

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Resolution 269 - Racial Profiling

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House Judiciary Committee  
Subcommittee on Crime and Corrections

Hearing Room No. 1  
Ground Floor, North Office Building  
Harrisburg, Pennsylvania

Monday, Oct 1 - 9:05 a.m.

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BEFORE:

Honorable Lita Indzel Cohen, Majority Chairperson  
Honorable Harold James, Minority Chairperson  
Honorable Kathy Manderino  
Honorable LeAnna Washington

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JENNIFER P. McGRATH, RPR  
2nd & W. Norwegian Streets  
P.O. Box 1383  
Pottsville, Pennsylvania 17901  
(570) 622-6850

T2001-165

ORIGINAL

**ALSO PRESENT:**

**Dana J. Alwine, Esquire**  
Majority Counsel to Judiciary Committee

**Judy Sedesse**  
Majority Administrative Assistant

**Richard Scott, Esquire**  
Minority Legal Counsel

**Mike Rish**  
Minority Executive Director

**Beryl Kuhr**  
Minority Counsel to Representative Blaum

**Cathy Hudson**  
Minority Administrative Assistant

**Jason Klipa**  
Majority intern to Judiciary Committee

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1           CHAIRPERSON COHEN: Good morning. I'd like to  
2 call the, this hearing to order. We are the Pennsylvania  
3 House of Representatives members of the Judiciary  
4 Committee, the Subcommittee on Crime and Corrections  
5 hearing on House Resolution 269 dealing with racial  
6 profiling.

7           My name is Lita Cohen, and I am the Chair of  
8 the Subcommittee on Crime and Corrections from the  
9 Judiciary Committee of the Pennsylvania House of  
10 Representatives. I'd like to welcome everyone and just  
11 make a brief opening statement detailing the rules of the  
12 committee and how we will proceed.

13           This is a fact-finding investigation only.  
14 We will be taking testimony. We, members of the  
15 committee -- and we will be joined later by other members  
16 of the committee -- will not be expressing our opinions.  
17 We will be taking testimony from the people scheduled to  
18 make presentations to us this morning.

19           If someone -- and I will make this  
20 announcement at the end -- if someone has something to say,  
21 we are more than happy to take written statements and make  
22 them part of the record if you are not scheduled to make a  
23 presentation today.

24           House Resolution 269 deals with racial  
25 profiling. Obviously, since September 11 of this year,

1 much has changed within our Commonwealth, both for the good  
2 and the bad. I think because of September 11, the mission  
3 of this Subcommittee and the mission of House Resolution  
4 269 has changed somewhat because what we are discovering  
5 now is we find that there is racial profiling all over.  
6 Particularly, it has been alleged among citizens against  
7 citizens.

8 I wanted to just read to you briefly a portion  
9 of an article from Thomas Friedman from the New York Times  
10 who attended a PTA meeting in Silver Spring, Maryland. And  
11 he said that before the teachers were introduced, the  
12 school's choir and orchestra, a Noah's Ark of black,  
13 Hispanic, Asian, and white kids, led everyone in God Bless  
14 America. There was something about the way those kids sang  
15 together and the earnest, if not always melodious, way the  
16 school orchestra pounded out the National Anthem that was  
17 both moving and soothing. As I took in the scene, it  
18 occurred to me how much the Islamic terrorists who just hit  
19 America do not understand about America.

20 He goes on. But he concludes by saying about  
21 a society that will dig until it has found everybody in the  
22 World Trade Center rubble because at some level it believes  
23 every individual is created in the image of God, a society  
24 that raises 600 million for the victims in 2 weeks.

25 And he asks, Is a godless spirit in this

1 place? Guess again. These terrorists so misread America.  
2 They think our strength lies only in the World Trade Center  
3 and the Pentagon, the twin pillars of our wealth and power  
4 and if they can just knock them down, we'll start to fault  
5 as if we, like them, have only one truth, one power center.  
6 Actually, our strength lies in the slightly dilapidated gym  
7 of Eastern Middle School on parent/teacher night and  
8 thousands of such schools across the land. That is where  
9 you'll find the spirit that built the twin towers and can  
10 build them over again any time we please. So in these  
11 troubled times, if you want to feel reassured about how  
12 strong this country is or what we're fighting to preserve,  
13 just attend a PTA meeting. It's all there hiding in plain  
14 sight.

15                   On that basis, I will introduce the Honorable  
16 Harold James, the Subcommittee Chair. I'd also like to  
17 introduce some staff: Dana Alwine, who is counsel to the  
18 committee, Majority; and Richard Scott, who is counsel to  
19 the Minority Chair. The Subcommittee Chair, the Minority  
20 Chair, Representative James.

21                   REPRESENTATIVE JAMES: Thank you, Madam Chair.  
22 I appreciate the opportunity. And I want to welcome and  
23 thank everyone for attending this early Monday morning.  
24 Okay. I'm first going to start with my remarks. Good  
25 morning. And before I begin, I'd just like to take a brief

1 moment to express my sympathy and support to the  
2 individuals, friends, and families of the victims of the  
3 attacks on September 11th. My thoughts and prayers are  
4 with them.

5           One of the outcomes of September 11th is that  
6 life as we know it will never be the same. It is also good  
7 to see the increased pride and patriotism across this  
8 country. We all must work to become united as one United  
9 States.

10           However, one of the other outcomes has been an  
11 increase in the profiling of Arab Americans and those who  
12 practice the Muslim faith. This is disturbing. And I  
13 would like to caution Pennsylvanians from venting their  
14 anger and frustration on US citizens, regardless of their  
15 ethnic origin or religion.

16           Our history shows us that during past crises,  
17 venting our anger on fellow citizens of a particular ethnic  
18 origin only serves our true foes and ultimately results in  
19 shame for our nation as a whole. I do not want to see the  
20 effects of last month's terrible events to change the civil  
21 liberties of any citizen.

22           Law enforcement must be vigilant of hate  
23 groups who may attempt to take advantage of this situation  
24 to advance their causes. This new type of profiling is  
25 just another reason for us lawmakers to ensure that



1 Pennsylvania works to prevent racial profiling.

2           However, today I would like to address my  
3 remarks to the issue of racial profiling as it existed  
4 prior to September 11 and the need for Pennsylvania to take  
5 up this issue and study the prevalence of racial profiling  
6 in the Commonwealth as House Resolution 269 directs.

7           Racial profiling is a practice where  
8 minorities -- often African-Americans and Latinos -- are  
9 targeted by law enforcement officers -- usually for routine  
10 traffic stops -- because they fit a race-based profile.

11           As a retired Philadelphia police officer, I'm  
12 not condemning our law enforcement officers. On the  
13 contrary, I seek to make law enforcement stronger, better,  
14 and more effective. The majority of police officers are  
15 hard working and dedicated. They perform a necessary and  
16 dangerous job.

17           But the perception of racial profiling has  
18 created distrust of the police. Seventy-five percent of  
19 African-Americans believe that racial profiling occurs  
20 frequently, and half of white Americans agree that it is  
21 commonplace. These poll results are astonishing.

22           And if that many people believe racial  
23 profiling occurs, then the issue must be addressed. The  
24 mere perception can cause as much damage as a real  
25 occurrence. As a result, 20 states have responded by

1 adopting laws to address racial profiling by law  
2 enforcement. Pennsylvania is not one of them; although, I  
3 have introduced several pieces of legislation in efforts to  
4 change that statistic.

5           President Clinton first began studying this  
6 issue, and even President Bush has called racial profiling  
7 wrong in America. Legislation has been introduced at the  
8 federal level to end racial profiling. Some bills would  
9 require the states to ban racial profiling or risk losing  
10 up to 10 percent of federal highway funds, while other  
11 measures would require states to adopt racial profiling  
12 policies in order to receive certain federal grants.

13           Connecticut and North Carolina were the first  
14 2 states to do something about racial profiling. In 1999,  
15 they required that law enforcement collect and record  
16 information regarding traffic stops. Four states,  
17 California, Oklahoma, Kentucky, and Tennessee, prohibit  
18 racial profiling by law enforcement. Tennessee also  
19 requires data collection of traffic stops.

20           The other 14 states establish policies against  
21 racial profiling and/or require data collection of stops.  
22 Those states are Kansas, Massachusetts, Missouri, Rhode  
23 Island, Washington, Colorado, Florida, Louisiana, Maryland,  
24 Minnesota, Nebraska, Nevada, Oregon, and Texas.

25           Additionally, while Arizona has no law on the

1 books regarding racial profiling, in May, Arizona's  
2 attorney general issued guidelines to aid law enforcement  
3 agencies in combatting racial profiling. And as I  
4 mentioned earlier, Pennsylvania has not adopted any laws or  
5 policies relating to racial profiling; although, it has  
6 agreed to look into the issue. And this is the reason  
7 we're all here today.

8 I have introduced 5 bills similar to laws  
9 adopted by other states that would address this issue, and  
10 all 5 have the support of Pennsylvania's Chapter of  
11 American Civil Liberties Union. House Bill 998 would  
12 require the State Attorney General to conduct a study of  
13 all traffic stops to determine if and how prevalent racial  
14 profiling exists in the Commonwealth.

15 The study would be conducted in Philadelphia,  
16 Pittsburgh, Erie, Allentown, Harrisburg, Altoona, and 5  
17 other municipalities chosen based on the different  
18 geographic regions and population sizes of the state.  
19 House Bill 999 would make racial profiling illegal and give  
20 the Attorney General authority to investigate and prosecute  
21 such offenses.

22 House Bill 1000 would require police to  
23 maintain records of all stops using the same format. House  
24 Bill 1001 would mandate training for State Police, while  
25 House Bill 1002 would require training for municipal police

1 officers. Proper training and adequate discipline of law  
2 enforcement officers can prevent racial profiling, restore  
3 the public trust, and ensure the protection of every  
4 resident.

5           And as many of you know, racial profiling is  
6 an issue I've been working on for a number of years along  
7 with the Pennsylvania Legislative Black Caucus and our  
8 current Chair, Representative LeAnna Washington. It is my  
9 hope that today's hearing is the start of continuing action  
10 at the state level to eliminate the practice of racial  
11 profiling in Pennsylvania and to bring relief to those who  
12 have been victims of it. Thank you, Madam Chair.

13           CHAIRPERSON COHEN: Thank you, Chairman James.  
14 The next person, or first person to appear before us will  
15 be Lieutenant Colonel Hawthorne Conley, Pennsylvania State  
16 Police, Deputy Commissioner of Administration. Welcome,  
17 sir. I believe we have a copy of your testimony. You may  
18 either read from it or just speak, if you will, because we  
19 do have the copy and we can read, whatever is your  
20 prerogative to do.

21           LT. COLONEL CONLEY: Thank you, Madam Chair.  
22 I would like to read from it.

23           CHAIRPERSON COHEN: Fine. Proceed any time  
24 you're ready. Oh, I'm sorry. We also have Dr. Robin  
25 Shepard Engel.

1 LT. COLONEL CONLEY: That's correct.

2 CHAIRPERSON COHEN: I believe you're  
3 testifying together?

4 CAPTAIN MILLER: She'll be following us.

5 CHAIRPERSON COHEN: Oh, okay. That's fine.  
6 You may proceed, sir.

7 LT. COLONEL CONLEY: Good morning, Madam  
8 Chair, Minority Chairman James, Honorable members of the  
9 House Judiciary Committee, Subcommittee on Crime and  
10 Corrections. I am Lieutenant Colonel Hawthorne N. Conley,  
11 Deputy Commissioner of Administration for the Pennsylvania  
12 State Police.

13 On behalf of Colonel Paul J. Evanko,  
14 Commissioner of the State Police, I would like to thank you  
15 for providing the State Police with an opportunity to  
16 present testimony before your committee today on House  
17 Resolution 269 and the issue of racial profiling.

18 On December 14th, 1999, Colonel Paul J. Evanko  
19 testified before this committee regarding the policies and  
20 procedures of the law enforcement community within the  
21 Commonwealth with respect to traffic stops and the issue of  
22 racial profiling.

23 At that hearing, Colonel Evanko made several  
24 recommendations regarding the need to collect race/gender  
25 data for each police/citizen contact. Since that time, the

1 Pennsylvania State Police has taken a number of steps in an  
2 effort to ensure that all police actions initiated by  
3 members of the Pennsylvania State Police continue to comply  
4 with the law and all constitutional protections afforded to  
5 citizens of the United States.

6           Following up on one of the recommendations,  
7 following up on one of the Commissioner's recommendations,  
8 the Department contacted the Administrative Office of the  
9 Pennsylvania Courts, the AOPC. The AOPC is responsible for  
10 the promulgation of all traffic citation forms used by law  
11 enforcement.

12           The Department recommended that the AOPC amend  
13 the current traffic citation form to include a block to  
14 capture the race and ethnicity of the operator of a motor  
15 vehicle. Because complete consensus within the law  
16 enforcement community could not be reached regarding the  
17 amendment to the traffic citation at that time, the AOPC  
18 decided not to move forward with changing the traffic  
19 citation.

20           We continue to remain open to working with the  
21 AOPC and other law enforcement agencies in this regard. In  
22 addition, the Department is currently exploring ways in  
23 which new technology may provide a means by which this  
24 information could be recorded by the members of the  
25 Pennsylvania State Police through the use of automation.

1 Drawing from the Commissioner's prior  
2 testimony, the Department also convened an internal  
3 committee to fully examine all issues related to racial  
4 profiling. The committee reviewed existing Department  
5 policies and procedures in addition to identifying the type  
6 of information and means by which this information could be  
7 collected.

8 The committee then recommended that the  
9 Department identify an independent external research group  
10 to conduct a study that would include the collection and  
11 analysis of police/citizen contact data analyzed against  
12 appropriate population-specific base rates to allow for  
13 policy, administrative, and operational recommendations.

14 As a result of this search, the Department has  
15 recently been approved by the Department of General  
16 Services to enter into a sole source contract with Dr.  
17 Robin Shepard Engle of the Pennsylvania State University to  
18 undertake this task.

19 Dr. Engle is a highly respected criminal  
20 justice researcher who is an affiliate with the Population  
21 Research Institute, PRI, at the Pennsylvania State  
22 University. The Pennsylvania State University is home to a  
23 PRI, 1 of only 13 centers in the country. The Department  
24 is currently working to finalize the contract terms with  
25 Dr. Engle through the Department of General Services.

1           In his previous testimony, the Commissioner  
2 also identified the need to amend Pennsylvania's Electronic  
3 Surveillance Act to permit the use of motor vehicle  
4 video/audio recorders by police officers of Pennsylvania.  
5 The Department has worked closely with the members of the  
6 General Assembly to draft this legislation.

