Racial Profiling in Vermont

Briefings Before
the Vermont Advisory Committee to the
United States Commission on Civil Rights

Briefing Report

Letter of Transmittal

Vermont Advisory Committee to
the U.S. Commission on Civil Rights

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The Vermont State Advisory Committee submits this report, *Racial Profiling in Vermont,* as part of its responsibility to advise the Commission on civil rights issues in Vermont. The Committee approved this report in a vote of 17 to 0.

In June and July 2008, the Committee invited law enforcement representatives, government officials, scholars, advocacy group representatives, community representatives, and the public to participate in the briefings. The Committee learned that there remains a strong perception, particularly among persons of color, that actual or perceived race, ethnicity, or national origin is used as the basis for law enforcement decision-making for traffic and pedestrian stops. At the same time the Committee learned that the leadership of many of Vermont's law enforcement agencies is committed to addressing this issue head-on.

The Committee recognizes that issues of racial profiling and bias-based policing have long been challenging ones for law enforcement, policy-makers, and the public. Discussions about racial profiling often concentrate exclusively on the presence or absence of racial animus in conducting traffic stops. A focus on this aspect of racial profiling often does not lead to constructive dialogue or effective solutions and may only result in some members of the public asserting, and police denying, that racial profiling occurs. The Committee, therefore, wanted the dialogue to move past perception, rhetoric, and accusation to a comprehensive approach that includes law enforcement and the community working together to build trust. Thirty percent of Vermont's population growth between 1990 and 2006 is attributed to ethnic and racial minorities, including immigrants. The Committee is concerned that inaction or ineffective action with regard to racial profiling will breed greater distrust between law enforcement and persons of color as Vermont's population grows more multiracial, multiethnic, and multilingual.

Based on the briefings, the Committee offers the enclosed report and recommendations:

- The Vermont State Police should promptly begin collection traffic stop data collection. State officials testified that they have been developing a system for race data collection

and have committed to collect traffic stop data statewide. The Committee makes this recommendation because the State Police are Vermont's largest law enforcement service provider, have the highest volume of interactions with vehicle drivers, and are in the best position to collect significant statistical data. Other Vermont law enforcement agencies should voluntarily collect traffic stop data in order to ensure transparency and build public confidence in their integrity, fairness, and professionalism.

- The Vermont Attorney General, in consultation with local, county and state law enforcement agencies and other stakeholders, should develop and issue a model bias-free policing policy that defines professional standards and expectation, establishes an early intervention system for complaints and concerns, and provides remedial steps, including disciplinary action as appropriate, for policy violations. All law enforcement agencies should adopt a version of the model policy. Law enforcement agencies should also develop a visible and readily accessible complaint redress system responsive to individual bias complaints.
- Mandatory comprehensive training on anti-bias policing should be expanded at the police academy for officer certification and continue by means of in-service training throughout a police officer's career.
- Video cameras should be installed in all front-line patrol vehicles and used to record all motor vehicle stops. The equipment must be properly maintained and recordings retained for an appropriate period of time.
- Police departments should strive to develop police-community partnerships, such as the Uncommon Alliance, that promote bias-free law enforcement practices and mutual understanding and respect between the police and the public.
- The Vermont Legislature should consider legislation that prohibits profiling of motorists and pedestrians solely on the basis of actual or perceived race, ethnicity, or national origin. The Legislature should further consider convening and appropriately empowering an oversight commission charged with monitoring local and statewide initiatives to address racial profiling.

The Committee's findings and recommendations are detailed in the accompanying report.

The Committee believes this report will enhance public understanding of the challenges racial profiling poses for law enforcement and the public, particularly persons of color, and identify steps that might be taken by law enforcement agencies to improve accountability measures, increase the effectiveness of law enforcement practices, and build trust between the community and law enforcement agencies.

Sincerely,

Curtiss Reed, Jr., *Chairperson*
Vermont Advisory Committee

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Introduction

> An African American graduate student was here in Vermont for a year. During that year, he was stopped 13 times by the police, never given a traffic ticket, never arrested for anything. Apparently he was violating no laws, yet he was regularly subjected to stops.
>
> On his first day in Vermont, he was stopped twice. What message are we sending to people?[1]

The topic of racial profiling – the t use of race as the basis for law enforcement decision-making – has been a prominent, provocative, and sensitive issue for many years. In February 2001, President Bush called for an end to racial profiling, stating "It's wrong, and we will end it in America."[2] President Obama wants to "ban racial profiling by federal law enforcement agencies and provide federal incentives to state and local police departments to prohibit the practice."[3]

In addition to being "wrong," racial profiling is an ineffective law enforcement practice steeped in racial and cultural stereotypes and erroneous assumptions about the propensity of people of color to commit particular types of crimes. Many people of color have experienced the humiliation of being unfairly targeted while driving, flying, shopping, or even walking.

In 2001, the "End Racial Profiling Act of 2001" was introduced in the United States Senate.[4] The bill recognized that "statistical evidence from across the country demonstrates that racial profiling is a real and measurable phenomenon." The bill was not passed that year, or when it was reintroduced in 2004 and 2007.

In Vermont, in 2001, House Representative Michael Kainen introduced a bill acknowledging that "the practice of 'racial profiling,' the disparate treatment of any person on the basis of race or ethnic origin by a law enforcement officer acting in an official capacity, has become a significant problem in many areas of the country."[5] He noted that Vermont continues to become more racially and ethnically diverse and recommended the creation of a task force to examine the issue of racial profiling to allow "officials [to] assess the extent of racial profiling in Vermont so that if

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[1] Anna Saxman, testimony before the Vermont State Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, July 17, 2008, transcript, p. 34.

[2] "President George W. Bush, Address before A Joint Session of the Congress on Administration Goals," 37 WEEKLY COMP. PRES. DOC. 9 (Feb. 27, 2001). Attorney General John Ashcroft stated he agreed with President Bush and that "[u]sing race... as a proxy for potential criminal behavior is unconstitutional, and it undermines law enforcement by undermining the confidence that people can have in law enforcement." United States Department of Justice, Fact Sheet, http://www.usdoj.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf (last accessed Apr. 27, 2009. Despite the admission that racial profiling was "wrong," the administration subsequently used racial profiling in public policies such as the National Security Entry/Exit Registration System, which required male visitors over age 16 from 24 Arab and Muslim countries and North Korea to register and submit to interrogation.

[3] "The White House, Civil Rights Agenda," http://www.whitehouse.gov/civil_rights/ (last accessed May 27, 2009).

[4] "End Racial Profiling Act of 2001," S. 989, 107th Cong. (2001).

[5] "An Act Relating to the Establishing of a Racial Profiling Task Force," H. 407, Gen. Assem., Gen. Sess. (Vt. 2001), available at http//www.leg.state.vt.us/DOCS/2002/BILLS/INTRO/H-407.HTM (last visited May 27, 2009).

racial profiling is found to be occurring, remedies can be fashioned to address it promptly and effectively."[6] The task force was not established, nor has the state enacted a law that specifically bans racial profiling.[7]

In June and July 2008, the Vermont State Advisory Committee ("Committee") held two public briefings to hear from law enforcement representatives, governmental officials, scholars, advocacy group representatives, community representatives, and others about possible profiling problems in Vermont and to explore possible solutions. The first briefing primarily focused on police stops and possible racial profiling. After the briefing concluded, the Committee decided to convene another briefing to invite state officials, additional members of law enforcement, and members of advocacy groups to continue the discussion about racial profiling. The Committee wanted to learn more about potential bias throughout the criminal justice system, starting with the possible over-identification of people of color for traffic stops and continuing through to post-arrest and post-detention decisions.

Chapter One: Background on Racial Profiling – The National Context

In the early 1990s, and through the start of the new century, complaints of racial profiling or "driving while black" gained national attention.[8] A number of states, including New Jersey, Maryland, Pennsylvania, Florida, Colorado, and Connecticut, were parties to civil actions resulting from complaints of racial profiling.[9] As a result of the litigation, some law enforcement agencies were placed under consent decrees, while other jurisdictions passed legislation relating to racial profiling; in addition, other agencies voluntarily developed and entered into data

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[6] See *id.*

[7] The Bill was referred to the Government Operations Committee; no action was taken. Vermont State Legislature, "The Vermont Legislative Bill Tracking System. Current Status of a Specific Bill or Resolution 2001-2002 Legislative Session." http://www.leg.state.vt.us/database/status/summary.cfm?Bill=H.0407&Session=2002.

[8] The issue of racial profiling is not limited to traffic stops. There are many venues distinct from law enforcement in which concerns about the use of racial profiling are expressed, such as surveillance of persons in retail shops and traveler searches. For example, in 2000 the General Accounting Office found that African American women were nine times more likely than white women to be subjected to x-ray searches by U.S. Customs officials. U.S. GOV'T ACCOUNTABILITY OFFICE, U.S. CUSTOMS SERVICE: BETTER TARGETING OF AIRLINE PASSENGERS FOR PERSONAL SEARCHES COULD PRODUCE BETTER RESULTS, GGD-00-38 (2000).

