding, unanimous support or opposition in the
25 District Attorneys' Association. There are a number of DAs

1 who really are pushing video and audio as a way to assure
2 that every one of our citizens is treated fairly when we
3 have these stops.

4 You know, one of the criticisms has been that
5 we don't know what happens on roadside stops and you have
6 different versions of events. So there are some DAs who
7 have felt that we should promote this video and audiotaping
8 of stops and equip police so that whenever there's a stop,
9 everything's on film and it's recorded so there's no
10 dispute as to what happened.

11 But not all the DAs agree on that. And so I
12 don't think that we have taken an official position on it.
13 I know Steve Zappala in Allegheny County was working with
14 police chiefs and I believe members of the NAACP on
15 promoting video and audiotaping. And I know he's been in
16 touch with our association on this.

17 I know -- I also recall that the last time we
18 had the Electronic Surveillance Act legislation, there were
19 movements of some of the DAs Association. At the time, the
20 leaders were in favor of expanding the -- the audio, you
21 know, provisions of that bill.

22 But I think it's a mixed bag. I think
23 that -- I like videotaping of confessions and things that
24 happen in police rooms because then we know what happened
25 and, you know, everything's on film and we don't have

1 police being questioned about their -- what the defendant
2 said. We see the defendant saying it.

3 But I do have some reservations about it. And
4 I'd like to have more input from all groups before we, you
5 know, we go full-fledged on it. I can tell you we are
6 using videotape pretty much. And a lot of police
7 departments have videotapes in their cars. But we
8 obviously cannot yet move forward on the audiotaping.

9 So it's not something that there's a unanimous
10 agreement on among all DAs at the present time.

11 REPRESENTATIVE JAMES: Okay. Well, again, I
12 want to thank you. And thank you for coming forward on
13 behalf of -- and against the racial profiling. And as you
14 see that since the last time that I spoke with you, that we
15 have added two other bills as it relates to education and
16 training with State Police and municipal police officers.
17 How do you see that?

18 MR. MORGANELLI: I think that's a fine idea.
19 I don't think you're going to find much resistance, if any,
20 from police organizations. I've talked to some of the
21 police in the state organizations early on when you first
22 were promoting this legislation in the early part of this
23 year, and I really didn't think that that would be a
24 problem.

25 And, you know, we need to do all these steps

1 to get to the end of this issue. And I agree with a lot of
2 the comments I heard from the Professor this morning, that
3 this does go to the issue of the integrity of the criminal
4 justice system. And I agree with the poll, and I've seen
5 the polls.

6 I think people are concerned about this issue
7 regardless of race. And it's an important issue to me
8 because as a prosecutor, if we have police stopping people
9 without probable cause, even if the police guess right and
10 a crime was committed or if they find drugs, it does no
11 good to us, as you know as a former police officer, because
12 the case will be tossed out, rightfully so, on a
13 constitutional issue.

14 So, you know, it doesn't really help us. Even
15 if the police are right and they identify and they stop and
16 someone is in possession of illegal drugs or whatever, we
17 can't just be doing this. There has to be probable cause,
18 there has to be reasons why and not just random stops and
19 police get lucky because they happen to stop someone.

20 So -- and I think most police recognize that
21 and -- but we need to do this study and collect the
22 information so that we can identify where these problems
23 are occurring.

24 REPRESENTATIVE JAMES: Well, again, thank you.
25 And thank you for testifying. Thank you, Mr. Chairman.

1 CHAIRPERSON BIRMELIN: Representative Josephs.

2 REPRESENTATIVE JOSEPHS: Thank you, Mr.

3 Chairman. Thank you, Mr. Morganelli. Thanks for your work
4 in the District Attorneys' Association. I agree with you
5 entirely that racial profiling does strike right to the
6 integrity of the entire criminal justice system.

7 Being the District Attorney of Northampton
8 County is sort of like being the AG of Northampton County.
9 What have you done in your county? What kind of studies
10 have you proposed? What -- what kind of training have you
11 tried to make sure that your local police get and so on?