7           Specifically, we have worked with Senator  
8 James Gerlach and Representative David Mayernik to draft  
9 legislation that would clearly permit law enforcement  
10 officers to record audio in addition to video at the scene  
11 of a traffic stop or other law enforcement encounter in a  
12 public place.

13           This combination of video and audiotape will  
14 not only provide an invaluable investigative tool for law  
15 enforcement, but it will also ensure that all troopers are  
16 properly exercising their informed discretion in accordance  
17 with the law and departmental regulations when interacting  
18 with the public in an official capacity.

19           The New Jersey State Police and Ohio Highway  
20 Patrol have recently equipped all patrol vehicles with  
21 mobile video recorders, MVRs. And in each case, the  
22 program has received tremendous support from officers and  
23 members of the community.

24           The International Association of Chiefs of  
25 Police has recently called for mobile video recorders to be



1 placed in all police vehicles to protect against the  
2 practice of racial profiling. Senate Bill 369 introduced  
3 by Senator Gerlach and House Bill 1933 introduced by  
4 Representative Mayernik are supported by the Pennsylvania  
5 State Police, the Pennsylvania Chiefs of Police  
6 Association, the Pennsylvania District Attorneys  
7 Association, the Fraternal Order of Police, the  
8 Pennsylvania State Troopers Association.

9           We urge your support in passing this vital  
10 legislation to provide Pennsylvania law enforcement  
11 officers with the tools necessary to deliver both efficient  
12 law enforcement services and a sense of comfort for  
13 community members who perceive that racial profiling may be  
14 a problem in their communities.

15           The Pennsylvania State Police continues to  
16 emphasize, through training and management directives, that  
17 we will not condone or tolerate the use of racial profiling  
18 or any other type of bias-based policing. An examination  
19 of our internal affairs complaints over the last 5 calendar  
20 years indicates that the Department has received a total of  
21 20 complaints of racial profiling over that period of time  
22 or approximately 4 complaints per year.

23           It should be noted that none of these  
24 complaints have been sustained. Even so, we will remain  
25 vigilant and committed to the belief that police action can

1 only be based upon observed behavior and not on the  
2 appearance of the individual being interacted with.

3 To quote a portion of the Pennsylvania State  
4 Police call of honor, quote, It is my duty to obey the law  
5 and to enforce it without any consideration of class,  
6 color, creed, or condition, unquote. We will remain  
7 steadfast in our commitment to this creed and to the  
8 premise that all individuals should be treated equally  
9 under the law.

10 Thank you again for providing me with the  
11 opportunity to address this committee. I am now prepared  
12 to answer any questions you may have.

13 CHAIRPERSON COHEN: Thank you, Colonel Conley.  
14 We appreciate your testimony. Before we proceed, I'd like  
15 to introduce Representative Kathy Manderino from  
16 Philadelphia, who has joined us this morning. Thank you.  
17 I just have one quick question.

18 On page 6, you talked about exercising  
19 training and management directives, et cetera. And then I  
20 think as a compliment to the State Police, you've said over  
21 the last 5 calendar years, there have been only 20  
22 complaints. You said it should be noted that none of these  
23 complaints has been sustained. What does that mean?  
24 Sustained by whom?

25 LT. COLONEL CONLEY: By the adjudicator of the

1 complaint itself, a member of the Pennsylvania State  
2 Police, a supervisor in that individual's chain of command.

3 CHAIRPERSON COHEN: I see. Thank you.

4 Representative James, do you have any questions?

5 REPRESENTATIVE JAMES: Yes. Thank you, Madam  
6 Chair. And thank you for testifying. And I do remember  
7 the hearings in December of '99 when at that time the  
8 Police Commissioner said that they was going to make that  
9 request. And I'm glad that you did bring that out that  
10 you, that you tried.

11 What I can't understand is what happened. In  
12 other words, you said that -- what's it called? -- APOC or,  
13 that AOPC, that you made the request, you the State Police,  
14 you made the request for the agency to change something and  
15 they didn't do it because they couldn't agree with  
16 somebody?

17 LT. COLONEL CONLEY: The problem here was the  
18 AOPC makes the traffic citation form. We, the Pennsylvania  
19 State Police, we actually produce our own. However, there  
20 was an attempt to have all agencies, all police agencies  
21 within the Commonwealth use the same form. And we could  
22 not come to a consensus on how to put that form together.

23 REPRESENTATIVE JAMES: I see. Well, does that  
24 stop you from changing your form even though the other law  
25 enforcement didn't agree?

1 LT. COLONEL CONLEY: No, it does not.

2 REPRESENTATIVE JAMES: Okay. So is it  
3 possible that you can proceed to go ahead and at least do  
4 yours?

5 LT. COLONEL JAMES: That's a possibility.

6 CAPTAIN MILLER: Representative, one of the  
7 things that we, that we're using --

8 CHAIRPERSON COHEN: Just for the record, could  
9 you please introduce yourself? We know who you are but --

10 CAPTAIN MILLER: Captain Jeffrey B. Miller.  
11 Just to support what Colonel Conley just said, one of the  
12 other things we're looking at -- and I think at the time  
13 those meetings were held with the AOPC in an attempt to get  
14 a unified traffic citation form, there was some concern by  
15 other law enforcement groups at that time early on in the  
16 process that they weren't sure of, you know, how is this  
17 thing going to play out.

18 So number one, they weren't sure about what  
19 data to gather; and they didn't really know how to compare  
20 that data to interpret it properly. And that's one of the  
21 things that I think Dr. Engle is going to touch on this  
22 morning.

23 But secondly, it's really not appropriate that  
24 we just modify a traffic citation. What we'd like to do is  
25 holistically look at the citizen contacts that we have. So

1 that would include traffic citations, written warnings, or  
2 any time that we interact with a member of the community  
3 that is initiated by some sort of police action.

4           So we're looking at maybe devising a form  
5 in-house that will capture across the board that type of  
6 data rather than relying on only one measurement which  
7 would be faulty when you try to apply that principle across  
8 the board.

9           REPRESENTATIVE JAMES: Well, that's correct  
10 because we don't want to lose the focus and say that we  
11 only want you to do this when you make a traffic stop. It  
12 should be in all contacts because that's exactly what the  
13 Philadelphia police do, in all contacts, whether it's  
14 pedestrian warnings.

15           And I think, and as you indicate, that that  
16 would be a greater measure of doing that. So I want to  
17 commend you if you're looking in that view of trying to  
18 accomplish that. That brings me to another bill that I've  
19 introduced which is to try to have the similar type form  
20 used by all police officers.

21           Have you all looked at the Philadelphia  
22 7548-A, which is the new form that they adopted?

23           LT. COLONEL CONLEY: I have not seen that  
24 form.

25           CAPTAIN MILLER: I haven't either, sir.

1                   REPRESENTATIVE JAMES: Okay. Well, that's the  
2 form. And it's in the bill. I don't know if I have it  
3 attached to the bill. But I just hope that you would look  
4 at that because with theirs, they have changed it -- I  
5 think maybe 2 years now, at least a year -- they've changed  
6 the form where it would include all that kind of  
7 information.

8                   And that's -- and my bill would suggest that  
9 if all law enforcement would adopt at least something  
10 similar to that, it would encompass what you just  
11 described.

12                   CAPTAIN MILLER: Right. And we're going to  
13 also look at all of the forms of the contiguous states like  
14 New Jersey State Police, Ohio Highway Patrol, and other  
15 agencies --

16                   REPRESENTATIVE JAMES: New Jersey State  
17 Police, though, watch them.

18                   CAPTAIN MILLER: I'm sorry?

19                   REPRESENTATIVE JAMES: I said watch that New  
20 Jersey State Police.

21                   CAPTAIN MILLER: Well, no. I mean just the  
22 format because obviously they're under the most stringent  
23 guidelines because they're under a federal consent decree.  
24 So looking at that as the max that we would require to  
25 collect, that would give us a good baseline to look at in

1 addition to what some other departments are doing.

2           And the Colonel has asked that Dr. Engle  
3 provide us with different types of forms and also different  
4 means by which we can scan those forms. And we're hoping  
5 that with the advent of some of the technology initiatives  
6 that we have, that we're going to be able to collect this  
7 data without having to be too cumbersome, you know, with  
8 regard to collecting it and then collating it, et cetera.

9           So if we can scan it, that would be even  
10 easier so we can just fill it out quickly. It can be  
11 scanned, and the data can be used.

12           REPRESENTATIVE JAMES: Okay. And another  
13 point you -- and I think the Chair commended you on that  
14 also -- is the fact that you emphasized the training and  
15 management directives that you're going to implement or  
16 have implemented.

17           One of the other bills I introduced was that  
18 we have, conduct some kind of training as it relates to  
19 sensitivity, cultural diversity, and racial profiling in  
20 terms of our training with the State Police. So you're  
21 amenable to do that?

22           LT. COLONEL CONLEY: Absolutely,  
23 Representative James. And actually, that's ongoing within  
24 our organization, cultural diversity training and the needs  
25 and policy of the agency. Recently, we conducted a survey.

1 And I had an opportunity to look at the rough draft of that  
2 survey.

3 And one of the questions that indicated were  
4 asked our people, are they aware of the Pennsylvania State  
5 Police policy on racial profiling? And 80 percent of the  
6 individuals responded that they were aware of our policy.

7 REPRESENTATIVE JAMES: Do you have a copy of  
8 that policy? Can we have it for the committee?

9 LT. COLONEL CONLEY: I'll get you a copy.

10 REPRESENTATIVE JAMES: As long as it's not  
11 security breaching or anything like that. All right.  
12 Thank you.

13 CHAIRPERSON COHEN: Would you please send it  
14 to the Chair so we can circulate it. Thank you.

15 REPRESENTATIVE JAMES: Thank you. Thank you,  
16 Madam Chair.

17 CHAIRPERSON COHEN: I'd like to welcome  
18 Representative LeAnna Washington from Philadelphia. We  
19 have time for a short question from Representative  
20 Manderino.

21 REPRESENTATIVE MANDERINO: Just quickly  
22 because I am confused about the AOPC's responsibility for  
23 promulgating all traffic citation forms used by law  
24 enforcement, which led me to believe in your initial  
25 testimony that there was one form used by everybody and



1 AOPC promulgates it.

2 But then in answer to a question, it sounded  
3 like you have your own form. Can you clarify that for me?

4 LT. COLONEL CONLEY: It's the same form;  
5 however, we produce it ourselves.

6 REPRESENTATIVE MANDERINO: But it has to be  
7 approved by them?

8 LT. COLONEL CONLEY: That's correct.

9 REPRESENTATIVE MANDERINO: Okay. Thank you.  
10 Just a comment to Representative James. I share your  
11 concern. I actually thought from testimony of the  
12 Commissioner during appropriations this last time that we  
13 were moving right along with this happening.

14 And so I am disappointed that it's not. And I  
15 am volunteering, if you need me, to be a part of an  
16 emissary to the AOPC to see if we can rectify the  
17 situation.

18 CHAIRPERSON COHEN: Thank you, Representative  
19 Manderino. Gentlemen, thank you. Colonel Conley, Captain  
20 Miller, we appreciate you appearing before us this morning.  
21 Thank you.

22 LT. COLONEL CONLEY: Thank you very much.

23 CHAIRPERSON COHEN: The next person to make a  
24 presentation to us is Dr. Robin Shepard Engle, Assistant  
25 Professor, Crime, Law, and Justice from Pennsylvania State

1 University, University Park, Pennsylvania. Dr. Engle,  
2 thank you for joining us.

3 And as I said to Colonel Conley, you may read  
4 from your written testimony or just make a presentation to  
5 us, whichever you prefer. Your written testimony is part  
6 of the record.

7 DR. ENGLE: Thank you. I prefer to read it.

8 CHAIRPERSON COHEN: Thank you. You may  
9 proceed at any time.

10 DR. ENGLE: Thank you. Good morning. My name  
11 is Dr. Robin Engle. And I am an Assistant Professor of  
12 Crime, Law, and Justice and a research associate with the  
13 Population Research Institute at the Pennsylvania State  
14 University.

15 I am pleased to present testimony before your  
16 committee on House Resolution 269 and the issue of racial  
17 profiling. Attached to my written testimony is a copy of  
18 my curriculum vitae where I have documented my research in  
19 the area of policing and criminal justice more generally.

20 Despite the decline in the crime rate over the  
21 last decade, there remains a persistent level of mistrust  
22 and tension between citizens and police. These tensions  
23 are particularly high for minority segments of the  
24 population who feel that they unduly receive a  
25 disproportionate amount of attention from police.

1           The perception of racial profiling has  
2 received national attention undermining police departments'  
3 attempts to restore and rebuild trust with their  
4 constituents. Indeed, one of the most salient public  
5 policy issues currently facing police administrators  
6 involves differential patterns of police/citizen contact  
7 based on citizens' race and ethnicity.

8           I have recently conducted analyses examining  
9 data collected for the Police/Public Contact Survey by the  
10 Bureau of Justice Statistics. The Police/Public Contact  
11 Survey is a national survey conducted in 1999 of US  
12 residents regarding their most recent contact with police.

13           My research shows that nationwide, citizens  
14 reported disproportionate outcomes by race after being  
15 stopped by police officers while driving a motor vehicle.  
16 Specifically, after statistically controlling for other  
17 factors, including the initial reason for the stop,  
18 evidence available, and a host of other legal and  
19 extralegal factors, African-Americans and Hispanics were  
20 significantly more likely to receive a citation compared to  
21 whites.

22           African-Americans were also significantly more  
23 likely to report being arrested, having physical force  
24 threatened or actually used against them, and having their  
25 individual persons or vehicles searched by police compared

1 to white respondents.

2           In addition, 31.3 percent of African-Americans  
3 indicated that they perceived that the initial stop made by  
4 police was illegitimate or that the police behaved  
5 improperly during the stop compared to only 17 percent of  
6 whites and 21 1/2 percent of Hispanic citizens. These  
7 figures represent statistically significant differences  
8 among groups.

9           The perception that officers make  
10 discretionary decisions based on citizens' race and  
11 ethnicity have led to widespread criticism and political  
12 crises at the local, state, and national level. The rising  
13 tension between officers and citizens is extremely  
14 important because the public's perception of legitimacy is  
15 a key precondition for the effectiveness of authorities.

16           Citizens' global perceptions of the police and  
17 justice more generally are most strongly influenced through  
18 personal contacts with police officers. Importantly,  
19 citizen contact with the police is most likely to occur via  
20 traffic stops.