[9] There were cities alleged to engage in racial profiling as well. For example, in Cincinnati, Ohio, the Department of Justice ("DOJ") joined a lawsuit filed by the ACLU and the Cincinnati Black United Front, alleging that police used excessive and deadly force against African Americans more often than against non-minority citizens. DOJ subsequently negotiated a Memorandum of Agreement that settled the suit. In Columbus, Ohio, DOJ investigated the allegation that the city and the law enforcement office of Columbus engaged in a practice of racial profiling and using excessive force against minority citizens at a higher rate than against non-minority citizens. DOJ subsequently accepted a proposal by the Columbus mayor that included a promise to implement significant changes and improvements to the police department's policies and procedures. In Illinois, the City of Highland Park entered into a consent decree after "the policies, practices, and customs of the Highland Park Police Department were found to target persons on the basis of race or ethnicity for surveillance, stops, detentions, interrogations, requests for consent to search, and searches." Data Collection Resource Center at Northeastern University, Legislation and Litigation: DOJ Investigations," http://www.racialprofilinganalysis.neu.edu/legislation/doj.php (last accessed May 29, 2009.

collection projects to assess the extent of the problem. A broad and diverse spectrum of political leaders, the courts, and the public "condemned" racial profiling.[10]

Concerns about racial profiling increased after the destruction of the World Trade Center towers and the launch of "the war on terror," which resulted in an expansion of police powers and the erosion of constitutional protections for many individuals, especially immigrants from predominantly Muslim countries. The most sweeping of the federal initiatives are the USA PATRIOT ACT[11] and the REAL ID Act.[12]

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[10] "Racial profiling" is variously defined, and the definition is itself controversial. Vermont Attorney General William Sorrell stated as follows: "Racial profiling, in the narrow sense, refers to a police practice of consciously or unconsciously identifying a particular racial or ethnic group as being more likely than others to be guilty of, or more prone to, committing criminal acts." William Sorrell, testimony before the Vermont State Advisory Committee to the U.S. Commission on Civil Rights, briefing, Montpelier, VT, July 17, 2008, transcript, p. 28 (hereafter cited as Briefing Transcript). This definition is consistent with that of the Congressional Research Service, which defines racial profiling as "the practice of targeting individuals for police or security interdiction, detention, or other disparate treatment based primarily on their race or ethnicity, in the belief that certain minority groups are more likely to engage in unlawful behavior." Library of Congress, Congressional Research Service, "Racial Profiling: Issues and Federal Legislative Proposals," available at https//www.policyarchive.org/handle/10207/1937 (last accessed May 27, 2007). Perhaps most revealing of the acceptance of the concept of racial profiling is that, in 1999, the Oxford American Dictionary provided a definition of racial profiling for the first time: "Racial profiling: an alleged police policy of stopping and searching vehicles driven by people from particular racial groups."

Generally, as used in this report, the term concerns "the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement investigative procedures. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity." Civil Rights Division, Department of Justice, Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, 2003, available at http://www.usdoj.gov/crt/split/documents/guidance_on_race.php (last accessed May 27, 2009). Another definition is found in a paper that explores under what, if any, circumstances race may be used legitimately by law enforcement officials: "any police-initiated action that relies on the race, ethnicity, or national origin and not merely the behavior of an individual." Mathias Risse, Racial Profiling: A Response to Two Critics 2 (John F. Kennedy School of Government, Harvard University, Faculty Research Working Papers Series, RWP06-042 Sept. 2006), available at http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP06-042/$File/rwp_06_042_risse_SSRN.pdf (last accessed May 27, 2009).

[11] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

[12] Making Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief, Pub. L. No. 109-13, 119 Stat. 231 (2005). Additionally, in September 2008, Attorney General Michael Mukasey significantly expanded the authority of the FBI to use intrusive investigative techniques to collect information about innocent Americans. *See* Department of Justice, THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS, http://www.justice.gov/ag/readingroom/guidelines.pdf (last access June 9, 2009). In the past, "the FBI could use these techniques – tasking informants, pretext interviews, and physical surveillance – only when it had some suspicion of criminal activity or a threat to national security relating to a specific individual or a group." CDT Policy Post 14.16: Investigative Guidelines Cement FBI Role as Domestic Intelligence Agency, http://www.mail-archive.com/cdt-announcements@cdt.org/msg00556.html (last accessed July 14, 2009). Because the Guidelines allow investigations without particularized suspicion, they may "increase the risk that agents will substitute for evidence of crime their own assumptions and even prejudices about who should be investigated, thus increasing the risk of racial profiling." *Id.*

In June 2003, acting on President Bush's directive, the Department of Justice issued guidance that "bar[red] federal law enforcement officials from engaging in racial profiling – even where such profiling would otherwise be permitted by the Constitution and laws. Specifically, the guidance provides that in making routine law enforcement decisions – such as deciding which motorists to stop for traffic infractions – consideration of the driver's race or ethnicity is absolutely forbidden."[13] Federal agencies, rather than state and local law enforcement agencies, are the front-line responders to national security threats.

The primary relevance of "racial profiling" in the state and local context involves the use of race as a factor in the description and/or apprehension of persons suspected of violating state or local laws.[14] This use of race occurs in the context not only of detaining a single individual but, in some situations, of creating a "dragnet" that implicates many innocent persons.

The argument advanced against the use of racial profiling in state and local law enforcement identifies both moral and pragmatic considerations. As the Department of Justice Guidance on racial profiling observes:

> Racial profiling in law enforcement is ... ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society. ... The use of race as the basis for law enforcement decision-making clearly has a terrible cost, both to the individuals who suffer invidious discrimination and to the Nation, whose goal of 'liberty and justice for all' recedes with every act of such discrimination.[15]

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[13] Department of Justice, "Justice Department Issues Policy Guidance to Ban Racial Profiling," available at http://www.usdoj.gov/opa/pr/2003/June/03_crt_355.htm (last accessed June 22, 2009).

[14] Despite the common themes that underlie the use of any racial profiling, a distinction has been drawn in many quarters between national security and other law enforcement activities. For example, in a 2003 policy statement, DOJ sanctioned its use in national security defense, but restricted its use in other types of domestic law enforcement. *See* "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," *supra* note 10 ("The above standards do not affect current Federal policy with respect to law enforcement activities and other efforts to defend and safeguard against threats to national security or the integrity of the Nation's borders, to which the following applies:

> In investigating or preventing threats to national security or other catastrophic events (including the performance of duties related to air transportation security), or in enforcing laws protecting the integrity of the Nation's borders, Federal law enforcement officers may not consider race or ethnicity except to the extent permitted by the Constitution and laws of the United States").

[15] Id. Tim Bombardier, Chief of the Barre Police Department and former Captain and Assistant Commander of the Criminal Division of the Vermont State Police, made precisely this point in a Barre-Montpelier Times Argus article covering racial profiling. The Chief stated that the best reason for avoiding racial profiling, "other than that it's wrong" is that it does not reflect good police work: officers must examine the 'totality of the circumstances' when conducting investigations, including traffic stops and focusing on race interferes with an officer's ability to detect more pertinent information. Peter Hirschfeld, "Vermont Police Accused of Racial Bias," Barre-Montpelier Times Argus, June 15, 2008. See also Michael Mello, written testimony to Vermont State Advisory Committee to the U.S. Commission on Civil Rights, June 12, 2008, pp. 4-5 ("Racial profiling is profoundly wrong. It is racism unworthy of the United States and of Vermont. Racial profiling corrodes the community trust essential to police work. It

A focus on efficacy may ultimately provide the most cogent arguments for change in law enforcement practices involving racial profiling. For example:

- Although overt racism is declining in this country, studies demonstrate the continuing prevalence of racial biases, including those that may be subconsciously motivated.[16] These biases affect eyewitness suspect descriptions; which influence law enforcement activity. In addition, individual law enforcement officers may harbor biases when responding to or acting independently of eyewitness reports.
- The creation of accurate suspect descriptions is essential to effective investigations. The quality of the training that law enforcement officers receive about conducting witness interviews may not be adequate; one research team recommended that formal training should encompass medico-scientific advances in memory and cognition skills.[17]
- Studies demonstrate that law enforcement officers use race in surveillance and when conducting traffic stops. These practices have a disproportionate impact on persons of color, resulting in their increased distrust of the law enforcement and criminal justice systems.[18] Perhaps as compelling from a law enforcement standpoint, hit rate data emanating from several studies suggest that race-based stops and searches of minorities yielded fewer hits on a percentage basis than traditional, behavior-based stops of whites, giving rise to the question of whether using racial and ethnic profiles is, in fact, an effective crime-fighting tool.[19]

In sum, when police use race as a proxy for criminal suspicion, not only is it ineffective but it puts the general public at risk. If law enforcement officials focus on race while other significant and relevant features go overlooked and unnoticed, it makes it more likely that a criminal who does not "fit the profile" will not be identified and apprehended. Additionally, it is clear that

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relegates some Vermonters to second-class citizen status. It sows distrust of all police and breeds contempt for the rule of law....").

[16] Priyamvada Sinha, Police Use of Race in Suspect Descriptions: Constitutional Considerations, 31 N.Y.U. REV. L. & SOC. CHANGE 131, 132 (2006).

[17] Ronald P. Fisher, R. Edward Geiselman & David S. Raymond, Critical Analysis of Police Interviewing Techniques, 15 J. POLICE SCI. & ADMIN. 177, 185 (1987). *See also* remarks of Dr. Laura Fishman in Chapter Three of this report.

[18] As one expert observed, "While no one can know the motivation of each individual trooper in conducting a traffic stop, the statistics ... representing a broad and detailed sample of highly appropriate data, show without question a racially discriminatory impact on blacks. ... The disparities are sufficiently great that, taken as a whole, they are consistent and strongly support the assertion that [police] targeted the community of black motorists for stop, detention, and investigation." Report of Dr. John Lamberth (plaintiff's expert), Wilkins v. Md. State Police (D. Md. 1993) (Civ. No. MJG 93-468) (cited in David A. Harris, Profiles in Injustice: Why Racial Profiling Cannot Work 62 (2002)).

[19] David A. Harris, Symposium: New Approaches to Ensuring the Legitimacy of Police Conduct: Racial Profiling Redux, 22 ST. LOUIS U. PUB. L. REV. 73, 82-83 (2003). For a sophisticated analysis of the complexity of racial profiling issues – including interpreting "hit rates" – and a discussion of the Harris thesis, see Bernard E. Harcourt, Rethinking Racial Profiling: A Critique of the Economics, Civil Liberties, and Constitutional Literature of Criminal Profiling More Generally, 71 U. CHI. L. REV. 1275 (2004).

using race as the sole or a primary factor adversely impacts the relationship between law enforcement agencies and persons of color in the community, undermining trust and cooperation in law enforcement efforts. Finally, reliance on race in the identification of suspects may compromise the efficacy of investigations and ultimately the integrity of the criminal justice system.