12 MR. MORGANELLI: Well, you know, in
13 Northampton County, first of all, we have a very, very
14 small minority population. I believe our county population
15 is about under 5 percent in terms of minorities. And that
16 includes blacks, Hispanics.

17 In Bethlehem, which is our major city where we
18 have a significant minority population as compared to the
19 rest of the county, I have been promoting and the police
20 have been involved in a lot of training on this issue.
21 I've had discussions with Chief Learn, Commissioner Learn
22 about the issue. He was supportive of my direction on
23 this.

24 And internally, we've been very supportive of
25 hiring more minorities. We don't have interstate highways

1 that intersect. So it's all municipal police departments,
2 basically, in the county. And most of the information I
3 think what you're going to find is, is that these problems
4 that are occurring are occurring largely on interstate
5 highways and the major cities where you have significant
6 minority populations.

7 So as far as my efforts have been, we have not
8 undertaken a study and -- in Bethlehem or any city. We
9 really haven't had any complaints that I'm aware of. But
10 what I've tried to do is to sensitize the Bethlehem Police
11 and the Easton Police, the major departments in our county
12 where we have portions of the minority communities to
13 training issues, which they've agreed to and have gone out
14 on.

15 And we meet with them often on the issues
16 about minorities. But we have not done a study because we
17 really don't have the -- the problem in terms of the
18 population. We just don't have them. We don't have the
19 population in our areas.

20 And I will tell you we've also encouraged in
21 Northampton County the hiring of minority police officers.
22 I used to be a city solicitor in Bethlehem before I was DA.
23 And one of the things that I had worked with the mayors
24 there was bringing more minorities into our police
25 departments and to go into the areas where we do have these

1 populations.

2 So actually, we had community policing long
3 before a lot of other areas. And I think Bethlehem is
4 probably one of the model cities in terms of progressive
5 approaches towards dealing with our minority populations,
6 which I said is very small compared to, like, Philadelphia
7 or Pittsburgh or other areas of our state.

8 So I've been interested in the issue for a
9 while, but I particularly got interested in the issue when
10 I read about the problems in the other states. And I think
11 that Pennsylvania needs to do a comprehensive study. And
12 if in any way I can assist on that, I'd be happy to do so.

13 REPRESENTATIVE JOSEPHS: I would only say that
14 your supposition that you have less of a problem because of
15 your demography is only that. And if you had a study, you
16 might know. Thank you.

17 MR. MORGANELLI: Right. Thank you,
18 Representative Josephs.

19 CHAIRPERSON BIRMELIN: Thank you, DA
20 Morganelli. We appreciate you coming here. And thank you
21 for being our testifier today.

22 MR. MORGANELLI: Thank you very much.

23 CHAIRPERSON BIRMELIN: Before I adjourn this
24 meeting, Representative James has one brief announcement.

25 REPRESENTATIVE JAMES: Thank you, Mr.

1 Chairman. I just want to say in the packet that we have
2 for everybody, you will see that there's a letter from a
3 Ralph Jones. And Ralph Jones is a citizen of Philadelphia,
4 who felt as though that he was a victim of racial
5 profiling.

6 And he had to write about it, and he wanted us
7 to know that and asked that I present that information.
8 And the letter is included in your packet. Thank you.

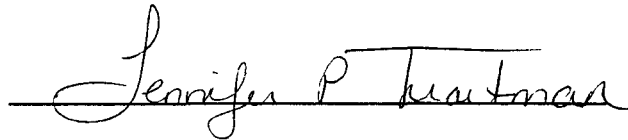
9 CHAIRPERSON BIRMELIN: Thank you, members of
10 the staff for your help and for the members who were here
11 this morning and this afternoon. This meeting is
12 adjourned.

13 (Whereupon, at 1:22 p.m., the hearing
14 adjourned.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause and that this is a true and correct transcript of the same.



JENNIFER P. TROUTMAN

Registered Professional Reporter

My Commission Expires:
April 30, 2001

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