21           The Police/Public Contact Survey found that of  
22 the 21 US residents who had a contact with police in the  
23 previous year, over half, 52 percent, of these occurred  
24 during traffic stops. As a result, many police agencies  
25 have begun gathering demographic information on

1 police/citizen contacts, particularly during traffic stops.

2           Some police departments have voluntarily  
3 implemented data collection strategies, while other local  
4 and state agencies were mandated by the courts or by  
5 legislative statute to comply with data collection efforts.

6           A survey of State Police conducted by the  
7 Bureau of Justice Statistics in 1999 reported that 9 of the  
8 49 State Police agencies required officers to collect  
9 demographic information; for example, sex, race, and  
10 ethnicity, of citizens for all traffic stops and that 31  
11 state agencies required officers to collect this  
12 information for citizens who received traffic-related  
13 citations.

14           Attached to my written testimony is a table  
15 that summarizes the main findings of 13 of the most  
16 prominent police/citizen data collection efforts to date.  
17 In line with this trend, the Pennsylvania State Police have  
18 recently entered into contract negotiations with myself and  
19 others affiliated with the Population Research Institute at  
20 the Pennsylvania State University to conduct an independent  
21 study of police/citizen contacts.

22           The methodological and empirical issues  
23 involved in such a data collection effort are numerous and  
24 complex. However, many of the problems associated with  
25 data collection and interpretation can be avoided with a

1 carefully developed research strategy.

2           Our research plan for collecting  
3 police/citizen contact data for the State Police represents  
4 3 components: First, data collection of the police/citizen  
5 contacts; second, data collection of appropriate base  
6 rates; and third, analyses of these data sources that  
7 produce legitimate reports with consistent policy  
8 recommendations.

9           For each component, a number of complex  
10 methodological and statistical issues must be considered.  
11 In the interest of time, I will address only one of these  
12 issues, the development of appropriate base rates, in my  
13 testimony before this subcommittee. However, I will be  
14 happy to answer any questions you may have regarding the  
15 other components of our research methodology.

16           Researchers have struggled with the issues  
17 surrounding the proper base rates; that is, the expected  
18 rate of stops of black drivers assuming no racial prejudice  
19 by police officers whatsoever, and whether or not detected  
20 differences reflect racial discrimination by police  
21 officers.

22           Comparisons made with the data collected are  
23 often inappropriate and easily misinterpreted by  
24 researchers, police administrators, and the public. The  
25 controversy over this issue is overwhelmed by the

1 unsupported assumption that all race-based decision-making  
2 by police officers is motivated by individual police  
3 officer racial prejudice.

4           Many of the summaries and conclusions in  
5 previous reports describing racial profiling data are  
6 inappropriate and inaccurate descriptions of the data. The  
7 problem with interpretation is that the mere presence of  
8 disparity in the aggregate stops does not in itself  
9 demonstrate racial prejudice.

10           Thus, researchers grapple with the issue of  
11 the appropriate base rate; that is, once researchers have  
12 determined how often officers stop, question, warn, search,  
13 cite, and arrest nonwhite suspects, they must create ratios  
14 or comparisons to some other population.

15           It is this comparison that is problematic for  
16 researchers. Should these rates be created by comparing  
17 the percent of suspects stopped by police who are nonwhite  
18 to the percent of nonwhite citizens in the population, the  
19 percent of nonwhite drivers, the percent of nonwhite  
20 drivers who engage in traffic offenses or other illegal  
21 behavior, or some other denominator?

22           While data interpretation is sometimes  
23 subjective, it can gain considerable legitimacy by  
24 utilizing the appropriate statistical comparisons.  
25 Implementing research designs that capture racial

1 differences in driving behavior is more difficult than  
2 using aggregate level population figures, which are readily  
3 available from the Census Bureau.

4           Working with specialists from the geographic  
5 information systems core within the Population Research  
6 Institute, our research team will develop more specialized  
7 demographically-based information to establish more  
8 reliable and valid base comparisons.

9           Nevertheless, population figures alone do not  
10 fully address who is actually using the roadways and, more  
11 importantly, who is violating traffic and other laws on the  
12 roadways. Few studies have examined differences in  
13 law-violating driving behavior based on race or ethnicity.

14           Some national transportation and travel  
15 surveys have indicated racial differences do exist for  
16 driving frequency. For example, findings from the  
17 Nationwide Personal Transportation Survey administered by  
18 the Federal Highway Administration and studies conducted by  
19 the Bureau of Transportation suggest that minorities are  
20 more likely than whites to use public transportation rather  
21 than personal vehicles as their primary means of  
22 transportation.

23           In addition, African-Americans were  
24 considerably more likely to live in households where a  
25 vehicle, or without a vehicle and significantly less likely



1 than both whites and Hispanics to have a driver's license.  
2 These findings suggest that African-Americans may be less  
3 likely than whites to be driving overall. Thus, racial  
4 disparity in traffic dispositions may be more serious than  
5 it appears.

6           The question of whether racial groups differ  
7 in their rate and degree of driving frequency and  
8 law-violating driving behavior is an important race-neutral  
9 explanation of disparity that researchers need to fully  
10 examine.

11           Dr. Lamberth from Temple University initiated  
12 the first efforts to establish a base rate of law-violating  
13 driving behavior in separate studies in New Jersey and  
14 Maryland. Described as a rolling survey, observers rode in  
15 cars that were moving at 5 miles per hour over the speed  
16 limit in New Jersey and exactly at the speed limit in  
17 Maryland.

18           The observers counted the cars that passed  
19 them and the cars that they passed, also recording the race  
20 of the driver in each vehicle. Using this technique, Dr.  
21 Lamberth reported that whites and African-Americans drove  
22 indistinguishably.

23           As other experts have noted, however, on major  
24 highways, most drivers speed to some degree or another. In  
25 fact, Dr. Lamberth's study reported that 98 percent of

1 drivers in New Jersey and 93 percent of drivers in Maryland  
2 were traffic violators using these criteria. Thus, the  
3 degree of law-violating behavior measured in these 2  
4 studies likely did not capture all motorists' real risk of  
5 being stopped.

6                   Research in progress in North Carolina  
7 conducted by Dr. Matthew Zingraff and his colleagues at the  
8 North Carolina State University improves upon Dr.  
9 Lamberth's technique by better estimating the degree and  
10 severity to which drivers violate the speed limit.

11                   Their research efforts represent the leading  
12 example to date of the most accurate base rates of  
13 law-violating driving behavior. Dr. Zingraff has agreed to  
14 serve as a consultant on our proposed research project with  
15 the Pennsylvania State Police.

16                   Thus, the best available methodologies for  
17 determining base rate information will be utilized in our  
18 study. These and other important methodological issues  
19 will be thoroughly considered by our research team prior to  
20 our data collection and interpretation.

21                   In summary, many of the problems with the  
22 interpretation of empirical data are partially due to data  
23 collection efforts that have not addressed why officers  
24 engage in decision-making based on citizens' race.  
25 Researchers have simply counted things; that is, they have

1 counted the number of traffic stops, citations, and  
2 searches conducted by police against white and nonwhite  
3 suspects.

4           Instead, research must be conducted under the  
5 larger theoretical context of explaining police behavior.  
6 Therefore, our objective for the research to be provided to  
7 the Pennsylvania State Police is to gather reliable and  
8 valid police/citizen contact data analyzed against  
9 appropriate base rates to enable specific policy  
10 recommendations.

11           These recommendations will be made by our  
12 independent external research group to ensure credibility  
13 and legitimacy. The program implemented will be timely,  
14 cost-effective, and minimally disruptive to the daily  
15 responsibilities of Pennsylvania State Police officers.

16           Given the catastrophic events of September 11,  
17 2001, our society will be entering a new collective  
18 dialogue regarding the proper balance between individual  
19 rights and societal protection. Racial and ethnic  
20 profiling by law enforcement will undoubtedly be at the  
21 forefront of that discussion.

22           The complex issue of whether certain forms of  
23 profiling are simply good planning will also be at the  
24 heart of that debate. Public opinion polls recently  
25 conducted after the terrorist attacks on the World Trade

1 Center and the Pentagon suggest that the public's  
2 perception of what is appropriate in regards to law  
3 enforcement and security have dramatically changed.

4           While politicians and policymakers like  
5 yourself across the country struggle to maintain the  
6 delicate balance between preserving individual rights and  
7 maintaining public security, the debate will continue  
8 regarding where that line should be drawn.

9           In this vein, researchers need to conduct  
10 theoretically guided, methodologically sound inquiries that  
11 generate reliable findings to better inform policy. It is  
12 only when we seek to explain officer behavior that we may  
13 then take steps to effectively control it.

14           Colonel Paul Evanko, Lieutenant Colonel  
15 Conley, and other administrators within the Pennsylvania  
16 State Police are insightfully aware of the need to examine  
17 current practices. Their commitment and resolve regarding  
18 the collection of police/citizen contact data will greatly  
19 benefit citizens of the Commonwealth.

20           It is my pleasure to be working with the  
21 Pennsylvania State Police as they address this important  
22 issue. Thank you for the opportunity to speak before this  
23 committee. I welcome your questions.

24           CHAIRPERSON COHEN: Thank you, Dr. Engle. But  
25 you lucked out because we only have time for one short

1 question from Representative James. I would hope, however,  
2 because of our time constraints -- and there are other  
3 members of the panel that would like to ask you some  
4 questions -- that you will remain available so that we can  
5 ask you questions at a later time.

6 DR. ENGLE: Certainly.

7 CHAIRPERSON COHEN: Thank you. Representative  
8 James.

9 REPRESENTATIVE JAMES: Yes. Thank you, Madam  
10 Chair. And thank you for testifying.

11 DR. ENGLE: Certainly.

12 REPRESENTATIVE JAMES: Now, your study -- I  
13 just want to be clear -- is this going to be an 18-month  
14 study? And if so, you're only studying what State Police  
15 are doing; or does it have anything to do with any other  
16 police throughout the state?

17 DR. ENGLE: This proposed contract is strictly  
18 with the Pennsylvania State Police. It is not with any  
19 other agency within the state. That's not to say that  
20 other agencies couldn't engage in this type of data  
21 collection effort. But my resources will be spent directly  
22 with the Pennsylvania State Police.

23 REPRESENTATIVE JAMES: And the time?

24 DR. ENGLE: The time frame we are trying to  
25 work out, negotiate back and forth exactly what works. But

1 once a policy is put in place and the data collection  
2 effort begins, even after the end of the contract, if the  
3 State Police choose, they can continue to collect that  
4 research. And you can see it over time what the trends  
5 will look like.

6 REPRESENTATIVE JAMES: That's good to hear.  
7 What's the contract time?

8 DR. ENGLE: The contract has not been put in  
9 place yet. A sole source contract has been approved.  
10 We're negotiating currently the details of that contract.  
11 I anticipate it will be an 18-month contract.

12 REPRESENTATIVE JAMES: Okay. Thank you.

13 CHAIRPERSON COHEN: Thank you. Thanks, Dr.  
14 Engle.

15 DR. ENGLE: Thank you.

16 CHAIRPERSON COHEN: The next person to appear  
17 before us is Michael J. Carroll, Vice President,  
18 Pennsylvania Chiefs of Police Association, Chief of Police,  
19 West Goshen Township, Chester County, Pennsylvania, our  
20 neighbor.

21 Chief Carroll, welcome. And we appreciate you  
22 being here. You can choose -- as you can see, we are under  
23 time constraints. You can choose to read from your  
24 statement or just give us a summary of your statement and  
25 then be available for questions, whatever you like.

1           MR. CARROLL: It's a relatively short  
2 statement, Madam Chairman.

3           CHAIRPERSON COHEN: That's fine. You may  
4 proceed. Thank you.

5           MR. CARROLL: Good morning, Madam Chairman,  
6 members of the Subcommittee. My name is Michael J.  
7 Carroll. I have been involved in law enforcement since my  
8 discharge from the United States Air Force in 1965. As a  
9 35-year veteran of the law enforcement, I have been  
10 privileged to serve the public in a variety of capacities,  
11 currently as Chief of Police of West Goshen Township in  
12 Chester County.

13           I'm appearing this morning in my capacity as  
14 the First Vice President of the Pennsylvania Chiefs of  
15 Police Association. And I'm also privileged to serve on  
16 the executive committee of the International Chiefs of  
17 Police Association.

18           I am sure the members of the subcommittee know  
19 the Pennsylvania Chiefs of Police Association is a  
20 professional organization of chiefs of police and other  
21 executives of police, public safety, and private law  
22 enforcement organizations across the Commonwealth of  
23 Pennsylvania.

24           The Association promotes the professional and  
25 personal development of its members through innovative

1 services, training, peer counseling, and comradeship. The  
2 Association provides a vehicle through which its members  
3 can come together, examine issues of concern to law  
4 enforcement professionals and the general public, address  
5 the needs of the law enforcement community in better  
6 serving the public at large.

7           The Pennsylvania Chiefs of Police are pleased  
8 to participate in the public hearing in connection with  
9 House Resolution 269 and to offer this brief testimony on  
10 behalf of Pennsylvania's local law enforcement executives.  
11 We are aware that the scope of today's inquiry is to obtain  
12 input as to whether the practice known as racial profiling  
13 exists in any significant level in Pennsylvania.

14           Let me begin by stating that the Pennsylvania  
15 Chiefs of Police Association has not conducted or  
16 commissioned any formal studies or surveys on this subject.  
17 Accordingly, we have no reports or data to submit to the  
18 subcommittee.

19           Fundamentally, the Pennsylvania Chiefs of  
20 Police Association believes that any form of police action  
21 that is based solely on race, gender, ethnicity, age of  
22 socioeconomic status of an individual is unethical and  
23 contrary to what we stand for in law enforcement.

24           As an organization, we strongly encourage law  
25 enforcement agencies to adopt and implement



1 anti-discriminatory policies against bias-based police  
2 practices. As part of an ongoing mission to raise the bar  
3 and strive for professionalism in law enforcement, the  
4 Pennsylvania Chiefs of Police Association has been pleased  
5 to have organized and sponsored, in conjunction with our  
6 friends at the Pennsylvania Commission on Crime and  
7 Delinquency, the Pennsylvania Law Enforcement Accreditation  
8 Commission.

9           This commission has been in development over  
10 the past year and was officially unveiled at the  
11 Pennsylvania Chiefs of Police Association Annual Education  
12 and Training Conference in July of 2001. Pennsylvania is  
13 now 1 of 10 states that have a state-specific police  
14 accreditation program.