Chapter Two: Background on Racial Profiling - The Vermont Context

As of 2009, the Vermont population was estimated to be 621,270, an increase of 2.0 percent over the 2000 census. The U.S. Census Bureau reported the following race/ethnicity data: White: 96.5 percent; Asian: 1.2 percent; Hispanic or Latino origin: 1.3 percent; persons reporting two or more races: 1.1 percent; Black: 0.8 percent; American Indian and Alaska Natives: 0.4 percent; foreign-born persons (year 2000): 3.8 percent.[20] Among those foreign-born is a significant and growing refugee population comprised of persons from various and diverse countries, including Bosnia, Bhutan, Burma, Burundi, China, the Congo, Iraq, Russia and former Soviet Union republics, Somalia, Sudan, Togo, and Vietnam.

Several initiatives sought to identify and address challenges faced by the small but growing populations of persons of color in Vermont.

- During the 2001-2002 Legislative Session, H.407, as noted above, was introduced. Its sponsor sought to create a task force to examine racial profiling and disparate treatment of persons on the basis of race or ethnic origin by any law enforcement officer acting in an official capacity in Vermont. The bill envisioned that the task force would report its findings and recommendations to the General Assembly and the Governor. The legislative effort did not succeed.

- In 2002, the Burlington Police Department adopted a "bias-free" policing policy. The policy affirmed the department's commitment to unbiased policing, prohibiting officers, except in limited circumstances, from considering race, ethnicity, gender, or other potentially improper criteria when making law enforcement decisions.

- In 2002, the Vermont Advisory Committee to the U.S. Commission on Civil Rights embarked upon a review of initiatives taken in response to its 1999 report, *Racial*

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[20] U.S. Census Bureau: State and County QuickFacts (last rev. Jan. 2, 2008). These data contrast starkly with the following 2006 U.S. race/ethnicity data: White: 80.1 percent; Hispanic/Latin: 14.8 percent; Black: 12.8 percent; Asian: 4.4 percent; American Indian/Alaska Native: 1.0 percent; foreign-born persons (year 2000): 11.1 percent. Similar data appear in a Demographic and Economic Profile on Vermont updated by the Rural Policy Research Institute, Truman School of Public Affairs, University of Missouri-Columbia in November 2006: State population of 623,050 in July 2005 (up 2.3 percent from the 2000 Census); White: 96.9 percent ; Hispanic: 1.1 percent; Asian: 1.0 percent; African-American: 0.6 percent. The latter study notes that many areas in Vermont have experienced significant growth in the number of Hispanic residents during past 15 years; in nine counties, the Hispanic population more than doubled between 1990 and 2005. Studies also show that, except for Native Americans, non-White residents overwhelming reside in Chittenden County. Center for Rural Studies, Vermont Center for Geographic Information, Vt. Indicators Online (last rev. Aug. 18, 2006).

Harassment in the Vermont Public Schools. The Committee issued a follow-up report in October 2003, the result of which was the enactment of statutory provisions, effective July 1, 2004, that addressed harassment in Vermont schools and incidents based on or motivated by a student or student's family's actual or perceived status, including race, creed, color, or national origin.

- In 2003, the Vermont Center for Justice Research conducted research on disparities in the criminal justice system and issued a report titled "Exploring the Dynamics of Race and Crime Using Vermont NIBRS Data."[21] The report concluded that in Vermont "Blacks experienced a significantly higher likelihood of arrest than whites or other minorities for all offense types except crimes against society." [22]

- In 2003, the U.S. Customs and Border Patrol, a subdivision of the Department of Homeland Security, instituted traffic "checkpoints" on I-91 south of White River Junction, generating inquiries and complaints about racial profiling to the Vermont American Civil Liberties Union. A Vermont ACLU advisory noted that, although the Border Patrol denied engaging in racial profiling, "anecdotally it appears that Caucasians of European descent are rarely detained for extensive questioning, while people of color, Hispanics, Middle Easterners, and Asians are singled out. Op-Ed pieces in *The Boston Globe* and other papers characterized the I-91 stop 'The Whiteness Checkpoint.'"[23]

- In 2003, the Burlington Anti-Racism Coalition (BARC) was founded, stating it would focus its efforts on legislation, action, and "study circles." It became active in lobbying for anti-racial harassment legislation governing public schools. It asked merchants in the major municipal retail district, Church Street Marketplace, to sign a "Statement of Goodwill," affirming their intent to treat all customers with fairness and dignity and to refrain from targeting persons for special surveillance on the basis of their color, creed, or national origin. Over 55 merchants cooperated with the request.

- Also in 2003, BARC, assisted by the Connecticut-based Study Circles Resources Center, planned and delivered a series of "study circles" on racism. A wide array of community groups and persons (representing grassroots activists, the school district, local and state officials, United Way, the Center for Community and Neighborhoods, local media, and others), totaling approximately 250 individuals, participated in 20 circles. The initiative resulted in the creation of action groups to address schools; businesses; housing; media;

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[21] William Clements, VERMONT CENTER FOR JUSTICE RESEARCH, EXPLORING THE DYNAMICS OF RACE AND CRIME USING VERMONT NIBRS DATA: EXECUTIVE SUMMARY (Jan. 2003), *available at* http://www.jrsainfo.org/ibrrc/background-status/Vermont/vermont_race.pdf (last visited May 27, 2009). Examples of crimes against society include drug and drug equipment violations, weapons law violations, gambling, pornography, and prostitution offenses.

[22] *Id.*

[23] ACLU of Vermont, Border Patrol Stops, http://www.acluvt.org/issues/border_patrol_stops.php (last accessed May 27, 2009). See also Testimony of Leslie Holman, Esq., immigration attorney, Vermont Advisory Committee Hearing, Montpelier, Vermont, March 31, 2006 (disproportionate detention of minority persons).

government and civic participation; community resources; community awareness and education; and celebrations, arts and culture.

- In 2004, the ALANA Community Organization, located in Brattleboro, Vermont, disseminated a survey designed to examine the nature of the interactions between ethnic, racial, and linguistic minority households and the Brattleboro Police Department ("BPD").[24] It found, that the statistical data supported anecdotal evidence of disproportionate contact between those households and the BPD, and that over 80 percent of the respondents felt that racial profiling was occurring (with 52.4 percent characterizing it as a "serious problem"). ALANA initiated the survey in response to a BPD survey of voters at the polls in March 2003, the results of which, the BPD maintained, demonstrated the adequacy of Departmental policies and procedures. The Police Chief questioned the focus of the survey on police misconduct that allegedly occurred two years prior and noted that the Department had since adopted a bias-free policy. Controversy persisted as to whether a Civilian Police Communications Committee, established to address complaints against police officers, had adequate investigative powers and whether data were available to track concerns regarding disparate treatment based on minority status.

- In 2005, an initiative known as the "Uncommon Alliance" started in Chittenden County. The Alliance engages community activists and residents, clergy, the State's Attorney's office, legislators, the Vermont Human Rights Commission, the Vermont State Police, refugees, neighboring police department personnel, and others on issues relating to the experiences of African Americans, African refugees, and other ethnic minorities with respect to law enforcement, with a special focus on racial profiling. The group established a steering committee comprised of racial, ethnic, religious, and national minorities whose members provide guidance to Uncommon Alliance committees and who also report back to Alliance participants on developments. The committees address data collection (planning and collaborating on a race data collection pilot program; data collection commenced on January 1, 2009); outreach; training (working collaboratively with law enforcement officials to design training for officers that improves their ability to provide bias-free policing); legislation; youth; and identification (assisting persons whose primary language is not English in interactions with police).
- In 2006, the Vermont Advisory Committee to the U.S. Commission on Civil Rights convened a briefing to examine issues affecting immigrants and refugees in Vermont. Although the Committee focused on the adequacy of social services and other resources available, including health care, education, housing, employment, and legal representation, especially for those who have limited English proficiency, it heard testimony that Mexican farm workers were subjected to discrimination and the constant fear of deportation or intimidation by local authorities. The Committee also heard testimony that individuals are often "targeted based on their race or ethnicity because they are members of a certain minority group and are supposedly more likely to engage in unlawful behavior or be present in the U.S. illegally."

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[24] ALANA stands for African, Latino, Asian, Native American.

- During the spring of 2007, the Burlington Police Department, Burlington City Council officials, two state legislators, moderator T.J. Donovan (Chittenden County State's Attorney), and the Executive Director of the Vermont Human Rights Commission met with approximately 50 members of the public – one-quarter of whom were described by a local weekly as recent immigrants and local established residents of color – to discuss race and law enforcement issues. A media report stated that Attorney Donovan convened the meeting in response to a *Burlington Free Press* Op-Ed piece in which Hal Colston, Director of NeighborKeepers, a non-profit, anti-poverty organization in Burlington, described his experience of "driving while black." One of the state representatives expressed his intention to introduce a bill during the upcoming legislative session that would generate data for analysis of racial profiling issues.[25]

- On June 6, 2008, the Uncommon Alliance issued a press release announcing the first of a series of public forums to advise the community of the initiative of four local police departments – Burlington, South Burlington, Winooski, and the University of Vermont – to have law enforcement officers collect drivers' race data during motor vehicle stops. The stated objective of the data collection process was to assist law enforcement agencies in analyzing whether individual officers are engaging in stops that may be based on racial bias instead of observed conduct and thus "to promote accountability and transparency of law enforcement officers, especially when dealing with members of minority communities." An editorial that appeared in the *Burlington Free Press* on June 12, 2008, commended the initiative, noting the inadequacy of "anecdotal" information and the need for data that either validates or dispels racial profiling concerns. The editorial urged commencement of a state-wide program. The supervising attorney in the Chittenden County Public Defender's Office agreed with the call for a state-wide program, commenting that race bias infiltrates all levels of the criminal justice system, from initial traffic stops to bail hearings to sentencing.[26]

- On June 12 and July 17, 2008, this Committee convened briefings to hear more from law enforcement representatives, governmental officials, scholars, advocacy group representatives, community representatives, and members of the public about racial profiling issues in Vermont.

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[25] Mike Ives, "Burlington Officials Address Discrimination, Again," Seven Days, Local Matters, May 30, 2007, available at http://www.7dvt.com/2007/Burlington-officials-address-discrimination-again (last accessed May 27, 2009).

[26] Peter Hirschfeld, Vermont Police Accused of Racial Bias, Barre-Montpelier Times Argus, June 15, 2008. The article also quotes Robert Appel, Executive Director of the Vermont Human Rights Commission, as citing racial disparities in imprisonment and stating that African-American men are represented in the inmate population in Vermont at a rate 12.5 times greater than their presence in the general Vermont population.

Chapter Three: Summary of Racial Profiling Briefing Participants

Racial Profiling Briefing, June 12, 2008, Burlington, Vermont

The Vermont Advisory Committee invited public officials, law enforcement personnel, scholars, community representatives, and the public to present on the topic of racial profiling. The first panel included three police chiefs, the executive director of the Human Rights Commission, and a public defender; the second panel included scholars and community representatives; and the third panel was open for members of the public to make statements to the Committee.

Panel One

Michael Schirling, Chief of Police, City of Burlington
Chief Schirling acknowledged that racial profiling was a deliberate police practice in the 1980s, only later to be found ineffective. He also observed that racial profiling exists both in reality and perception. Chief Schirling noted that his predecessor, Thomas Tremblay, the current Commissioner of the Vermont Department of Public Safety, launched initiatives designed to identify the presence and impact of racial profiling. Chief Schirling expressed his own commitment to addressing racial bias in police activity and his recognition of the importance of trust-building and transparency as his Department undertakes steps to do so. He outlined the following priorities: examine, through data collection and analysis, law enforcement practices such as traffic stops; screen officer candidates intensively; hire personnel who do not manifest overt racial bias; identify supervisory officers who can promote interracial understanding and good race relations with and in the community; and offer effective training and education for officers on a continuing basis.

Col. James W. Baker, Director, Vermont State Police
Colonel Baker advised that the Vermont State Police is the largest law enforcement agency in the state. It provides primary police services to approximately 45 percent of the population, and also operates emergency communication answering and dispatching services that review and process approximately 75 percent of the emergency calls in Vermont. These services, and the agency's coverage of about 80 percent of the state land mass, bring State Police into contact with a large segment of residents of, as well as visitors to, Vermont. Colonel Baker observed that the state population is today more diverse than it was a decade ago, and that this trend is likely to continue.

Colonel Baker is responsible for the rules, regulations, policies, practices, and processes that govern the conduct of State Police officers. He said that he supports statements that make clear to all that bias in policing in unacceptable; he also noted that it is an ongoing process to render the Vermont State Police a "culturally competent" organization.

Colonel Baker then outlined actions that have been implemented and are designed to address racial bias concerns: (1) issuance of a statement of vision and expectation that all persons be treated with respect and dignity, and without the influence of bias; (2) adoption of a Non-Bias Policing policy; (3) installation of video cameras in State Police cars and requiring their use for all traffic stops; (4) appointment of a standing committee to audit traffic stops that result in

vehicle searches (5) operation of an Internal Affairs process, per statute and policy, that is overseen by an Advisory Commission whose members are appointed by the Governor;[27] and (6) commencement of an enhanced training program this fall.

Robert Appel, Executive Director, Vermont Human Rights Commission

Mr. Appel focused his remarks on the question of racial disparity in the administration of criminal justice. Citing data from the U.S. Sentencing Commission project, he stated that Vermont ranks second only to Iowa in racial disparity in incarceration rates, with African Americans imprisoned at a rate 1,250 percent more per 100,000 residents than Whites. These data, Mr. Appel noted, are corroborated by data published by the Vermont Department of Corrections, which show that 10.1 percent of inmates incarcerated in Vermont on June 1, 2006, were African American (up 20 percent from the previous year's 8.4 percent), a rate more than 12 times greater than the state's percentage of African American residents.

Mr. Appel said that the question whether the discriminatory exercise of discretion by criminal justice personnel causes these racial disparities "remains largely unanswered." He observed that issues relating to stops and investigations of persons of color (including Mexican farm workers) had been discussed in several contexts in Vermont during the past year, including at an immigration forum held in Montpelier in October 2006; relative to the I-91 (Hartford/White River area) Border Patrol Checkpoint's alleged disproportionate detention of non-White travelers; in "study circles" on race convened in several Vermont communities; and through the Uncommon Alliance. In addition to the data collection started by the police departments participating in the Alliance, Mr. Appel indicated that the Alliance has produced several informational brochures, including a publication designed to inform community members of their rights and responsibilities in interacting with law enforcement officers and a brochure intended to assist officers in understanding Muslim customs.

Mr. Appel said that the success of efforts to have state law enforcement agencies adopt "meaningful" anti-bias policing policies has been mixed. He cited a U.S. Department of Justice policy with respect to racial profiling as a "best practice" insofar as it directs officers not to rely on race as a motivating factor to a stop unless there is information available on the race of an identified suspect.

Finally, Mr. Appel stated that racial profiling is a concern and priority of the Vermont Human Rights Commission. In addition to law enforcement and criminal justice issues, he described complaints involving housing and public accommodations, retail and shopping mall surveillance practices, and harassment in the schools. He mentioned that Commission staff and Commissioners are seeking to broaden their own understanding of the "latent characteristics" of racial bias through education and training programs.

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[27] Colonel Baker stated that cases in which racial profiling or bias is alleged or suspected are referred to the Internal Affairs Director for investigation, and those findings are subsequently reviewed by the Advisory Commission, thus ensuring citizen oversight. He also noted that the Commission is comprised in a manner responsive to state demographics.

Gary Margolis, Chief of Police, University of Vermont Police Services
Chief Margolis explained that the University of Vermont ("UVM") Police Services unit is one of the largest full-service law enforcement agencies in the state and that its accreditation from the Commission on Accreditation for Law Enforcement Agencies ("CALEA") is in part dependent upon its adoption of policies that address racial profiling.

He reviewed the history of a 2003 incident during which a UVM officer drew a gun on an African American student the officer mistakenly believed to be a suspect in a robbery. The Department terminated the officer, and the Chief initiated intensive officer training regarding racial profiling, enlisting the advice of expert Jack McDevitt of the Racial Profiling Data Collection Center at Northeastern University.

Chief Margolis stated that he was involved in the development of an anti-bias policy statement that now serves as a model for law enforcement agencies throughout the state. He also shared his belief that, notwithstanding potential shortfalls associated with data collection processes and analysis, undertaking data collection is an important basis for "open dialogue" between law enforcement officials and community members. He predicted that the Uncommon Alliance, in which he is participating, will serve as a model for other Vermont municipalities, enhancing the awareness of law enforcement personnel of racial profiling issues.

Margaret Jansch, Chittenden County Public Defender
Ms. Jansch advised the Committee that her office handles 5,000-6,000 criminal cases annually. The office is the largest public defender unit in the state, and Burlington has the largest minority population in Vermont. With respect to racial profiling and criminal justice, Ms. Jansch indicated that her information is anecdotal and that, in her view, data collection is essential. She offered strong support for the use of video cameras in officer vehicles, but commented that the videotapes are not always available or produced upon the request of defense counsel.

Ms. Jansch expressed concern about the prevalence of traffic stops involving young African American men and said that many of her office's cases are drug prosecutions arising out of these traffic stops. She stated that young African American males in late-model cars are at high risk of a traffic stop and that she has filed motions to dismiss cases on the ground that the rationale offered for stops was pretextual. She also expressed her view that race-based sentencing disparities existed.

Panel One: Questions and Answers

In response to a Committee question, the two police chiefs and Colonel Baker reported rising success in the recruitment of female officers but continuing challenges with respect to recruitment of non-White officers.

Discussion next turned to model policies. One of the panelists stated that many policies prohibit stops based solely on an individual's membership in a protected class. Mr. Appel again favorably cited the 2003 U.S. Department of Justice guidance statement, reiterating his belief that limiting the prohibition to stops based "solely" on race is unduly restrictive. He also criticized the

absence of a legally mandatory link between policy and training. A panel member noted that there is no central repository in Vermont for adopted policies.

Panel Two

Hal Colston, Executive Director, *NeighborKeepers*
Mr. Colston is presently Executive Director of *NeighborKeepers*, a non-profit, anti-poverty organization in Burlington, Vermont. He observed that, although Vermont demographics are changing, the state is "a generation behind" in learning about race bias issues, including racial profiling. He characterized racial profiling as being "epidemic," and stated that he has known people who have left the state due to racial climate concerns. He also indicated that he and his sons, as African Americans, have been subjected to law enforcement action based on racial profiling.

Mr. Colston characterized the Uncommon Alliance as a forum within which to discuss racial profiling issues and to identify solutions, citing the imminent data collection project. The objective of this grassroots and law enforcement leadership effort is, he said, to make Vermont a safe and inclusive place for all. He reminded the panel of Martin Luther King's statement that "whatever affects one directly, affects all indirectly."

Laura Fishman, Associate Professor, Department of Sociology, University of Vermont
Dr. Fishman, who identified her areas of expertise as sociology and criminality, stated that she has done work in the Vermont prison system since the 1970s. When she first began her studies, she said, there were no persons of color incarcerated; now, inmate demographics resemble those of a major urban area.