15           A fundamental part of the accreditation  
16 process is an evaluation of the procedures and policies in  
17 place within each municipal police department as it seeks  
18 professional accreditation through the Commission. The  
19 Commission has developed a complete manual of accreditation  
20 program standards that describes and illustrates a  
21 comprehensive set of professional standards applicable to  
22 law enforcement, whether in a small rural department or a  
23 police agency of thousands of law enforcement  
24 professionals.

25           Central among these professional standards are

1 policies aimed at making certain that traffic law  
2 enforcement is applied in a uniform and consistent manner  
3 as the best means of ensuring public confidence in its  
4 police agencies. Our accreditation process requires  
5 municipal police departments to have such  
6 anti-discriminatory policies in place and to implement  
7 these policies and directives as they train and mentor  
8 their officers.

9           Having now discussed what law enforcement  
10 professionals are doing to self-regulate the ranks, we now  
11 turn to what the General Assembly might do in this area and  
12 what effect this legislation might have on our ability to  
13 serve the public.

14           First, we offer that the very definition of  
15 bias-based policing requires special care so that in  
16 prohibiting contact in which -- I'm sorry -- in prohibiting  
17 conduct in which a law enforcement contact is based solely  
18 by the individual's race, gender, ethnicity, age or  
19 socioeconomic level, we don't preclude law enforcement  
20 consideration of race and ethnicity when it is part of a  
21 suspect's description or is otherwise validly related to an  
22 officer's investigation of criminal activity.

23           Second, we have concerns about data collection  
24 programs to address bias-based policing. And we applaud  
25 the Pennsylvania State Police for its leadership in

1 engaging professional assistance to study the subject  
2 before undertaking a data collection program.

3           We trust that this process will seek to  
4 identify the need for data collection and if some  
5 collection of data is deemed necessary to develop  
6 reasonable parameters for the types of data to be  
7 collected, the means by which it is collected, and the uses  
8 to which the collected data may be put.

9           You must be aware that the burdens placed on  
10 law enforcement have not lessened. Rather, they have  
11 increased despite the expansion of more advanced  
12 information technology into the field of law enforcement.  
13 In addition to the burdens that have always faced municipal  
14 police, including small officer complements and limited  
15 budgets, we also face federal and state mandates and  
16 limitations.

17           An example of these increased burdens are the  
18 new 8-page crash reporting form which is mandated by the  
19 Pennsylvania Department of Transportation for reportable  
20 accidents and the continuing refusal of the General  
21 Assembly to allow local law enforcement to use modern speed  
22 technology such as radar.

23           Thus, local police departments are concerned  
24 about potentially onerous data collection mandated in the  
25 area of bias-based policing. We are also concerned about

1 the intrusiveness of data collection on the citizens with  
2 whom our officers interact.

3           We recommend that the best means of data  
4 collection would involve driver self-identification of  
5 their race and ethnicity on their driver's license  
6 application and the bar coding of this information on the  
7 license so that the officer does not have to ask the  
8 question or, even worse, presume the race and ethnicity  
9 based on personal observation.

10           Finally, any legislative approach to  
11 regulating bias-based policing should provide law  
12 enforcement with the required tools for implementation.  
13 Foremost among those tools is the availability of in-car  
14 video/audio equipment as the most effective way to document  
15 interaction between officers and drivers and passengers and  
16 as a deterrent to false claims of bias-based stops.

17           Additional examples would include funds for  
18 data collection systems and additional funding  
19 opportunities for enhanced training. The values of local  
20 law enforcement professionals and the Pennsylvania Chiefs  
21 of Police will not tolerate selective or discriminatory  
22 enforcement of the law.

23           I appreciate the opportunity afforded to share  
24 this information and these thoughts with you as you  
25 undertake your consideration of this important subject. We

1 look forward to working with the subcommittee and other law  
2 enforcement stakeholders as we continue to consider the  
3 subject of bias-based policing. Thank you for the  
4 opportunity to speak today.

5 CHAIRPERSON COHEN: Thank you, Chief Carroll.  
6 We appreciate you being here. Representative James has a  
7 question for you.

8 REPRESENTATIVE JAMES: Thank you. Thank you  
9 for testifying. In your capacity as the Vice President of  
10 the Association, would you have any problems with training  
11 being implemented through the municipal police officer  
12 training, Education and Training Commission as relates to  
13 sensitivity, cultural diversity, and prevention of racial  
14 profiling?

15 MR. CARROLL: No.

16 REPRESENTATIVE JAMES: Would you have any  
17 problems with police officers using the same similar type  
18 form as it relates to traffic stops, pedestrian stops, or  
19 warnings?

20 MR. CARROLL: Well, I think the answer to the  
21 question, the general answer, is no. We use the same forms  
22 now. I think in order to do --

23 REPRESENTATIVE JAMES: All police use the same  
24 forms?

25 MR. CARROLL: Well, we use the same forms in

1 traffic citations as the State Police and every municipal  
2 department in the state, the same form that the AOPC offers  
3 to us. Any change to that form obviously would take some  
4 consideration because of the type of change, what length  
5 that would add to a traffic stop.

6           And what our main concern in collecting this  
7 type of data is the confrontational style of the traffic  
8 stop caused by the questions we would be required to ask.

9           REPRESENTATIVE JAMES: And such as an example,  
10 what question would you ask that would cause a  
11 confrontation?

12           MR. CARROLL: Well, you're going to ask  
13 questions such as race obviously. What race are you? It  
14 can be done, obviously, through observation. In many  
15 cases, it can't. And some people are sensitive enough that  
16 they are upset by the question.

17           We then put that police officer in the  
18 position of defending the question as opposed to the  
19 traffic stop.

20           REPRESENTATIVE JAMES: Well, I've heard that  
21 before. And my view is just that police officers years  
22 before never asked no questions about what race a person  
23 was. They just put down there what they thought or used  
24 their judgment. But I think -- would you be opposed to  
25 having race on the form?

1 MR. CARROLL: No, I would not be opposed to  
2 having race on the form. I also would not be opposed to  
3 having race on the driver's license so that the  
4 confrontational issue would not be faced.

5 REPRESENTATIVE JAMES: All right. Thank you.

6 CHAIRPERSON COHEN: Thank you, Representative  
7 James. Representative Manderino.

8 REPRESENTATIVE MANDERINO: Thank you. I  
9 actually think you may have just answered my question. I  
10 just want to make a comment. I hear what you're saying  
11 about how the data is used. It's very much the same point  
12 that Dr. Engle was making in terms of what the base is.

13 But I think I just heard you agree that in  
14 order to make any analysis, we do have to have the raw  
15 data.

16 MR. CARROLL: I think that's true. Sure.

17 REPRESENTATIVE MANDERINO: Okay. Thank you.

18 CHAIRPERSON COHEN: Thank you, Representative  
19 Manderino. Chief Carroll, we appreciate your being here  
20 and making a presentation to us. Thank you very much.

21 MR. CARROLL: Thank you for your time.

22 CHAIRPERSON COHEN: The next person to appear  
23 before us is Francis T. Healy, the Special Assistant to the  
24 Chief, Commissioner of Police Timoney in the Philadelphia  
25 Police Department. Welcome. Sir, you may begin at any

1 time. Do you have written testimony?

2 MR. HEALY: I didn't have written testimony  
3 prepared.

4 CHAIRPERSON COHEN: That's fine. That's fine.  
5 Any time you're ready, you may proceed.

6 MR. HEALY: First of all, I'd like to,  
7 Commissioner Timoney would like to convey his apologies for  
8 not being able to be present here today. Obvious events  
9 precluded him from coming to Harrisburg.

10 He sent me basically because I've been the  
11 officer involved primarily in his office -- I'm also an  
12 attorney -- with the racial profiling issue and the data  
13 collection issues within the Philadelphia Police  
14 Department. And what we've done so far, we believe, is  
15 probably one of the most aggressive stances in  
16 investigating whether racial profiling exists or not  
17 exists.

18 First, when we looked at this issue, there's 2  
19 basic things that's become clear today. It's the data  
20 collection process and the analysis process. Both are  
21 separate and actually independent but obviously related  
22 issues. Our first step is to actually collect accurate  
23 data.

24 In Philadelphia, what we did is we designed a  
25 separate form called, it's our form 7548-A, which is the



1 vehicle and pedestrian investigation form. It's an 8 1/2,  
2 2-page form, 8 1/2 by 11 double-sided form. It forces the  
3 officer not only to include the race that he perceives the  
4 individual to be. It also includes the basis for the stop.

5           It must be -- so we can -- whether or  
6 not -- we can evaluate whether or not he had the minimum  
7 reasonable suspicion or the probable cause for the stop.  
8 The form goes into whether or not the individuals are  
9 searched and/or frisked as well. And we make the  
10 distinction between a search and a frisk, which is the  
11 pat-down, for very good reasons. And I'll get to that  
12 point.

13           Designing the form actually wasn't the easiest  
14 process in the world. And what we did is, to make sure our  
15 officers bought into this process -- we have 7,000 police  
16 officers that we're looking to change behavior with. And  
17 actually, I think we've been very effective.

18           What we've done is, when we implemented the  
19 form, we did so in a division-wide basis at a time. As  
20 opposed to just me designing a form and throwing it on top  
21 of the officers to use, what we did is we came up with a  
22 sample. We put it into a division.

23           And then what we did is focus groups after  
24 that division. And we tweaked the form and made it better  
25 each time. So by the time this form was actually

1 implemented, I believe in July of 1999 in full, every  
2 police officer in the city was able to at least comment or  
3 put their input into the form.

4           So what it really did is it accomplished a lot  
5 of buy-in. So the officers understood what we were doing.  
6 We weren't trying to gather data to hurt them in any way  
7 because that's usually the attitude of a police officer  
8 when you're starting to collect data. So the idea was the  
9 officers bought into the program.

10           The next step what we did is I went out to  
11 almost each and every roll call as a sergeant myself and as  
12 the attorney background, tried to explain to the officers  
13 why it's so important that they document the reasonable  
14 suspicion; probable cause, if any; the reason for the frisk  
15 or the search.

16           Those efforts were actually very successful.  
17 However, in addition to that, what we did is we produced a  
18 videotape. We got contributions. And each and every  
19 officer in the police department received a training video  
20 on racial profiling, basically not to do it. So that went  
21 out to every officer, I believe, in the fall of 1999.

22           So as of this date, we have a data collection  
23 system in place in Philadelphia that actually has been  
24 recognized by the United States Justice Department as one  
25 of the best practices in policing across the nation. So

1 we're very proud of that fact.

2           Now moving on to actually the harder part.  
3 We're capturing good data. The good part is to make sure  
4 that our data is accurate. We didn't just put a form out  
5 there and assume the data to be good. What we did is  
6 Commissioner Timoney dedicated, I believe it was, 10  
7 lieutenants to the Internal Affairs Unit of the police  
8 department and created what we call the Integrity Control  
9 Unit.

10           One of the primary functions of this unit is  
11 to audit the 7548 forms to make sure they are in  
12 compliance with the Commissioner's orders. What we  
13 designed -- actually, what I designed for them actually was  
14 an audit report, very similar to an audit report you would  
15 receive from a CPA firm.

16           But the auditors, when they examine the forms,  
17 they'll take a statistical sampling of the forms from each  
18 district. And they will opine on whether or not the forms  
19 meet the Commissioner's agenda, whether or not they're  
20 lacking, or whether or not the forms are not being  
21 completed correctly.

22           So what happens -- what's most important there  
23 is we have responsibility on to the captain of the  
24 district, who's ultimately responsible. So that's, that's  
25 a key to making sure these forms are done correctly. So we

1 do have the oversight from the Internal Affairs.

2           And this moves us into the analysis part of  
3 it. A lot of people; namely, the ACLU in one of their last  
4 monitoring reports, did try to compare our stop data with  
5 census data. Now, there's a lot of individuals, a lot of  
6 organizations trying to compare, like, what does raw data  
7 mean. And that's really the state that the police  
8 department is in right now.

9           Comparing stop data to census data is  
10 basically an inaccurate method of comparison because census  
11 data includes people that aren't on streets when cops are  
12 making the stops. So it's really -- you're -- using an  
13 accounting analogy, you're counting apples and oranges.

14           So what we tried to do is -- and actually, I  
15 believe a lot of the other police departments throughout  
16 the country are starting to go this way -- is we're trying  
17 to establish internal benchmarks where we can see whether  
18 or not people are being treated differently.

19           The fact that more African-Americans may be  
20 stopped in one district versus another on its face is not a  
21 prima facie case that racial profiling exists. There is a  
22 great many other layers that are involved. And it's going  
23 to take the work of probably, a lot of work of law  
24 enforcement, a lot of work of social sciences and those,  
25 and those in academia to come up with the answers of why

1 certain things occur.

2           But these are the efforts that we've done so  
3 far. We're probably on the cutting edge in Philadelphia.  
4 We not only compare the raw data with the number, like I'm  
5 saying the number of African-American stops, white stops,  
6 or Latino stops versus the whole to come up with raw  
7 percentages.

8           What's more importantly we found is we  
9 compare with any trace. So, for example, if we stop  
10 African-Americans -- and the audits that are done can  
11 actually tell me whether or not the stops had reasonable  
12 suspicion, yes or no; whether or not the frisks that were  
13 conducted, if any, had the reasonable suspicion that were  
14 necessary under law; whether or not the search was done or  
15 that problem cause existed.

16           So what I can evaluate is whether or not,  
17 within a certain race class, certain people are either  
18 being stopped illegally or being frisked without reasonable  
19 suspicion or searched without reasonable suspicion. We  
20 think these indicators are more indicative actually of  
21 whether or not an individual officer or group of officers  
22 or district are targeting minorities or ethnic, ethnics for  
23 special treatment.

24           Now, what we're not going to come up with is  
25 conclusions as of yet. We're coming up with data. And the

1 most important thing is we don't know 100 percent what this  
2 means. And like I said, academia is going to play a big  
3 part in this because there's a lot of social sciences and  
4 ergonomics involved on why certain people are stopped more  
5 than others.

6           So the idea here is we want to collect as much  
7 data, analyze it as much as we can. And basically, we've  
8 opened ourselves up to the nation through the Police  
9 Executive Research Forum. They've identified Philadelphia  
10 as a test, as a test city to try to help analyze this  
11 information.

12           So we've already agreed to submit any stop  
13 data that they request once they get their program up and  
14 running to help further analyze it. So basically, from  
15 Philadelphia's perspective, I can say without any  
16 hesitation that we've taken this issue of racial profiling  
17 to heart and we've taken probably some of the most  
18 aggressive steps not only in Pennsylvania but in the nation  
19 on capturing the data and trying to analyze it as well.  
20 I'd be happy to answer any questions.

21           CHAIRPERSON COHEN: Thank you very much, Mr.  
22 Healy. We appreciate that. Lieutenant Colonel Conley  
23 referred to 2 bills that are before the Legislature. One  
24 is a Senate bill. And we're members of the House. So  
25 we'll deal with House Bill 1933.

1 Right now, Pennsylvania law permits video  
2 interception devices. But what House Bill 1933 does is  
3 authorize police officers to use oral interception devices.  
4 Could we have your opinion on that?

5 MR. HEALY: From a municipal police  
6 perspective such as Philadelphia, a majority of the  
7 interactions we have with people are outside of the car.  
8 The cameras in cars with the audio are excellent devices.  
9 They capture a lot of information. But a lot of the work  
10 we do is not necessarily on traffic stops.

11 What's important to say here is actually,  
12 racial profiling is actually becoming a misnomer in the  
13 country. It's really more so racially biased policing. So  
14 we want to know whether or not -- we capture not only the  
15 traffic data stops on our forms, we also capture the, what  
16 we call pedestrian investigation stops. So those would be  
17 out of the view of any camera or microphone.

18 So although I support any microphones -- I  
19 mean, it would be great to have them -- in a city setting,  
20 a lot of our -- whether or not you're going to capture  
21 biased policing, it's a much broader concept than just  
22 traffic stops. But I do support the traffic cameras and  
23 the audio. They are good for officer safety.

24 CHAIRPERSON COHEN: Thank you. Chairman James  
25 has a question.

1                   REPRESENTATIVE JAMES: Thank you. Thank you  
2 for testifying. And thank the Commissioner on behalf of  
3 the committee. I just want to commend Philadelphia for  
4 taking a lead and coming out with changing the form, doing  
5 the study. And it's good to hear that -- you say you've  
6 been recognized by the Justice Department.

7                   Have any other, if you know, have any other  
8 State Police or municipal police officers in Pennsylvania  
9 have been interested in the new form that you have adopted?

10                  MR. HEALY: Off the top of my head, I can't  
11 say specifically in Pennsylvania. But I know we've had  
12 about 75 different jurisdictions ask for copies of our form  
13 and our training tape to either use it whichever way they  
14 want.

15                  REPRESENTATIVE JAMES: Can that be provided to  
16 the committee?

17                  MR. HEALY: Sure.

18                  REPRESENTATIVE JAMES: Both the copy of the  
19 form and the training tape?

20                  MR. HEALY: Absolutely. Actually, I'll also  
21 include the instructions that go along with the form  
22 because they're very important.

23                  REPRESENTATIVE JAMES: Great. Okay. Again, I  
24 just want to -- I appreciate it. That's why one of the  
25 bills I made is exactly the 7548, asking that all police



1 officers throughout the state adopt that form. And I took  
2 that from the Philadelphia form. Thank you. Thank you,  
3 Madam Chair.

4 MR. HEALY: Thank you.

5 CHAIRPERSON COHEN: Thank you, Chairman James.  
6 Don't leave. We're not done. Mr. Healy.

7 MR. HEALY: I'm sorry.

8 CHAIRPERSON COHEN: Please, could you stay a  
9 little while longer? We have more questions.

10 MR. HEALY: Oh, absolutely. I thought you  
11 were done. I'm sorry. I apologize.

12 CHAIRPERSON COHEN: Thank you. Representative  
13 Manderino has questions.

14 MR. HEALY: I'm sorry.

15 CHAIRPERSON COHEN: That's all right.

16 REPRESENTATIVE MANDERINO: Good morning.

17 MR. HEALY: Good morning.

18 REPRESENTATIVE MANDERINO: As has come up in  
19 earlier testimony, data collection is critically important  
20 and also a sensitive issue. Can you tell us, since you  
21 moved to this 2-page form, what did you move from; how much  
22 longer is it taking officers in paperwork or field work to  
23 collect the data?

24 MR. HEALY: Well, like I had mentioned, we did  
25 focus groups when we first implemented the form. And one

1 of the biggest problems from police officers were that I'm  
2 never going to get anything done with this form. So we  
3 took that to heart.

4           And actually, what we did is I gave it to the  
5 Commissioner and said, Head stop me. Ask me the questions  
6 that are on there. It took about 3 to 4 minutes to  
7 actually complete the form. Now, the form has a lot of  
8 information on it; but sometimes it's not relevant.

9           For a ped stop, you're not going to include  
10 all the vehicle information, if you understand what I'm  
11 saying. A lot of the form is there for what that specific  
12 need is. But you're not going to fill out the entire form.  
13 It won't be necessary in every situation.

14           We tried to design a form that could be used  
15 in every situation. And your question, what we did before  
16 that, I don't know if you're familiar with our standard 48,  
17 which is our incident report. It's a 6-inch by 9-inch form  
18 that we do for every incident in Philadelphia.

19           The officers did back -- before this form was  
20 implemented, they would fill out the information on this  
21 form. Now, what happens, in the narrative section of the  
22 form, either you could have a lot of information from a  
23 very aggressive police officer or an officer who didn't  
24 think something was so important and wouldn't include it.

25           So if you tried to capture data off of those

1 forms alone, you wouldn't be able to do it. One officer  
2 might forget the weight and height; one officer might  
3 forget the age. What we did with the form that we  
4 developed, it's mandatory.

5           The officers have to go through and fill in  
6 the blocks. And that's more importantly what the Integrity  
7 Control Unit goes through and checks, makes sure the  
8 officers are filling in all boxes. And if not, they're  
9 held accountable. More so the supervisors and the captains  
10 are held accountable.

11           So we have like a check and balance system to  
12 make sure the data we do capture is there and correct. And  
13 the officers in the integrity control unit will randomly  
14 call the individuals that were stopped to make sure that  
15 they are the people that were stopped. So they do random  
16 audits to make sure that some of the information is  
17 actually correct.

18           REPRESENTATIVE MANDERINO: Quick follow-up.  
19 So the old way of gathering data may have taken 3 or 4  
20 minutes or may have taken less depending on how much detail  
21 the officer chose to include with that particular stop?

22           MR. HEALY: I would probably say, in all  
23 honesty, it probably took less. You could probably be done  
24 a car stop or a ped stop in Philadelphia in about a minute  
25 and a half, 2 minutes. But that didn't capture all of the

1 data that was needed.

2           If I frisked the individual, it probably  
3 wouldn't have showed up there. Had I searched him, it  
4 wouldn't have showed up on that form.

5           REPRESENTATIVE MANDERINO: Now that you've  
6 been using this for almost 2 years, how are complaints from  
7 the officers with regard to paperwork or time constraints?

8           MR. HEALY: Well, officers, they'll always  
9 complain. Okay? But what we're seeing is the newer  
10 officers that are coming up know no different. I mean, so  
11 this is what they grew up with. A lot of the old-timers,  
12 it took them a while to kick and scream.

13           But they're -- everybody seems to be on board.  
14 And what was more important to get them on board, I went to  
15 each and every roll call. I wasn't like an outsider trying  
16 to say, This is a form you must do. I didn't ram it down  
17 them. I explained to them why it was important. It  
18 protected them from accusations of wrong doing.

19           I said, It's very important that the forms are  
20 on there. The sensitive issue of race was brought up,  
21 whether or not we should include the race and do you ask  
22 the individual what his race is. We don't really -- not  
23 being disrespectful -- care what the person thinks his race  
24 is. What's more important is what the officer perceives  
25 that race to be.

1           I mean, so we don't really ask the person to  
2 get them out of the car and look him up and down. On this  
3 very form, we also have biological information of the  
4 officers to capture if he can, height, size, weight. And  
5 the biggest thing I ever tell an officer is never, never  
6 ask a woman their weight on a highway. That could be very  
7 hazardous. I said, Guess. Okay? Whatever you do, guess.

8           It's just a general approximation so the  
9 officer can identify that person if they need to in the  
10 future. So we're sensitive to those type of issues, and we  
11 try to train that to our officers.

12           REPRESENTATIVE MANDERINO: Just a last  
13 question. Is the perceived race a checkoff box or a  
14 written description? And given what we know now, do you  
15 also have the ability to catch Middle Eastern descent or  
16 anything like that?

17           MR. HEALY: The original boxes we had were  
18 African-American, white, Latino. But the question of  
19 Latino was actually -- this was a lot of problem. There's  
20 Latinos white and black. I mean, Latinos from a different  
21 part of the world are very light-skinned.

22           So a lot of times, we may be getting a Latino  
23 checked as white who may be black. The idea was, it's the  
24 officer's perception. Specifically, we don't have a box  
25 for Indians or anything like that. I'm sorry. We do have

1 a box for Indians. But we don't actually specifically  
2 state Middle Eastern.

3 It's a -- off the top of my head, I can't  
4 remember what it was. But there is a box for that  
5 classification of ethnicity.

6 REPRESENTATIVE MANDERINO: Thank you. Thank  
7 you, Madam Chairman.

8 CHAIRPERSON COHEN: Thank you, Representative  
9 Manderino. Representative Washington also has a question.

10 REPRESENTATIVE WASHINGTON: Thank you, Madam  
11 Chair. Did I hear you say that once the integrity  
12 department gathers information, if there's any discrepancy  
13 in filling out the form, then that person is called in?

14 MR. HEALY: That's correct.

15 REPRESENTATIVE WASHINGTON: Then is there also  
16 a mechanism in place where you can determine whether or not  
17 a specific police officer is doing this in a certain area  
18 and getting more of the same race of people?

19 MR. HEALY: Yes.

20 REPRESENTATIVE WASHINGTON: And what do you do  
21 when you find that out?

22 MR. HEALY: Well, like I said at first, the  
23 data collection process is one issue and the analysis is  
24 another. And actually, we do both. The data collection  
25 issues a lot of times are the officer forgets to put things

1 in or corrects, puts things in the wrong boxes.

2           Those are more so training issues that, just  
3 they're training issues. Some officers are quicker than  
4 others to pick up certain things. Those responses are  
5 usually handled by the district level supervisor. Usually,  
6 they're the first level supervision that captures these  
7 type of errors.

8           Now, the more important thing is -- and what I  
9 think you're trying to get at -- is whether or not we're  
10 analyzing this and responding if we find something. Like I  
11 said, we don't really understand 100 percent how to analyze  
12 the data. But that's not going to stop us from analyzing  
13 the data, if you understand the difference.

14           What we'll do is -- we have several ways to do  
15 this. The Integrity Control Unit as well as the General  
16 Internal Affairs Office responds to complaints of  
17 profiling. They'll do a full internal investigation if a  
18 complaint, if an individual says he believes he was stopped  
19 merely because of his race or his ethnicity.

20           The data that we're collecting is analyzed to  
21 see whether or not officers are making, I'll say for lack  
22 of a better word, bad stops. How many bad stops were made  
23 during the period under review? That indicates the officer  
24 may have a training issue, or it also may mean he's  
25 targeting a special race or ethnicity. We're not sure.

1           It could just be an error; it could be  
2 intentional. Either way, the matter is brought forward  
3 from the Integrity Control Unit to the immediate supervisor  
4 of the officer as well as his commanding officer. But in  
5 addition, we also do random samplings in the district.  
6 They may just evaluate 1 or 2 squads of a district.

7           If there's an accusation that was made out  
8 there that, let's say, 2 squads in the 35th district is  
9 doing something different, they will basically do a sting  
10 in that district. We do those as well. So we really have  
11 taken a lot of aggressive steps to try to identify.

12           Now, if we do see an officer that does appear  
13 to have a pattern, since it's very hard to get to the  
14 intent, what was his true intention when he stopped the  
15 individual, what we'll do is we will bring him in and show  
16 them the statistics and say, Are you aware that you are  
17 stopping, 90 percent of your stops are a certain race or  
18 ethnicity?

19           In fact, when we first began this, our  
20 Internal Affairs identified 2 officers in our highway  
21 patrol who were apparently stopping a high percentage of  
22 African-Americans. So what they did as a preemptive thing  
23 to see whether or not anything was going on, they brought  
24 the 2 officers in and just basically laid the data out.

25           Well, at this point in time, it kind of



1 confused Internal Affairs that the 2 officers that were  
2 brought in were 2 African-American highway officers. But  
3 that's not an excuse. I mean, so the idea was this is a  
4 very complicated issue. I mean, it's not white on white.  
5 It's not African-American on African-American. It's very  
6 complicated.

7           So what we did is we did bring the officers  
8 in. And what we found out was where they were assigned was  
9 almost 90 percent African-American. So the stops did  
10 actually match the geographical area where they were  
11 assigned. But the statistics, it jumped off the page for  
12 one of the investigators.

13           And they brought them in, and they gave them  
14 additional counseling. And they just said, you know, these  
15 are statistics.

16           REPRESENTATIVE WASHINGTON: But in a case  
17 where there were 2 Caucasian police officers and they were  
18 stopping African-Americans, would you bring them in and  
19 just talk to them as well; or is there something in place  
20 for training --

21           MR. HEALY: Well, that would be the first  
22 step.

23           REPRESENTATIVE WASHINGTON: -- or whatever in  
24 place for them?

25           MR. HEALY: To be honest with you, I wouldn't

1 make the distinction because there's been claims out there  
2 that police officers, African-American, white, Latino, are  
3 blue, for lack of a better word. I mean, it doesn't matter  
4 what their race is. It's what their results are.

5           So actually, I believe -- I would kind of  
6 subscribe to that theory that we're more concerned whether  
7 or not the impact of policing, whether it be by a white  
8 officer, African-American officer, or Latino officer, the  
9 impact of what their actions are are more important than  
10 what their race is.

11           So we'll treat them both the same. We'll tell  
12 the African-American officer. We'll counsel, train, and  
13 ultimately discipline if we find it's intentional. We do  
14 the same for the white officer as well.

15           REPRESENTATIVE WASHINGTON: Thank you. Thank  
16 you, Madam Chair.

17           CHAIRPERSON COHEN: Thank you, Representative  
18 Washington. Thank you, Mr. Healy. We appreciate your  
19 being here. Now we're done. I would just like to suggest  
20 that in addition to not asking a woman her weight, you  
21 don't ask her age either. Thank you very much.

22           The next person to make a presentation before  
23 us is William T. Valenta, Jr., the Commander of the City of  
24 Pittsburgh Police. Mr. Valenta, welcome. And you may  
25 begin at any time. And again, we do have your written

1 statement.