She urged that one must examine policy, and not only the actions of individual officers, when considering race bias issues. She also called attention to the general racial climate, including the influence on it of media perpetuation of stereotypes.

Robert Walsh, author and adjunct faculty member
Mr. Walsh initially completed a career in the U.S. Marine Corps, retiring with the rank of Lieutenant Colonel. During the years 1980-95, he taught African American history at South Burlington High School in Vermont and was a member of the Vermont House of Representatives from 1983-89. He is currently a member of the adjunct faculty of the University of Vermont.

Mr. Walsh is the author of "Through White Eyes: Color and Racism in Vermont" and is engaged in a Vermont African American history project that includes teacher training. He observed that, in general, traditional approaches to American history do not adequately address the African American experience. Without an adequate education about this experience, Mr. Walsh stated, on graduation Americans enter the workforce influenced by stereotypes. He posited that law enforcement officers' attitudes about race are affected by this educational deficit and, in particular, their inadequate understanding of the root causes of discrimination. Mr. Walsh noted that data collection will not itself address this shortfall, and recommended that the state Police Academy add African American history to its training curriculum.

Sherwood Smith, Lecturer, Integrated Professional Studies Department, College of Education and Social Services, and Director, Center for Cultural Pluralism, University of Vermont
Dr. Smith testified that he teaches courses in human development, including cultural influences. He noted that people working for change are in "different developmental places," and that one challenge in addressing racial profiling is that it can be engaged in by officers who are not conscious of their own bias (as compared with "conscious racial bigots").

Dr. Smith then observed that an officer can find a factually valid reason to stop virtually anyone; thus, the question is not whether a stop is justified but rather what motivated it. He urged that care be used in the design of data collection studies, including consideration of the use of both qualitative and quantitative information.

Training is critical to change behavior and to "experiment with new behaviors," Dr. Smith stated. He underscored the importance of forums where issues such as racial bias can be aired to raise awareness and to identify obstacles to change.

Panel Two: Questions and Answers

Dr. Fishman amplified her remarks, underscoring the importance of recognizing class and gender as well as race issues, and distinctions between immigrant and non-immigrant minorities, particularly insofar as newer residents may have English language difficulties. With respect to law enforcement officer training, Dr. Fishman identified receptiveness as critical to training effectiveness, commenting, "people will only change when they are receptive to doing so." She emphasized a special need for training law enforcement officers in witness identification, as studies have shown that officers are generally no more accurate than members of the public. She observed that this skill is pivotal in data collection work as well.

Dr. Smith stated that, although training is useful, people must recognize that the entities offering training may themselves be affected by systemic bias, or maybe so perceived by others. He suggested that understanding "White racial identity" is vital in training. Dr. Smith added that quality relationships between law enforcement officials and the people whom they serve are important (citing the community policing approach in Burlington as a positive example); law enforcement officers, he said, must have a presence in the community for more than law enforcement purposes.

Mr. Colston observed that the increasing demographic diversity of the state is not well-reflected in the ranks of state leaders and until that changes, change will not come. Specifically, he expressed concern that leaders make decisions affecting people of color without experience and familiarity with them.

Public Comment

Andy Santiago, Member of the Public
Mr. Santiago, a Brooklyn native raised in Hawaii, testified that he has lived in Vermont for three years. He is of Puerto Rican descent. He moved to Vermont in search of a better life for his three-year-old daughter who has disabilities. He stated that he loves Vermont, but believes he has

been the target of racial profiling and racist comments. He described perceived bias-driven incidents in many aspects of his daily life, including driving, shopping, engaging in recreational activity, and his housing situation.

Susanna McCandless, Lecturer, Department of Geography, College of Arts and Sciences, University of Vermont, and Farm Worker Assistance
Ms. McCandless testified that she works with Latino and Mexican farm workers. She said that these workers live in isolation and fear because their visibility in small towns and their illegal status renders them unable to leave the farms on which they work to engage in the most basic human activities. Ms. McCandless acknowledged that the unavailability of visas under present immigration policy is a matter that can only be resolved at the federal level.

Antoinette Bennett-Jones, Member of the Public
Ms. Bennett-Jones, a pregnant African American woman, advised that she had recently relocated to Burlington from Florida to have her baby. She testified that she was the victim of an allegedly racially motivated traffic stop and physical assault by a Williston police officer. The officer, she said, directed that she pull her vehicle over in the parking lot of a Williston Wal-Mart, where she and her sister planned to pick up diapers for their nephew. Ms. Bennett-Jones charged that the officer failed to cite a legitimate reason for the stop, although he told her that the car inspection sticker was peeling. A newspaper article stated that she received a $314 ticket for "disobedience to a police officer," but no traffic citation. The newspaper also reported that, after Ms. Bennett-Jones left the scene, she was diagnosed with a sprained wrist, according to discharge papers from Fletcher Allen Medical Center.[28] Tonya Bennett, Ms. Bennett-Jones' sister, offered corroborating testimony to the panel.

Ron Redmond, Executive Director, Church Street Marketplace
Mr. Redmond described an advocacy effort by the Peace and Justice Center in Burlington relating to racial profiling by merchants. Specifically, Church Street Marketplace merchants were asked to sign a "Statement of Goodwill" affirming their intent to treat all customers with fairness and dignity and to refrain from targeting persons of color for special surveillance.

Mr. Redmond further stated that he has been approached by persons of color who report perceived racial profiling activity; within the past few years, he recalled three instances in which he was asked to intercede with a merchant. He shared his belief that it is important to educate businesspeople about "White privilege" issues.

Written Comments Submitted by Public

Allen Gilbert, Executive Director, American Civil Liberties Union of Vermont
Mr. Gilbert submitted written testimony to the Committee, attached as Appendix A. His statement advised that the Vermont chapter of the American Civil Liberties Union has tracked the racial profiling issue for a number of years, including consideration of data collection. He observed that without hard data it is impossible to determine whether, and to what extent, racial

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[28] Hirschfeld, *supra* note 26.

profiling exists in Vermont. His organization receives a number of related complaints annually regarding the law enforcement activities of officers at the local, state, and federal level.

Mr. Gilbert commended the Burlington-area police departments that are slated to begin data collection. He noted that some criminal justice experts believe that such efforts are most effective when, as in this instance, they are undertaken voluntarily; however, he said that, eventually, the practice may need to be mandated by statute if comprehensive data collection is the goal.

The issue of police accountability needs to be addressed more generally, Mr. Gilbert stated. He recommended establishing complaint avenues independent of the law enforcement agencies and the bodies that oversee them, including the State Attorney General's office. He shared his view that the results of internal police investigations should be publicly disclosed.

Mr. Gilbert noted that the vast majority of Vermont law enforcement officers are fair, effective and professional in the exercise of their duties. He stated that all officers suffer when there is a public perception of the presence of a few "bad actors" who are not held accountable. He urged the creation of an independent agency, ombudsperson, or civil rights officer to whom members of the public can turn as an alternative to civil litigation.

Racial Profiling Briefing, July 17, 2008, Montpelier, Vermont

After its June briefing, the Vermont Advisory Committee determined that it needed to hear from additional speakers on the issue of racial profiling. At its second briefing, perspectives were offered by additional public officials, law enforcement personnel, scholars, and community representatives. The Deputy Consul from the Mexican Consulate spoke on the first panel; the Vermont Attorney General, a State's attorney, and a public defender spoke on the second panel. The third panel included two police chiefs, a representative from a sheriffs' department, and a trainer from the police academy. Finally, the briefing concluded with a law professor, two community representatives, and the chair of the New Jersey Police Advisory Committee on Police Standards.

Panel One

Amparo Anguiano, Deputy Counsel, Mexican Consulate
Ms. Anguiano is assigned to the Boston office of the Mexican Consulate. The office covers all New England states with the exception of Connecticut, which has the highest concentration in New England of Mexican residents.

Ms. Anguiano indicated that, since the 2000 Census, when approximately 36,600 Mexicans were identified in the region, the number of residents of Mexican origin has increased dramatically, nearing 50,000 by the end of 2005. Over half of this population, she said, is in Maine; approximately 2,000 persons of Mexican origin are believed to be in Vermont. Some Mexicans come to New England from Mexico; others migrate from locations in the U.S. Many have U.S.-born children, and some were born in the U.S. The population includes people in lawful immigration status and those without documentation.

Ms. Anguiano commented that many Mexicans in New England live in isolated, homogeneous settings. Because they are highly visible in public, she believes that members of this population are "highly vulnerable" – although not necessarily subject – to racial profiling. The Mexican Consulate has initiated a mobile visits program to provide services to Mexicans in rural areas; however, participation rates vary, with higher Vermont participation in Addison County than Franklin County during recent outreach attempts.

Regarding immigration law enforcement, Ms. Anguiano said that the nature and extent of participation by state and local officials is highly variable throughout the region. In Rhode Island, for example, the Governor issued an Executive Order requiring compliance with immigration law eligibility verification on the part of state agencies and contractors. By contrast, in 2008, the Governor of Massachusetts announced an initiative to integrate immigrants and refugees into communities throughout the state.

In Vermont, Ms. Anguiano testified, the State Police and the Department of Corrections are expected to provide secondary assistance, such as detention or transport services, to federal agencies, including the U.S. Border Patrol and Immigration and Customs Enforcement ("ICE"). She noted that Vermont recorded the highest number of arrests of Mexicans in the region (82) – a statistic she called "striking" in a state that has so few Mexican residents. Ms. Anguiano added, however, that arrest statistics are compiled by the Border Patrol and ICE, which transmit the data to the Consulate, and it is unclear whether other states were underreporting this information.

She commended the Middlebury Police Department policy on undocumented foreign nationals, which she characterized as a "balanced and pragmatic approach" that recognizes basic rights of foreign nationals, such as access to consular services.