2 MR. VALENTA: I'll speak to you. I know the  
3 subject pretty well. So --

4 CHAIRPERSON COHEN: That's great. Thank you.

5 MR. VALENTA: Madam Chair and distinguished  
6 members of the committee, on behalf of Chief Robert  
7 McNeilly, thank you very much for giving us the opportunity  
8 to speak before the subcommittee.

9 In 1996, the United States Department of  
10 Justice entered into an investigation with the Pittsburgh  
11 Bureau of Police looking into allegations of abuse by  
12 members of the Pittsburgh Bureau of Police. In 1997, after  
13 a series of negotiations wherein we attempted to discuss  
14 with Justice what our plans were under Chief McNeilly to  
15 look into some of the concerns of Justice, we entered into  
16 a federal consent decree.

17 We have been under that federal consent decree  
18 for now 4 1/2 years. And under an independent auditor, we  
19 are seeking that -- and we are on track -- that we will be  
20 out of the decree in the spring of 2002. Central to that  
21 decree was the formation of what was then termed an early  
22 warning system, which we now call the Personnel Assessment  
23 and Review System or the PAR system.

24 It's my understanding this was speaking  
25 specifically to racial profiling and traffic stops. I'll

1 speak to that segment of it. But understand that the PAR  
2 system captures over 18 indices wherein we can track an  
3 officer's behavior.

4           Insofar as traffic stop information is  
5 concerned, the Pittsburgh Bureau of Police now collects  
6 data on every traffic stop from every officer on a form.  
7 And the traffic stop indicates not only the gender and race  
8 of the driver, it also indicates the reason for the initial  
9 stop.

10           This information is then given to the  
11 officer's supervisor at the end of their shift. The  
12 supervisor reviews this information. The information is  
13 then put into a data base. And at any time, the supervisor  
14 of the officer has, then has the ability to go into the PAR  
15 system and then in to check what, whether it be arrest  
16 data, which we also capture by gender and ethnicity, but  
17 also by traffic stop data on gender and ethnicity.

18           We also wrestled with the question of  
19 comparison data. As you have heard from other speakers  
20 this morning, it is incredibly difficult to come up with  
21 bases and benchmarks based on census data with how to  
22 compare officers.

23           Through our research -- and this is going back  
24 into 1997 in discussions with Justice -- what we have found  
25 as the best measure for reviewing officers' behavior is to

1 look within their individual peer groups. What we are able  
2 to do is when we click into the PAR system to observe an  
3 officer's traffic stops, we are able then to see the  
4 officer's breakdown of their traffic stops or arrests and  
5 then what their comparison peer group would be as well.

6           The supervisor then can make, the initial  
7 supervisor can make some determination whether that falls  
8 within, within guidelines or not. This, this becomes very  
9 important because along with the PAR system, what we are  
10 able to do, we also conduct a quarterly trend analysis of  
11 our officers.

12           With that, each supervisor is required to do  
13 an analysis of all the officers under their command for all  
14 18 indices of the PAR system based on benchmarks. Any  
15 allegation of bias, be it through a citizen's complaint, if  
16 it appears that the officer is falling, their traffic stop  
17 or their arrest is falling out of what their peer group  
18 should be results in an investigation by the supervisor to  
19 look into search and seizure data, citizen stop data,  
20 subject resistance data, use of force to see if in fact  
21 there are disparate treatments that are also being  
22 conducted by the officer under the theory that if the  
23 officer is exhibiting some bias in one area, we would  
24 expect to see it in all areas.

25           Currently, we believe that the PAR system is

1 the leading system for tracking officer behavior in the  
2 nation. We have received inquiries from major police  
3 departments across the country looking into the work that  
4 we are doing.

5 In that, we also believe that data collection  
6 is essential. And I say that based upon our experiences  
7 and the initial discussions with Department of Justice. To  
8 this day, we maintain that we did not believe that Justice  
9 had sufficient grounds to bring the initial lawsuit.

10 Unfortunately, we lack the data to refute  
11 that. What we have now is, is that we have data that is  
12 showing that by and large, our officers are conducting  
13 traffic stops and arrests within their particular peer  
14 groups.

15 We are finding that use of force data  
16 is -- within less than one percent of our arrests, officers  
17 are using force. So we are able now to counter claims of  
18 officers, against officers or against the Bureau of Police.  
19 Along with that, we have been able to identify officers  
20 that do require additional counseling, retraining,  
21 discipline because certainly we don't want them on our  
22 police department as well.

23 The value of these systems, though, is going  
24 to be seen as time goes on. I recently testified at  
25 another proceeding that one, that we can't begin to

1 understand how important this becomes not for identifying  
2 the potentially rogue officer but the equally devastating  
3 claim of a false claim against an officer or a police  
4 bureau.

5           And for that reason, the only thing we have in  
6 our hands is the data that we collect. And without that,  
7 it becomes incredibly difficult to convince anybody that  
8 the officer is in fact a good officer; that, you know, the  
9 Bureau of Police isn't tolerating any type of racial bias.

10           With that, we are now able to collect that  
11 data. We continue to improve upon those systems. And I  
12 believe now, under the guidance of Chief McNeilly, that we  
13 have the best system for tracking officer behavior in the  
14 nation.

15           And with that, I'd be -- there's usually a lot  
16 of questions. I usually like to keep it short. I'll be  
17 happy to answer questions.

18           CHAIRPERSON COHEN: Thank you, Captain  
19 Valenta. I believe that Chairman James has some questions.

20           REPRESENTATIVE JAMES: Thank you, Madam Chair.  
21 And thank you for testifying. It was good to hear you say  
22 that you also have one of the best systems and the Justice  
23 Department contacted you in regards to that system.

24           MR. VALENTA: That's correct. We had to work  
25 with Justice. It had to be approved through their, through

1 their agency as we were going through the consent decree.

2 REPRESENTATIVE JAMES: Now, do your police  
3 officers, if they stop someone not in a traffic stop but  
4 stop a pedestrian for whatever reason, do they fill out any  
5 information or write out anything?

6 MR. VALENTA: They have the ability to, sir.  
7 If they stop them and would search them, yes. They also  
8 have the ability -- we have what's called a field contact  
9 search and seizure form, that the officers can have the  
10 option of filling the form out just for a routine, a mere  
11 encounter.

12 If in fact, though, they would conduct a  
13 search of some type, then they're required to fill the form  
14 out.

15 REPRESENTATIVE JAMES: So then it's the  
16 officer's judgment if they stop someone because they  
17 believe they committed some crime and they ask them some  
18 questions and then the officer feels, though, that he  
19 didn't, the officer does not have to fill out any --

20 MR. VALENTA: They're not required to do so.

21 REPRESENTATIVE JAMES: That's one of the  
22 questions I forgot to ask the State Police. I know one  
23 time, the State Police did have, it was up to the  
24 discretion whether or not they filled out any form. I  
25 didn't know if that was required.



1           Also, have -- in your -- you said that you  
2 have the -- in tracking the officers' behavior with your  
3 system, have you, has it resulted in any discipline or the  
4 dismissal of any officers yet?

5           MR. VALENTA: The system itself has not. And  
6 I think it's important to understand the system as it is.  
7 It's very much an intuitive type of system. Specific  
8 instances that have occurred certainly have resulted in the  
9 dismissal of officers. The numbers I don't have at hand.

10           But if memory serves, it's been over 20 police  
11 officers have been dismissed over the past 4 or 5 years.

12           REPRESENTATIVE JAMES: As a result of that --

13           MR. VALENTA: Well, part is as a result of the  
14 oversight. And part is the result of when Chief McNeilly  
15 took over, there was an absolute need to install a better  
16 sense of discipline in the Pittsburgh Bureau of Police.  
17 And that was the result of that.

18           Maybe to explain a little bit better, we  
19 have -- on a quarterly basis, our command staff meets. And  
20 I'm sure you've heard in New York where they have comstat  
21 meetings talking about crime statistics, we do the same on  
22 a monthly basis.

23           On a quarterly basis, the Pittsburgh Bureau of  
24 Police holds a comstar meeting. And the comstar meeting is  
25 for the basis of discussing personnel issues. We all meet.

1 And all the commanders get together, and we discuss the  
2 officers that have given indicators on our PAR system.

3 And we discuss them with the chief, the deputy  
4 chief, the assistant chiefs. And we're required then to  
5 justify whether we think a specific officer needs to be  
6 monitored more closely by a supervisor, if they require  
7 counseling, if they require some retraining based upon not  
8 only what we see in the PAR system but on our discussion  
9 with supervisors.

10 REPRESENTATIVE JAMES: All right. Thank you.  
11 Thank you, Madam Chair.

12 CHAIRPERSON COHEN: Thank you. Representative  
13 Manderino has a question.

14 REPRESENTATIVE MANDERINO: Thank you. Good  
15 morning.

16 MR. VALENTA: Good morning.

17 REPRESENTATIVE MANDERINO: You explained to us  
18 that the PAR system compares officers to their peer group  
19 and would identify somebody or persons who are outside the  
20 norm of that peer group. You also made a brief reference  
21 to guidelines. But -- and maybe this is where it comes in.

22 But my question is, How do you know that the  
23 peer group itself is appropriate or is following guidelines  
24 that would be perceived as racially or genderly neutral or  
25 not having its own bias?

1 MR. VALENTA: So in other words, you're  
2 looking for the issue of sort of the road turn, if you  
3 would, or something to that degree or --

4 REPRESENTATIVE MANDERINO: Well, no. For  
5 example, we've heard from a couple of different levels of  
6 law enforcement. And I don't want to use any by name. But  
7 say the State Police have a reputation of being better or  
8 worse than the Pittsburgh Police Department or better or  
9 worse than the Philadelphia Police Department in terms of  
10 whether or not their force is actually or is perceived to  
11 be harsher with regard to racial profiling or something  
12 like that.

13 So how do we know? What are our guidelines?  
14 We know with your system if an officer is acting out of the  
15 norm of his fellow officers within the Pittsburgh Police  
16 Department. How do we know under what guidelines we're  
17 following that the Pittsburgh Police Department itself is  
18 not outside of the norm of law enforcement with regard to  
19 racial stops or racial profiling, et cetera, under this  
20 system we're talking about?

21 MR. VALENTA: I guess the difficulty in this  
22 is, as previous speakers have stated, is that trying to  
23 determine exactly what the norm is is probably the most  
24 vexing question for any one of us. As Mr. James said  
25 earlier, I mean, part of this is that we have to understand

1 that the vast majority of police officers are out there and  
2 are doing their job as they are, as they are supposed to  
3 be.

4           So you would expect that as a group, you  
5 would, you would see some norming -- and that might be for  
6 100 officers; it might be for 200 officers -- that you  
7 would expect to see some normalization of the data. That  
8 was the premise we had to go under. We continue to seek  
9 to, if we can improve upon that.

10           Understand as we were going through this, we  
11 were required to come up with a fairly, a fast answer. And  
12 to that degree, what I can say is our complaints regarding  
13 either motorists who have been stopped or citizen contacts  
14 have been relatively few, perhaps 3 to 5 a year in  
15 Pittsburgh where somebody has specifically stated that they  
16 were stopped specifically because of their ethnicity, which  
17 leads us to believe that at that point our peer group data  
18 is then appropriate.

19           REPRESENTATIVE MANDERINO: Just one quick  
20 follow-up. And I don't mean to tell you how to do your  
21 job. You know it better than I do. I guess my one concern  
22 is that human nature is human nature. And I think that  
23 when we look at just our nation's response and individual  
24 citizen response since September 11th and just some of the  
25 anxiety that's been in the Arab community and the

1 Arab-American and the Middle Eastern community, we know  
2 that a human response -- and we're still struggling right  
3 now to figure out what is appropriate profiling in that  
4 case and what is inappropriate profiling.

5           And I think it will take some time to work  
6 through that. But I think in this whole equation, we have  
7 to recognize that human nature is human nature. And we  
8 ought to have guidelines that protect against inappropriate  
9 but perhaps natural or human response to different kinds of  
10 profiling.

11           MR. VALENTA: And I agree. And what I would  
12 say at least my experience has been insofar as in  
13 Pittsburgh with the allegations of profiling with persons  
14 of Middle Eastern descent has been through citizens  
15 contacts.

16           Unfortunately, officers have been compelled to  
17 answer calls for those types of contacts. So we are put in  
18 the very uncomfortable situation of a citizen purporting  
19 something suspicious and the officer having to report it,  
20 or the officer having to go investigate it, thus explaining  
21 to the other person.

22           So how do you counter that? I think part of  
23 that is with training. And we do sensitivity training. We  
24 do verbal de-escalation techniques. We've done that  
25 voluntarily as well as through our community outreach,

1 which we've done as well.

2 REPRESENTATIVE MANDERINO: Thank you.

3 CHAIRPERSON COHEN: Thank you. We appreciate  
4 your being here.

5 MR. VALENTA: Thank you.

6 CHAIRPERSON COHEN: Thank you. The next  
7 person to make a presentation before us is Professor John  
8 C. Lamberth, Temple University in Philadelphia. Dr.  
9 Lamberth, again, you may read from your testimony or make a  
10 presentation to us.

11 DR. LAMBERTH: Thank you for the opportunity  
12 to be here and to address some of these issues that are  
13 really quite vexing in the country and are particularly  
14 vexing today, I think.

15 Since 1993, when I was involved in the  
16 definition of what racial profiling is or how to go about  
17 scientifically investigating and measuring racial  
18 profiling, I have wrestled with many of the questions you  
19 are wrestling with today and not quite in as public a forum  
20 as you must wrestle with them. But nevertheless, I have  
21 dealt with them.

22 And since that time, the methodology that was  
23 first developed in New Jersey has been utilized in Maryland  
24 and in Arizona and, in addition, has been utilized by  
25 academic counterparts in North Carolina and Rhode Island.

1           In 1998, I began work on issues beyond the  
2 racial profiling that goes on on highways and in attempting  
3 to determine how we scientifically measure racial profiling  
4 in urban and suburban areas. And that is even a more  
5 vexing problem than the highway issue. And yet,  
6 nevertheless, as I say, I have worked on that.

7           And I am here today to talk to you about some  
8 of the experiences that I've had and some of the things  
9 that I've learned. You do have my written testimony here;  
10 and therefore, I would like to expand upon it a bit rather  
11 than stick to exactly what is here.

12           The first set of data you've heard a lot about  
13 already that are necessary to determine whether racial  
14 profiling is going on are the data from police departments,  
15 the stop data. Those data are absolutely crucial. They  
16 must be there, and they must be in enough specificity to be  
17 able to know a great deal about the particular stops.

18           We've heard already today from the  
19 Philadelphia Police Department, which has a form that has a  
20 great deal of information, and evidently -- although, I've  
21 not seen it -- the Pittsburgh Police Department, which also  
22 collects a great deal of data. And these endeavors are to  
23 be commended.

24           However, the second set of data which are  
25 absolutely necessary to making a determination as to

1 racial, whether racial profiling is going on are the  
2 benchmark data, if you will. What are the appropriate data  
3 to compare the stop data to?

4           And in many instances, what we have seen is  
5 that these particular stop numbers are compared to census  
6 data. The -- and these are inappropriate data. And I  
7 can -- I have had that same feeling that you have heard  
8 earlier this morning from the police departments that these  
9 are inappropriate data.

10           And just recently over the summer, I completed  
11 a research, the first research project -- and there are now  
12 several more that have been completed -- that have data to  
13 show that indeed my feelings and the feelings of the police  
14 department are exactly accurate.

15           If you will look on the second page of my  
16 testimony, you will see some actual data from a Michigan  
17 county sheriff's department in which we took surveys of  
18 traffic at specific locations and compared them to those  
19 specific locations since its track date.

20           And as you can see, those particular estimates  
21 from the census track, from the census data overestimate  
22 the actual traffic of African-American motorists in 4  
23 different locations and underestimate it at 7. And those  
24 differences in estimation run from a 6 percent  
25 overestimation to 303 percent underestimation of the



1 traffic data.

2           There appears to be no rhyme or reason in  
3 going from census data to actual traffic data. Therefore,  
4 I would encourage you as you are thinking about this to be  
5 sure that there are traffic data that are available to  
6 compare the stop data to.

7           While I applaud the Pittsburgh Police  
8 Department -- and certainly, I have been in a number of  
9 meetings with executives from the Pittsburgh Police  
10 Department. And they are to be complimented for what they  
11 have done -- the complementary approach to the internal  
12 benchmarks; that is, the peer benchmarks, must be traffic  
13 surveys from which the officers are actually picking people  
14 to stop. And if those comparisons are not made, then we  
15 cannot have an accurate assessment of whether profiling is  
16 actually going on.

17           During the course of this past year, I would  
18 like to, I had been working with the state of Kansas. And  
19 I would like to recommend to you that you consider what has  
20 been done in the state of Kansas as a statewide approach to  
21 investigating the issue of whether racial profiling is  
22 going on.

23           In 2000, the Kansas Legislature passed a bill  
24 informing the governor and the attorney general that they  
25 needed to take action to determine whether racial profiling

1 was occurring in the state. The state then considered  
2 several scientific proposals to make that determination.  
3 And during the course of this past year, we have been  
4 involved in assessing racial profiling in 10 departments in  
5 the state of Kansas.

6           One of the reasons that I would recommend that  
7 you consider this model is that it is an integrated  
8 approach throughout the state. In other states, the  
9 legislature has decreed that the various police departments  
10 collect data but have not informed them as to exactly which  
11 data to collect or how to analyze it.

12           And there is a great deal of frustration among  
13 police departments when they are faced with this sort of a  
14 situation. So I would encourage you to consider what the  
15 appropriate data to collect are and what the appropriate  
16 analyses are as we, as you move forward.

17           Secondly, the Kansas approach was to then turn  
18 to the Department of Justice. And they received funding  
19 from the Department of Justice from COPS, the  
20 community-oriented policing division of the Department of  
21 Justice, for this particular study.

22           And the study will be completed in the spring  
23 of 2002. And then they will make a determination as how to  
24 proceed with other police departments. If it is found that  
25 profiling is going on in this randomly selected sample of

1 police departments, then their intention, I think, is to  
2 proceed with more assessment.

3           If it is found that racial profiling is not  
4 going on among these departments, then it is their  
5 intention to work with the communities in Kansas who are  
6 convinced that racial profiling is going on and have that  
7 perception because there is, there are both sides of this  
8 issue.

9           There is not only the issue of whether it is  
10 going on or not but the perception that it is going on  
11 among certain parts of the community. I would therefore  
12 strongly recommend that you adopt something that  
13 incorporates an ability to, for the police departments to  
14 know what they should do and also, if at all possible, to  
15 have a funded mandate rather than an unfunded mandate,  
16 which is very frustrating to police departments.

17           Finally, let me talk about just a bit of  
18 research that I have been doing since 1995 and that we are  
19 emphasizing at this particular point, which goes to the  
20 point of racial profiling. In the late -- in the  
21 mid-1980s, the, at least the perception and, to a great  
22 extent, the assumption that racial profiling was going on  
23 became associated with the war on drugs.

24           And there was a great perception that one of  
25 the reasons that police were stopping minority group

1 members was that they were more likely to be carrying  
2 contraband than were nonminority group members.

3 I have now put together both a, an Op-Ed  
4 piece with Professor David Cole from Washington -- pardon  
5 me -- from Georgetown University School of Law. And I have  
6 given you the supporting data in my handout that has, that  
7 denotes 10 different studies now of the contraband found  
8 when minority and nonminority group members are searched by  
9 the police. And you can see that this ranges widely.

10 The first study occurred in 1995, which I  
11 conducted in the state of Maryland. And it goes through to  
12 the year 2000 of a study in Oakland, California. And there  
13 is a study from London, a study in traffic. There is a New  
14 York study of stop-and-frisk, which were pedestrians.  
15 There is a customs data, which are also not traffic  
16 studies.

17 The amazing thing about all of these studies  
18 is that they find the same thing: Minority group members,  
19 when searched, are not, not any more likely to be carrying  
20 contraband and in several instances are less likely to be  
21 carrying contraband than nonminority group members.

22 CHAIRPERSON COHEN: Excuse me. Dr. Lamberth,  
23 if you could summarize because we do have --

24 DR. LAMBERTH: I'm on my last sentence.

25 CHAIRPERSON COHEN: Thank you.

1 DR. LAMBERTH: My -- the import is here that  
2 not only does the stopping of minority group members cause  
3 problems and frustrations within minority communities, but  
4 it also turns out that it does not gain a thing even if it  
5 were constitutionally permissible. Thank you.

6 CHAIRPERSON COHEN: Thank you very much. I  
7 believe that Representative James has some questions.

8 REPRESENTATIVE JAMES: Thank you, Madam Chair.  
9 Thank you, Professor Lamberth, for testifying. And I don't  
10 know if you were here earlier. You were quoted by the  
11 State Police. So that shows your expertise.

12 What I'm going to ask you is -- and if you  
13 know -- if it's possible, let's say, if the Pennsylvania  
14 State Police or any police department in the state of  
15 Pennsylvania, you think they can ask for funds from the  
16 federal government such as happened in the other state you  
17 described, that maybe they can get money to help in terms  
18 of addressing racial profiling or conducting studies?

19 DR. LAMBERTH: Yes, I do. And if I may take a  
20 moment, I recently had a conversation with the Deputy  
21 Director of COPS, who indicated to me that some of their  
22 discretionary, more of their discretionary money this year  
23 would be spent for, for projects of this sort.

24 And so I, I firmly believe that there are more  
25 funds available and that they would be available to either

1 the State Police or various police departments or states if  
2 they wish to apply for them.

3           REPRESENTATIVE JAMES: Well, thank you.  
4 That's good to know. That will help us in our  
5 appropriations, with our appropriation this year. Okay.  
6 Thanks.

7           CHAIRPERSON COHEN: Thank you, Representative  
8 James. Dr. Lamberth, thank you very much. We appreciate  
9 you being here. We've been advised that the next person  
10 scheduled to testify, Burrell Brown, Esquire, the State  
11 Chapter of the NAACP, has been injured and will not appear  
12 before us.

13           So we'd like to welcome the Honorable State  
14 Representative Linda Bebko-Jones from Erie. We thank you  
15 for taking the time to be with us today. You may either  
16 read from your prepared remarks or just make a presentation  
17 to us, whichever.

18           REPRESENTATIVE BEBKO-JONES: Thank you. Good  
19 morning, Madam Chairman, members of the committee. First,  
20 I want to applaud the subcommittee on a very important  
21 issue and having these hearings here. I'm very honored to  
22 be one of the cosponsors of the resolution.

23           I'm also here not just wearing a hat as a  
24 State Rep. but the hat of the Mayor of the City of Erie and  
25 the hat of the Police Chief of the City of Erie. You have

1 packets in front of you with the Mayor's written testimony  
2 and our Police Chief's testimony.

3           But I think it's important to know that I  
4 might be quoting some remarks from the Mayor's testimony  
5 later on because I think they're very important for you to  
6 understand what we have been doing in the City of Erie.  
7 I'm very excited. I think what we have done in the City of  
8 Erie can serve as a model program.

9           Almost a year ago, we began meeting with  
10 different groups in our community regarding racial  
11 profiling. And as a result of meeting with different  
12 groups, we formed an alliance to see how we can begin to  
13 have a pilot program in Erie.

14           And as the Mayor indicated and so that  
15 everybody understands what we have begun in the City of  
16 Erie, I want to read what she has said about the alliance.  
17 "The alliance on the racial profiling study was  
18 established earlier this year in Erie.

19           The alliance is composed of the City of Erie;  
20 the Office of the Mayor; the Chief of Police; and the Erie  
21 Police, or the Erie Bureau of Police; the FOP; the local  
22 chapter of the NAACP; and the African-American Clergy of  
23 Erie"; and also our neighborhood watches, which we have 123  
24 of them in the City of Erie.

25           "The alliance came together largely because of

1 the national attention being focused on the issue of racial  
2 profiling. The local chapter of the NAACP and the  
3 concerned African-American clergy in the area met with me  
4 to express their opinion that racial profiling was  
5 occurring in our city.

6 I, along with the Chief of Police, held as  
7 strong an opinion that it was not and had never seen  
8 evidence to show the same. Rather than continue with  
9 dialogue where neither side could give hard evidence nor  
10 proof of such profiling, we took the joint position that we  
11 did not want such profiling to occur in Erie and the only  
12 manner in which to move from opinion or perception was to  
13 gather data.

14 In order to do so in a legal or constitutional  
15 manner, we developed an approach, found a nationally  
16 available informational gathering form that could be easily  
17 utilized by the police without being time consuming and  
18 found the hardware that could scan these forms easily and  
19 on a daily basis.

20 We also contacted various cities in the  
21 country who were employing racial profiling data gathering  
22 and programming to determine the basis of the best  
23 practices in implementing such a pilot program in Erie.  
24 The alliance then forwarded this information to our local  
25 district attorney, the State Attorney General, and Homer



1 Floyd of the State Human Relations Commission asking to  
2 review that information and asking for their input.

3           The alliance then sought a third party who  
4 could provide an objective analysis of the gathered data as  
5 well as formation of the data base and a structured program  
6 that would build in the appropriate variables that would  
7 need to be considered to receive an accurate and reliable  
8 analysis and determination of whether or not racial  
9 profiling was occurring in Erie. The third or neutral  
10 party selected was the Civic Institute at Mercyhurst  
11 College in Erie headed by Dr. Tom Gamble.

12           The pilot study has begun since September 1st  
13 of this year and is projected to run until September of  
14 2002. Regular meetings of the alliance have occurred both  
15 before and since the initiation of the pilot program. Erie  
16 City Council has also endorsed the pilot program by a  
17 resolution and has supported it financially both through  
18 the purchase of needed equipment and by the contract with  
19 the Civic Institute.

20           All police officers were trained in the use of  
21 the survey forms prior to the event of the pilot program."  
22 And you will see those forms that are included in our  
23 police chief's testimony. So, you know, Erie, I believe,  
24 began this without a mandate. And I'm really proud of my  
25 city for going forward with this.

1 I wanted to commend the subcommittee for  
2 addressing this matter. I realize that law enforcement  
3 agencies face daunting and challenging tasks in keeping us  
4 safe from crime. The horrible events of September 11th  
5 have certainly heightened this tremendous responsibility,  
6 and I'm sure that law enforcement agencies everywhere are  
7 under greater pressure from the public to do what it takes  
8 to protect them.

9 But equal treatment under the law is paramount  
10 to our democratic society. The residents of Pennsylvania  
11 must have confidence in the men and women whose job it is  
12 to protect and to serve. We've seen what happened in our  
13 neighboring state of New Jersey when lawmakers chose to  
14 ignore evidence of racial profiling.

15 Their failure to end this discriminatory  
16 practice forced the state to settle a costly lawsuit. But  
17 the reality that not all New Jersey residents had equal  
18 rights under the law cost the state even more. And there  
19 is evidence that law enforcement agencies in other states  
20 are using the tactic of race-based profiling as well.

21 Through the hearing process, members of the  
22 subcommittee have learned that racial profiling is a  
23 problem in Pennsylvania. We might not know yet if racial  
24 profiling is a systemic problem or one that is more  
25 prevalent in certain areas of the state than others.

1           But how widespread a problem it is I believe  
2 is irrelevant. The very perception itself that  
3 African-Americans, Latinos, and now possibly people of  
4 Middle Eastern descent are targeted by law enforcement for  
5 no other reason than they fit a race-based profile erodes  
6 the trust the people must have in law enforcement.

7           If we are to restore that confidence, we must  
8 develop effective policies that stop this act of  
9 discrimination. We owe it not only to the people of  
10 Pennsylvania but to the police officers who sacrifice their  
11 safety on a daily basis to ensure our public safety.

12           I support a package of bills introduced by my  
13 colleague from Philadelphia, Representative Harold James,  
14 that would require police training and studies to end the  
15 practice of racial profiling in Pennsylvania. And I would  
16 ask the members of the subcommittee and the General  
17 Assembly to do the same.

18           We must not tolerate racial profiling anywhere  
19 in Pennsylvania. In these difficult times, law enforcement  
20 must have the unwavering support of the general public. To  
21 ensure that, we must put an end to discriminatory law  
22 enforcement.

23           And, you know, besides the vehicle stops that  
24 we are doing in this pilot program in Erie, we are also  
25 doing pedestrian stops, if you've seen that in the Mayor's

1 testimony and the police chief's testimony. And some of  
2 you might know, some of you might not know -- and that's  
3 included in your package -- an article that appeared in our  
4 Erie paper where an expert credited Erie for our profiling  
5 study and what we are doing.

6           And that person is Ronald Davis, who is a  
7 38-year-old captain with the Oakland, California Police  
8 Department. And Davis came to Mercyhurst College and  
9 addressed the entire group of us that formed this coalition  
10 and really gave us credit for what we are doing.