Panel Two

William Sorrell, Attorney General, State of Vermont

Mr. Sorrell first offered that "racial profiling, in the narrow sense, refers to a police practice of consciously or unconsciously identifying a particular racial or ethnic group as being more likely than others to be guilty of, or more prone to, committing criminal acts." He noted that such identification can result in relatively high levels of traffic stops and/or increased levels of suspicion of wrongdoing when police interact with members of the particular racial or ethnic group.

Mr. Sorrell explained the jurisdiction of the Attorney General's Office, noting that because neither the Vermont State Police nor the Vermont State Attorneys report to the Attorney General, he would address the more general issue of racial bias in the criminal justice system instead of the specific question of racial profiling.

Mr. Sorrell observed that Vermont has some of the most expansive anti-discrimination laws in the country; Vermont courts have reinforced the principle of equal rights for all citizens; the Vermont Human Rights Commission is active; and the Vermont Supreme Court has a Committee on Fairness and Equal Access to Justice. He nevertheless cautioned that "vigilance is

warranted." He noted that, although African Americans comprise approximately one percent of the population of Vermont, 2007 State Department of Corrections data reflected that African Americans constituted approximately 10 percent of persons incarcerated, and Mr. Sorrell characterized as "legitimate" questions arising from these data. Among the issues presented, he suggested, is whether, based on similar facts, Vermont prosecutors charge African Americans at higher rates than other potential defendants. He also recommended for study the relative conviction rates and sentencing of African American and non-African American defendants.

In closing, Mr. Sorrell stated that he has not heard compelling or convincing allegations of racial bias in the post-arrest criminal justice system in Vermont; however, to ensure that equal rights and justice are being accorded to all, he looked forward to participating in any study that seeks answers to the questions identified as well as others reasonably posed.

Anna Saxman, Deputy Defender General, Office of the Defender General

Ms. Saxman identified herself as the former chair of the Racial and Ethnic Bias Subcommittee of the Vermont Supreme Court Access to Justice Committee. She stated that the nature and extent of racial profiling in the state should be investigated because there is only anecdotal – and not statistical – information available.

Much of what is happening, Ms. Saxman observed, is "invisible" insofar as it may involve surveillance in addition to detention and arrest activity. She cited possible differential treatment of persons stopped for suspicion of routine infractions, such as speeding. She emphasized the importance of knowing how prevalent differential treatment is, if it exists, because the state will be adversely impacted if it has a reputation for racial harassment of visitors and residents. She commended the voluntary data collection initiative in Chittenden County.

Ms. Saxman believes that examination of racial profiling should encompass all aspects of the criminal justice system, including the types of charges; criteria for bail-setting, including community ties and flight risk; and sentencing. She urged that steps be taken to increase minority representation in jury pools, and she identified pretrial detention as an area in need of study, due to its effect on the ability of detainees to make effective use of defense counsel. Ms. Saxman cited as an important concern the examination of issues of race in the juvenile justice system. Finally, she noted that the Public Defender's Office provides training to attorneys and investigators regarding racial bias and cross-cultural competency.

T.J. Donovan, State's Attorney, Chittenden County

Mr. Donovan stated that racial profiling concerns have been a priority of his since his election to office in November 2006. He convened a community forum in May 2007, addressing "Race in the Criminal Justice System." The impetus for the forum was Mr. Colston's "My Turn" piece in the *Burlington Free Press*, in which Mr. Colston recounted a personal experience of profiling. Mr. Donovan is also participating in the Uncommon Alliance, an initiative that he characterized as successfully bringing together members of the minority community and law enforcement officials to discuss "openly and honestly" the issue of race and law enforcement accountability.

Commending the voluntary decision of the police departments of Burlington, South Burlington, Winooski and University of Vermont to begin data collection, Mr. Donovan said that the

outcome will "not only increase the transparency of the criminal justice system, but serve as a valuable internal management tool for the police." He called it "remarkable" that community partners, in a grassroots effort, created this commitment, observing that the goal was accomplished by an acknowledgement that "change, while difficult, can occur when an incremental approach is taken."

Mr. Donovan urged that this work extend beyond police departments to prosecutors, who he believes should be accountable to the public and make decisions based on public safety considerations. He stated that race should never be a factor in their decisions, although it is nonetheless important to understand the role that both race and poverty have played in our society and the criminal justice system. Finally, Mr. Donovan commented that prosecutors' offices should be staffed in a manner that reflects the communities they serve, and he shared his progress to date toward that goal.

Panel Two: Questions and Answers

A Committee member asked Mr. Sorrell to elaborate upon his comment that racial bias has not been found in the judicial system. Mr. Sorrell replied that he has not encountered compelling or convincing allegations from defense counsel, juries, or judges that persons of color are being prosecuted at higher rates than Whites. He acknowledged, however, that incarceration data raise questions. He also mentioned previous legislative consideration of data collection, but recalled that some persons expressed personal privacy concerns when an initiative was under consideration.

Ms. Saxman commented that it is extremely problematic to accuse a judge of racial bias, stating that no allegation "will upset a judge more." She also noted that bias is difficult to prove. She has, however, seen judicial comments in trial transcripts that caused her concern.

In responding to a question regarding the juvenile justice system, Ms. Saxman cited the absence of data collection and the prevalence of anecdotal evidence. She mentioned one study that found differential referral rates of minority youth to diversion programs. She also noted that minority children in detention appear to be less likely to be sent home due to perceptions of increased risk in their home environments.

A Committee member asked the panel whether it supported or opposed mandatory data collection. Mr. Donovan stated that he does not believe that data collection should be mandated, because the police departments participating voluntarily in Chittenden County will become the best advocates of the practice with other state law enforcement agencies. He also expressed concern about an unfunded mandate.

Attorney General Sorrell stated that it would be helpful if the Legislature appropriated funds to support data collection, including experts as necessary. He also said that law enforcement agencies will face staffing challenges associated with the need to do in-depth analysis of massive records, particularly if a study were to cover post-arrest proceedings in addition to traffic stops. He asked whether a prospective study might be more productive, insofar as it may improve prospects for ensuring the best quality data.

Ms. Saxman agreed that a prospective approach would be best, advising that the Honorable Justice Denise Johnson, Associate Justice of the Vermont Supreme Court, has led an initiative designed to examine these issues. She said that many states have done similar criminal justice system studies. She characterized as important the collection of data from the courts as well as law enforcement agencies, stating that a well-designed study that is devised by qualified sociologists and statisticians would be valuable. Mr. Sorrell expressed support for such an endeavor.

A Committee member inquired about constraints on the ability or willingness of possible victims of racial bias to come forward with their concerns. Ms. Saxman identified some of the avenues available, such as the Vermont Human Rights Commission and defense counsel in criminal cases. She noted, however, that municipal police departments do not typically have citizens' review boards. Mr. Sorrell replied that, in Vermont, police commissions are intended to function in a role similar to citizens' review boards, and that the State Department of Public Safety has a statutorily mandated Advisory Committee comprised of civilians.

Panel Three

Thomas Hanley, Chief, Middlebury Police Department
Chief Hanley described Middlebury Police Department policy governing law enforcement and foreign nationals, attached as Appendix B. The policy recognizes that, when undocumented foreign nationals come to the police department for help or to make reports, full priority should be given to public safety and justice rather than rigid enforcement of immigration regulations, that latter which is a federal responsibility. He added that the written policy formalized how his department had been dealing with the issue for many years, commenting that in fact, the policy dovetails with the policy his department adopted eight years before, "which specifically dealt with the issue of racial profiling, specifically prohibiting it as a means of police work."

Trevor Whipple, Chief, South Burlington Police Department
Chief Whipple has been in his position for two years, coming into a department that is facing charges of racial bias. He has participated actively in the Uncommon Alliance, and characterized it as a model for other communities, working to the mutual benefit of community members and law enforcement and inclusive of persons of color as well as law enforcement agency personnel. He cited as among its benefits not only the exchange of information and perspectives, but relationship- and trust-building. He strongly supports the data collection initiative that is slated to begin shortly.

Chief Whipple identified challenges his department faces in the recruitment of a diverse complement of officers, noting that he has expanded recruitment to the Boston area. Efforts to date have yielded substantial progress with respect to the hiring of female officers, but not persons of color, although three officers of color are now on staff. He also underscored the importance of effective candidate screening for bias and compliance with the non-bias policy as a criterion to consider in promotions.

W. Sam Hill, Sheriff, Washington County Sheriff's Department
Sheriff Hill reported that 13 (county-based) sheriff's departments helped to prepare him for the briefing. He spoke with personnel from each county and believes that sheriffs throughout the state take seriously the issue of bias-free policing.

Estimating that approximately 50 percent of the sheriff departments have anti-bias policies, he said that departments are not seeing problems with, or receiving complaints of, racial bias. One sheriff's department, he noted, has an ethics policy that it believes, with training, is adequate.

Sheriff Hill stated that he believes that, if there were racial bias concerns and complaints, his department would be aware of them, as there are many local channels of communication, including town offices, constables, board members, and the department itself. He emphasized the importance of effective training to ensure that department personnel discharge their responsibilities appropriately.

The Sheriff described the scope of departmental operations: departments typically have contracts with specific municipalities within the county to perform either discrete or comprehensive patrol services. He cited highway safety as a major area of service. Another function of the departments is to transport juveniles, mental health patients, and others from places of detention to the courts – a highly stressful task, for which they receive training.

Cindy Taylor-Patch, Training & Curriculum Coordinator,
Vermont Criminal Justice Training Council
Ms. Taylor-Patch described the general scope of services the Council provides, which involves curriculum development and recruitment and in-service training for Vermont law enforcement personnel. She explained that the two-hour recruit training program on racial awareness encompasses racial profiling and that this is the only segment in the initial training devoted to bias prevention.