11           And he also gave us suggestions of what we can  
12 do. And so after you review what I presented to you, I  
13 would really ask this committee to look seriously of what  
14 Erie is doing because I think we are in the forefront of  
15 this pilot program.

16           I know there's some communities around this  
17 Commonwealth who have not even begun to deal with this  
18 issue. They have been resistant. And that is natural. I  
19 think we had that with all the meetings that I attended.  
20 There was some resistance, obviously.

21           And I really believe this issue is just simply  
22 an issue of ignorance and nothing else. And I think we  
23 just need to educate more. So I thank you for the  
24 opportunity for me to present this information. I will  
25 take any questions from any members and be happy to answer

1 them if I can.

2 CHAIRPERSON COHEN: Thank you, Representative  
3 Bebko-Jones. We are indeed honored to have you present  
4 with us today. I believe that Representative Manderino has  
5 a comment or a question.

6 REPRESENTATIVE MANDERINO: Just a quick  
7 question. I notice that the form which was put into effect  
8 prior to September 11th actually has a classification for  
9 Middle Eastern. Did Erie develop the form, or did I hear  
10 you say you got the form from some national place?

11 REPRESENTATIVE BEBKO-JONES: What the Mayor  
12 and the Police Chief did was search out different national  
13 organizations for input, and that's where I believe that  
14 they got that information from to include that on the form.

15 REPRESENTATIVE MANDERINO: Thank you.

16 CHAIRPERSON COHEN: Thank you, Representative  
17 Manderino. Representative Washington.

18 REPRESENTATIVE WASHINGTON: Thank you, Madam  
19 Chair. We'd just like to thank our Representative for  
20 coming in and testifying today and for representing the  
21 Mayor and the Police Chief, and we want to just applaud you  
22 for the work that Erie has done in the area of racial  
23 profiling.

24 REPRESENTATIVE BEBKO-JONES: Thank you.

25 CHAIRPERSON COHEN: Thank you. Thank you very

1 much. Again, we appreciate you being here. The last  
2 person to make a presentation to us will be Larry Frankel,  
3 Executive Director of the American Civil Liberties Union in  
4 Philadelphia. You may proceed at any time. Thank you.

5 MR. FRANKEL: Thank you, Chairwoman Cohen and  
6 the other members of the subcommittee who are here today.  
7 I do not have written testimony. But I believe you've all  
8 been provided, through the House Judiciary Committee, a  
9 volume of information that my office has collected.

10 Largely, this contains copies of statutes from  
11 other states so that you would have some sense of how far  
12 behind Pennsylvania is in some regards with addressing this  
13 issue. And I also didn't prepare testimony because I was  
14 eager to hear what other witnesses had to say today.

15 And it seems to me, since the last hearing on  
16 this subject in December of '99, progress has been made.  
17 And I think we've heard about that progress today. And I  
18 think it points us all in directions where further progress  
19 can be made.

20 We heard about the voluntary efforts of the  
21 State Police and the City of Erie and the efforts being  
22 undertaken by Philadelphia and Pittsburgh. Those efforts  
23 may be indeed the result of lawsuits that were brought, but  
24 efforts are being undertaken to address the issue.

25 But I think it's also very valuable to recall

1 the testimony, at least of Professor Lamberth but alluded  
2 to by others, that I think is critical to reinforce and to  
3 begin to permeate throughout the Commonwealth. Not only is  
4 racial profiling unconstitutional, unethical, immoral, it's  
5 bad police practice.

6           It is not an effective means for necessarily  
7 identifying the real perpetrators on a consistent basis  
8 because it does not focus on conduct but rather focuses on  
9 appearance. Many perpetrators of crimes may elude the  
10 police because of that focus.

11           And I think if the training program includes  
12 really educating existing police and new police officers  
13 that it's not the most effective way of enhancing public  
14 safety, that understanding will become more central to the  
15 police function.

16           And there really will be less resistance to  
17 the data collection or some of the training methods once  
18 it's understood that what we're really trying to do is not  
19 only provide justice for everybody, which is important, but  
20 also promote public safety and promote, you know, the most  
21 effective method of policing.

22           So I think it's been tremendously important  
23 that we heard that testimony today and that that be  
24 repeated repeatedly so that it really does become part of  
25 what the public understands.

1           I think the training component is very  
2 important. I'm glad to hear that it's being undertaken. I  
3 think it does have to include diversity and sensitivity.  
4 But I also think it has to be much more specific like the  
5 Philadelphia video that just, this is wrong, you don't do  
6 it, and be very clear about it because all the sensitivity  
7 training may not mean much if people don't understand that  
8 it is not to be undertaken.

9           And while I don't think the Legislature can  
10 get into the minutiae of what is included in the training  
11 program, one hopes that the development of more materials  
12 that demonstrate to police officers why it's bad, how it  
13 may indeed be inadvertently engaged in would be valuable.

14           I'm also encouraged to hear about efforts to  
15 change the forms and the commitment of the members of this  
16 committee I think to prompt, to prompt AOPC to also move  
17 forward to changing the forms because without a change in  
18 forms, the data collection is really going to be very  
19 difficult.

20           Unless there's some place on the forms to  
21 indicate the perceived race -- and I would agree that the  
22 perceived race is what is important -- then it's going to  
23 be difficult to actually look at an aggregate amount of  
24 data if you don't know what is the perception of the  
25 arresting officer.



1           The development of new forms that include  
2 information not only as to race but whether somebody was  
3 searched, whether there was, what was the basis for the  
4 stop, what was the basis for the search, whether a citation  
5 or some other kind of document was issued and if not, some  
6 indication why not, all of that is important for really  
7 effective data collection.

8           The commitment that I hear to developing data  
9 collection -- and I'm tremendously encouraged by the fact  
10 that the State Police are undertaking a, you know, an  
11 external study, an external review -- that is the key to  
12 rooting out the problem.

13           It is very difficult to look at isolated  
14 incidents. And maybe there were only 20 complaints over 5  
15 years to the State Police. But how many people never  
16 thought that there was any place to complain to? I mean, I  
17 don't think that's really the indication.

18           I think it's the kind of external review of  
19 data collection that will make a difference. And I'm  
20 encouraged that the State Police are doing it, encouraged  
21 that the City of Erie is doing it, pleased that it's going  
22 on in Philadelphia and Pittsburgh.

23           But that means there's a whole lot of the rest  
24 of the state where it's not going on at the moment. And we  
25 need to encourage, if not compel, that kind of data

1 collection elsewhere.

2           The analysis is also important, and it's also  
3 very encouraging to hear that more sophisticated analysis  
4 is being undertaken. Maybe there were indeed problems with  
5 census data as the comparison, but it takes time to really  
6 develop the sophisticated methods. And we've heard that  
7 testimony today.

8           And to the extent that the Legislature can  
9 encourage further development of appropriate comparative  
10 data, I think that is very valuable. How does the  
11 Legislature do that? Probably through funding or probably  
12 through suggesting to the appropriate officials there may  
13 be federal funding. That may actually be an easier task  
14 than the state funding at this point.

15           But I think funding will be critical. Funding  
16 will be critical for departments to voluntarily undertake  
17 data collection and voluntarily undertake new training  
18 programs. Or if you compel them, funding will definitely  
19 be absolutely critical because you don't want to be, have  
20 this become an unfunded mandate and then resented by  
21 departments all over the state.

22           But I think what's also important is there  
23 have to be real consequences and not just data collection  
24 and not just analysis but real consequences. Consequences,  
25 when it's determined that there is a pattern of practice,

1 whether it's within individual officer units,  
2 department-wide, if there isn't consequences, all the  
3 analysis, all the data collection isn't going to matter in  
4 the end.

5           There also have to be consequences for not  
6 completing the forms. One of the problems we saw with the  
7 first go-around in reviewing data from Philadelphia Police  
8 Department is that many of the forms were not completed.  
9 Much of the critical information was not included.

10           So if there is to be legislation or even if  
11 this can be accomplished without legislation, unless there  
12 is some enforcement and discipline associated with it, it's  
13 probably not going to accomplish everything that could be  
14 accomplished.

15           That discipline may take the form of we're  
16 going to bring in officers, show them the data and talk  
17 about further training, further counseling. Repeated  
18 violations may require other discipline. But it's  
19 important that that be a component of whatever package of  
20 legislation or recommendations come forth.

21           I would also like to address, since it came up  
22 with regard to a couple of witnesses, the legislation  
23 regarding the audiotaping, the videotaping. And my  
24 recollection from legislation similar to this from the last  
25 2 sessions is there's a couple of very important issues to

1 look at as that legislation proceeds, whether as originally  
2 written or as amended through the process.

3           And the 2 factors that I recall more  
4 specifically at this point is looking at who controls when  
5 that audiotape goes on, making sure it goes on and cannot  
6 be shut off. It's an audiotape. It's a tape recording,  
7 and it can be real convenient to shut it off when you don't  
8 want things heard. And it's never been clear to me in some  
9 of the bills that have passed that there's some real  
10 control mechanism there.

11           The second aspect that showed up -- and I  
12 think this was when the bill was in the Senate last session  
13 toward the end -- were exceptions for use of those  
14 audiotapes and that they could not be used in certain  
15 disciplinary proceedings.

16           So we were going to have audiotapes to be used  
17 to rebut false claims of bias, but they couldn't be used if  
18 management thought that police officers had done something  
19 inappropriate and it was caught on the tape. It may sound  
20 like a good tool. But unless there are proper controls on  
21 it, it will indeed be very, very subject to abuse and may  
22 not actually accomplish what one would hope it would  
23 accomplish.

24           And then as a final comment just in reflection  
25 on the events, the tragic events of September 11th, while

1 that may require us to rethink some issues with regard to  
2 airports -- although, I am sceptical even with regard to  
3 airports because from what I've read -- and we don't know  
4 everything -- there was plenty of conduct engaged in by at  
5 least some of the alleged perpetrators that should have  
6 triggered somebody asking questions without regard to their  
7 ethnicity, you know.

8           Showing up with cash for tickets for a one-way  
9 flight and the kind of nervousness that was displayed in an  
10 airport have always been indicators that, you know, you  
11 stop and take a look. I think that we need to keep in mind  
12 that the tragic events of September 11th had nothing to do  
13 with what goes on on highways and sidewalks in the  
14 Commonwealth of Pennsylvania and should not be used as any  
15 kind of rationale or justification for not addressing what  
16 goes on on the highways and sidewalks of Pennsylvania.

17           And I don't think anybody here today suggested  
18 that it should. I haven't heard that in this room, but I  
19 have heard it elsewhere. And I think that it should be  
20 time to say no, you know, this is not -- that is truly  
21 mixing apples and oranges.

22           And the other factor is going back to the  
23 whole notion of it being ineffective police procedures.  
24 There are some -- and I happen to be one at this  
25 point -- thinking that ethnic profiling in airports is

1 going to very soon prove to be an ineffective police  
2 procedure.

3           And some people are going to figure out what  
4 the profile is and figure out real quickly and real easily  
5 how to evade it. I mean, it strikes me the kind of people  
6 who can -- I don't know how their minds work -- but can put  
7 together the kind of horrific scheme of September 11th can  
8 easily figure out how to get around any type of ethnic  
9 profiling scheme in an airport.

10           It's not going to be an effective tool. We  
11 need to focus on conduct. We need to focus on how to  
12 develop the kind of resources that will help us prevent  
13 this. And it's not clear that profiling really prevents  
14 those kind of crimes from occurring.

15           So thank you. I commend you for your work. I  
16 particularly commend Representative James for his  
17 persistence on this issue because I think what I have heard  
18 today makes me feel that that work, that his persistence,  
19 with a little help from my organization, has paid off in  
20 moving some departments in this state forward. And  
21 hopefully we can move others forward as well.

22           CHAIRPERSON COHEN: Thank you, Mr. Frankel. I  
23 certainly, after that comment, would not deny  
24 Representative James an opportunity to make a statement.

25           REPRESENTATIVE JAMES: Thank you, Madam Chair.

1 And thank you, Larry Frankel and the ACLU, for all your  
2 hard work and help keeping me along with this persistence.  
3 And I think that I just would encourage that you continue  
4 to work with us and all of those that testified continue to  
5 work with us.

6 I just also -- in terms of the Philadelphia  
7 Police and the lawsuit, how has that -- I mean, is that  
8 still ongoing and you're still monitoring that? And does  
9 it seem to be working out?

10 MR. FRANKEL: The lawsuit, which was a  
11 settlement agreement, is still being under court  
12 supervision. I think that not only was it as a result of  
13 our lawsuit; but I think that the Police Commissioner  
14 Timoney has a very contemporary, or even, even more  
15 forward-thinking in a contemporary sense about changes that  
16 need to be made for effective policing.

17 I think between the judge in that case, a  
18 forward-looking attitude on the part of the Police  
19 Commissioner, and a little bit of prodding from, you know,  
20 the lawyers from our organization, that progress has been  
21 made, that more progress will need to be made.

22 You're trying to root out practices that go  
23 back many, many, many years and attitudes that go back many  
24 years. But it's still under court supervision, and there  
25 are still aspects that are being worked on.

1                   CHAIRPERSON COHEN: Thank you again. We  
2 appreciate your being here. And my thanks to all of those  
3 who came early this morning and made presentations to us.  
4 As I mentioned at the beginning of the hearing, if there is  
5 anyone here that would like to make a presentation to us,  
6 you're more than, if you're willing to send us written  
7 statements, we will add those statements to the record.

8                   Additionally, we will be holding other  
9 hearings. So if there's anyone that is here present today  
10 or anyone that's watching us on television that would like  
11 to have their voices heard, by all means, please contact me  
12 as the Chair of this committee, of the subcommittee. And  
13 we will schedule your presentations at future hearings.

14                   Again, our thanks to everyone. This hearing  
15 is adjourned.

16                   (Whereupon, at 11:16 a.m., the hearing  
17 adjourned.)

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1 I hereby certify that the proceedings and  
2 evidence are contained fully and accurately in the notes  
3 taken by me during the hearing of the within cause and that  
4 this is a true and correct transcript of the same.

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11 JENNIFER P. McGRATH

12 Registered Professional Reporter

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17 My Commission Expires:

18 April 30, 2005

19  
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21  
22  
23 JENNIFER P. McGRATH, RPR  
24 P.O. Box 1383  
25 2nd & W. Norwegian Streets  
Pottsville, Pennsylvania 17901

JENNIFER P. McGRATH, RPR  
(570) 622-6850