Panel Three: Questions and Answers

Committee members asked questions regarding the extent to which state and local law enforcement agencies engage in immigration enforcement. Sheriff Hill replied that sheriffs on full patrol respond to complaints in the same manner as municipal police officers; thus, if a sheriff believed that a situation posed a national security threat, ICE or another federal agency with jurisdiction would be contacted. Chief Whipple stated that his department has no regular interactions with ICE and does not "police at the federal level." He said that, if an individual is under suspicion for an offense that is within the jurisdiction of his department and the suspect is believed to be undocumented, contact would be made with ICE or the U.S. Border Patrol. Chief Hanley commented that if an undocumented person is brought into custody, the appropriate consulate is notified so that it can render services, and then a transfer is made to federal authorities or a holding facility.

Committee members questioned Ms. Patch-Taylor about the adequacy of the racial awareness training. She acknowledged that the two-hour block did not provide a substantial training opportunity, and stated that additional training could be offered as part of in-service

programming, but that there are financial and staffing challenges with respect to curriculum development and the availability of qualified and effective trainers. She also explained that the recruit training program has pre-established minimum requirements.

A Committee member asked the panel whether it favored data collection and cruiser videotape mandates. Chief Whipple observed that a mandate could be viewed as evidence of distrust, and he expressed concern that it would engender resistance from law enforcement officers. He stated that he believes that a model such as the Uncommon Alliance is preferable, and that Alliance participants have offered suggestions regarding data collection and analysis, including inquiry into what circumstances precipitated a stop. He offered a cautionary note about the legislative process, noting that legislative outcomes do not always best reflect the intent of those seeking legislative action. In conclusion, Chief Whipple recommended that the Chittenden County initiative be viewed as a pilot program from which experience can be gained for future endeavors, including legislation should that prove necessary. He urged that models be implemented that foster relationship-building and nurture trust.

In response to the same question, Sheriff Hill expressed concern about an unfunded mandate. He identified budget constraints and the contract-revenue model that generates financial support for sheriff's office operations. Chief Hanley echoed concerns about mandates and noted that raw data can be manipulated to generate various outcomes; instead, he said, he favors good recruitment and candidate screening practices that include vetting for racial bias. Chief Hanley identified various informal channels through which he, with years of Middlebury Police Department experience, receives feedback on the performance of individual officers and his department; he also proactively seeks information from migrant workers and the Mexican Consulate. Finally, Chief Hanley stated, although the department uses videotaping in its patrol cars, there are resource constraints affecting its ability to ensure system operation and maintenance.

A Committee member inquired about the availability of effective means to publicize complaint channels. Chief Whipple commented that individuals may be reluctant to come forward due to the perceived power differential between a law enforcement agency and members of the public; he has, however, worked with the Refugee Resettlement Program and Uncommon Alliance participants to keep channels of communication open. He said that he has also met with refugees to explain individual rights as well as to identify complaint mechanisms. He views the Vermont Human Rights Commission as a neutral agency whose role is to provide an avenue for expression of concerns and complaints. He underscored that it is important to have options rather than a single channel for redress.

A Committee member re-opened discussion of the interface between federal Homeland Security initiatives and the work of state and local law enforcement agencies. Chief Hanley commented that no one is legally required to carry identification unless driving a vehicle, but that such information is requested when police are investigating a suspected crime. If an undocumented person is believed to have committed a crime, Chief Hanley added, the Middlebury Police Department will contact an appropriate federal agency. He also noted that his department refers occasional anonymous tips about "illegal aliens" to a federal agency. Chief Hanley clarified, however, that all possible violations of federal law are referred to an appropriate federal agency,

including, for example, suspicion of counterfeiting, because local law enforcement agencies lack jurisdiction over such matters.

Sheriff Hill observed that if, in the course of a vehicle stop, a driver is asked for and cannot produce a license, registration, and proof of insurance, the absence of appropriate documentation may result in a federal agency contact. He noted that the sheriff's office lacks access to a federal database to determine if someone is documented.

Chief Whipple stated that ICE can direct a local law enforcement agency to detain an individual for suspected violation of federal law.

Panel Four

James Johnson, Chair, New Jersey Advisory Committee on Police Standards
Mr. Johnson, who is a partner in the law firm of Debevoise & Plimpton, LLP, began his comments with a brief description of the events that led to the establishment of the New Jersey Advisory Committee on Police Standards ("Advisory Committee on Police Standards"). Pursuant to a consent decree, the New Jersey State Police were directed to identify and implement steps to eliminate the fact, appearance, and risk of racial profiling in the performance of duties. The many initiatives undertaken in New Jersey over the several years since the decree are comprehensively documented in the New Jersey Advisory Committee on Police Standards report.

Mr. Johnson derived a number of conclusions from the work of the Advisory Committee on Police Standards. First, while recognizing the nobility of their public service, he noted the tendency of law enforcement agencies to be self-protective – sometimes to an extent not in their self-interest – and observed that "oversight ensures accountability." Second, he underscored the importance of transparency. Law enforcement, he said, serves best when functioning as part of its community; if community members are unclear why certain law enforcement decisions or tactics are used, or where to direct concerns and complaints, they will lack trust, a key component of effective law enforcement.

Mr. Johnson explained that the Advisory Committee on Police Standards held six hearings and took testimony from a wide array of witnesses – community members as well as experts – and derived findings from this comprehensive briefing process. The resulting recommendations were reached by consensus and included steps such as data collection and use of video-cameras in patrol cars. These data, he explained, not only protect officers from physical harm and unfounded charges of misconduct, but provide an excellent self-study foundation for officer counseling and management. The New Jersey outcome, Mr. Johnson believes, was a good one, and he commended the Advisory Committee on Police Standards for the quality of its work.

Michele Jenness, Vermont Refugee Assistance
Ms. Jenness urged that clear boundaries be maintained between the enforcement of criminal law and the enforcement of immigration law. She noted that local police department policies that bar officers from seeking to enforce federal immigration requirements are consistent with federal

policy. She also commented that enforcement of immigration law needs to remain a federal responsibility to allow local police to focus on their primary duties.

Observing that immigrants and refugees confront racial and xenophobic biases, Ms. Jenness stated that when local law enforcement officers ask those whom they have detained and who "look like immigrants" about their status, this activity raises serious civil rights concerns. Based upon anecdotal reports, Ms. Jenness said, this activity occurs with enough frequency to raise concerns about a pattern and practice of racial profiling. She also identified serious public safety issues arising out of the fact that immigrants are hesitant to use police emergency services, even to report crimes, for fear that they or family members could be deported.

Since 1992, Ms. Jenness testified, Vermont Refugee Assistance has provided legal counsel to immigrants being held in the custody of what is now the U.S. Department of Homeland Security. It provides weekly presentations to male immigrants held in the Franklin County jail in St. Albans and, on a needs basis, to female immigrants held in Dale Correctional Facility in Waterbury. The great majority of these immigrants, she said, are in civil removal proceedings.

Naweza Muderhwa, Program Specialist, Association of Africans Living in Vermont
Ms. Muderhwa told the Committee that she immigrated to Vermont in 1996, when she was 13 years old. She described an altercation arising out of a racial slur that her brother had as a young child, and the insensitive, if not hostile, treatment from the Burlington police officer who responded. She stated she lost confidence in the police as a result. In addition, she observed, many persons of color in the community have had similar experiences and lack trust in local law enforcement. Ms. Muderhwa stated that immigrants view the United States as a country that engenders hope, and commented that she and others should not be struggling here because they are immigrants or persons of color.

Michael Mello, Professor of Law, Vermont Law School
Professor Mello noted that the Committee heard considerable testimony about needed data, but there is, nevertheless, significant anecdotal reports of racial profiling and bias. He has heard similar stories over 20 years at the law school from international students, especially after 9/11. He also cited the Brattleboro ALANA Organization study addressing interactions between the Brattleboro-area persons of color and the Brattleboro Police Department, characterizing it the next best thing to "hard data."

Professor Mello commented on the stark contrast between the comments offered by law enforcement officials and those of civilians with respect to the issue of racial profiling. He said that, although he believes that both are being honest in their descriptions, the only way to "bridge the reality divide" is to collect and analyze data. Professor Mello urged consideration of a state-wide data collection mandate, observing that voluntary data collection initiatives are rare.

Professor Mello recommended several actions: collect data on traffic stops; video and audio-tape all vehicle stops; provide anti-bias training for all Vermont law enforcement officers; establish and fund an oversight committee similar to the New Jersey Advisory Committee on Police Standards, which report he described as a model; and conduct a comprehensive study of racial profiling in the state of Vermont

Panel Four: Questions and Answers

The Committee advanced questions regarding any connection between the climate in Vermont public schools and racial profiling issues. Professor Mello, who discussed the 1999 and 2003 reports of the Vermont Advisory Committee in his written testimony, found a direct link between problems with the racial climate in Vermont schools and concerns about racial profiling, observing that Vermont law enforcement officers are likely products of Vermont schools. Ms. Muderhwa said that American students should be educated about the refugee experience – and, in particular, what compels refugees to flee their countries – as a means of heightening awareness and understanding.

Professor Mello noted that Mr. Sorrell carefully distinguished between police activity that leads to arrests (*e.g.*, stops) and post-arrest processing through the criminal justice system (stages including the exercise of prosecutorial discretion, plea bargaining, trials, and sentencing). Professor Mello reiterated his recommendation that a comprehensive study be conducted to examine the nature and extent, if any, of racial profiling and/or bias in both law enforcement and the criminal justice system as a whole.

Mr. Johnson posited that racial bias in law enforcement be scrutinized through both study of data on police behavior during stops and other enforcement activity and review of public policy decisions, such as the relative priority of law enforcement and prosecution of types of criminal conduct, such as drug-dealing, and their relationship to policing activities. He emphasized that accountability and transparency help to build trust and facilitate discussions between law enforcement agencies and the community. He also clarified that the New Jersey consent decree applied only to the New Jersey State Police, not to county or municipal police entities, although the New Jersey Report does recommend data collection and videotaping as best practices for all law enforcement agencies.

Chapter Four: Findings and Recommendations

Preface

In its last report on racial harassment in Vermont schools, the Vermont Advisory Committee observed, "Vermont has not escaped the racial prejudice that has afflicted our nation for centuries." Although much of the focus of the briefings convened by the Committee for this report was on police conduct and racial profiling by law enforcement officers, there is anecdotal evidence that racial profiling also occurs in other aspects of daily life, such as shopping and traveling. It occurs both in Vermont and in our society at large and ranges from the subtle to the overt. That people of all races should be treated with respect, dignity, and fairness is fundamental to good police work and essential to a just society.

By virtue of their position and standing and the power with which they are invested, law enforcement officers are held to higher standards of conduct than the general public and have a special obligation to the communities they are charged to protect. They bear a heavy burden to understand, respect, and communicate fairly with diverse members of a community. When police use race or ethnicity as a proxy for criminal suspicion, it puts everyone at risk; officers may, for example, overlook relevant factors in an investigation, which could allow a criminal who does not "fit the profile" to go unnoticed. Moreover, when members of a community feel misunderstood or threatened, police effectiveness may be undermined because individuals are afraid to report crimes or may be reluctant or unwilling to provide law enforcement with the assistance and information that is vital to solving crimes.

In sum, there is considerable anecdotal evidence that people of color feel disproportionately targeted not only by law enforcement but when engaging in other life activities. The Committee heard from people who maintained that police targeted them because of the color of their skin or their perceived ethnicity. Others told of family members or friends who believed they were singled out because of their race or ethnicity. The emotional consequences of this perception can be severe and give rise to alienation and mistrust of our institutions, particularly law enforcement. Police action based solely on racial and ethnic profiling violates the right of the persons targeted and undermines the basic law enforcement objective of protecting the public safety.

On the other hand, the suggestion that a law enforcement officer is intentionally discriminating against the people he or she is sworn to protect understandably offends police officers and causes defensiveness on their part. Many law enforcement officers are as passionate in their belief that racial profiling does not occur as are those within the minority community who believe it does. The dilemma is how to address both beliefs without exacerbating existing tensions. In short, it is important to clarify the status of racial profiling in Vermont, and data collection and analysis will provide additional insight into this question.

The Committee acknowledges that the allocation of adequate resources is critical to the success of any policy or legislative initiative. Simply stated, unfunded mandates are unlikely to succeed. While recognizes the resource constraints affecting the State and its municipalities, the Committee recommends that the State, through appropriate agencies, assist by serving as a

resource to county and local law enforcement agencies in policy development, provision of quality in-service officer training, development of data collection protocols and appropriate means of data analysis, and access to grants information, thus performing a coordinating and enfranchising role. Collaboration between law enforcement agencies, such as the police departments involved in the Uncommon Alliance project, also provides a model for other agencies as they seek to address the work ahead.

Findings and Recommendations

Based on the record established in these briefings, the Vermont Advisory Committee offers the following Findings and Recommendations on accountability, policy development, legislation, data collection, training and education of police officers, and other measures that it believes will move Vermont forward in addressing issues of racial profiling.

Finding 1: Accountability
Accountability is a vital element of policing. Law enforcement officers are better able to achieve their goals of protecting the public safety, enhancing the quality of neighborhood life, and serving community needs if they are trusted by the communities they serve. To fulfill its mission to "protect and serve," law enforcement agencies must thus implement strategies that improve community trust, including effective accountability procedures.

The Committee learned that members of some Vermont communities are frustrated with the availability and quality of accountability and oversight mechanisms of law enforcement agencies. Specifically, the Committee heard frustrations and grievances expressed about the quality of the complaint and response systems. The Committee shares this concern – officers and law enforcement agencies should be held to account for their actions –and concurs with public officials who testified that, in complaint and response systems, some form of citizen input would improve the oversight and resolution process.

Recommendation 1:
The Committee recommends that each law enforcement agency at the state, county, and local level develop a visible and readily accessible complaint redress system responsive to individual complaints. A joint effort by citizens, advocates, government officials, and law enforcement agencies to publicize available channels for complaint resolution is needed. Complainants are entitled to know the outcome of their complaints, and information about the number of complaints levied against police departments and their resolution must be publicly available, consistent with appropriate and applicable personnel policies of law enforcement agencies.

The Committee further recommends that the Legislature convene and appropriately empower an oversight commission charged with monitoring, local and statewide initiatives to address racial profiling, including adoption of anti-bias policies, collection and analysis of data on police traffic stops, complaint procedures and outcomes, and relevant certification and in-service training programs for law enforcement personnel. This commission would make specific recommendations to the Legislature regarding appropriate next steps, such as mandatory data collection, maintenance of video recordings taken during law enforcement activity, officer certification and in-service training programs, and complaint resolution procedures, including

citizen input mechanisms. The Committee endorses the process used by the New Jersey Advisory Committee on Police Standards as a model for the development of recommendations regarding racial profiling issues.

Finding 2: Policy Development
For there to be accountability, there must be clear law enforcement agency anti-bias policies. The anti-bias policies among Vermont law enforcement agencies differ substantially. The Burlington Police Department has a directive that commits to unbiased policing and assures the public that it is "providing service and enforcing laws in an equitable and impartial way." Likewise, a Middlebury Police Department policy recognizes that public safety and justice are preferred over the "rigid enforcement of immigration regulations" and intends, in part, to mitigate fears among community members of police prosecution or potential deportation based on actual or perceived national origin. There are, however, law enforcement agencies in the state that do not have anti-bias policies.

Recommendation 2:
The Committee recommends that the Vermont Attorney General, in consultation with local and state law enforcement agencies and other stakeholders, develop and issue a policy template addressing anti-bias policing. The policy used by the Burlington Police Department, "Racially Biased Policing: A Principled Response," attached as Appendix C, and the Directive of the New Jersey Attorney General, "Official Statewide Policy Defining and Prohibiting the Practice of 'Racially-Influenced Policing,'" attached as Appendix D, are useful models. All Vermont law enforcement agencies are strongly encouraged to adopt such policies.

The policies must clearly define and prohibit discriminatory profiling and state that law enforcement activity must be based on a reasonable suspicion that the person being detained committed an offense. The definition of bias-policing found in the South Burlington Police Department's "Bias Free Policing Policy," attached as Appendix E, provides an example of a comprehensive description of prohibited police conduct.

An effective policy will also establish expectations for conduct and disciplinary procedures for officers who engage in inappropriate profiling and will provide complaint channels for persons who believe they have been the target of inappropriate profiling.

Finding 3: Legislation
Vermont does not have a specific state statute that bans racial profiling. However, the use of race or ethnicity as the sole factor in deciding to stop, question, or arrest an individual – unless race or ethnicity is part of an identifying description of a specific suspect for a specific crime – violates the civil rights of that individual.

Many states have laws that ban racial profiling of motorists and pedestrians; many of these laws, however, are inadequate because they fail to fully define the problem.

Recommendation 3:
The Committee recommends that the Vermont Legislature consider legislation that prohibits profiling of motorists and pedestrians solely on the basis of actual or perceived race, ethnicity, or

national origin. The above-mentioned anti-bias policies developed by local law enforcement agencies provide a useful starting point; in addition, the Texas statute prohibiting racial profiling, attached as Appendix F, is a comprehensive law on which legislation could be modeled.

Finding 4: Training of law enforcement personnel
As a part of the initial certification process for law enforcement personnel, the total number of hours for basic training at the police academy is over 900 hours, including 100 hours of post-basic instruction. The time allotted for cultural awareness training is only two hours. The Committee recognizes that there are resource constraints that affect the curriculum provided by the Vermont Criminal Justice Training Council for police candidates, but also concludes that the number of hours allocated to, and the content of, racial awareness training are insufficient. There is also inconsistent post-academy training across law enforcement agencies regarding anti-bias training and cultural awareness.

The Committee concludes that racial and ethnic differences generate complex emotions and reactions, both conscious and unconscious, arising out of a lifetime of experience and socialization. For that reason, awareness training cannot be effectively conducted in a single-session format as part of an officer certification program, particularly one that has demonstrated resource and time constraints. The Committee also finds that continuing in-service training is necessary in light of fast-changing Vermont demographics, because awareness of the diverse cultures of incoming residents and visitors will improve the ability of law enforcement officers to engage in bias-free policing and ultimately to advance public safety.

Recommendation 4:
The Committee recommends that educational and training measures be designed to address racial profiling in law enforcement and that law enforcement agencies emphasize the prohibition on racial and ethnic profiling to recruits and experienced officers. These agencies also need to ensure that their officers understand agency policy on anti-bias policing, have copies of the policy, and follow the procedures established by the policy.

Adequate training is the first step in the process of creating awareness and establishing performance expectations. Comprehensive training must begin in the academy and continue throughout a police officer's career. The Committee also recommends that the Vermont Criminal Justice Training Council expand the number of hours dedicated to anti-bias and cultural awareness training required for initial certification. The Committee recommends that a mandated minimum number of in-service training hours be devoted to bias-related training and that it be over a specified time period, such as at two-year intervals, for officers to retain their certification.

The Committee further recommends that programs offer awareness training on ethnic, racial, and cultural sensitivity issues with which officers are required to deal when interacting with the general public and that the training use a variety of strategies, including videos, real-life scenarios of police contacts and stops, and interactive sessions. Training must provide feedback to officers. Additional training sessions should be provided to officers whose conduct has been identified by supervisors to be problematic on this issue.

It is recommended that the Vermont Criminal Justice Training Council certify these programs and their instructors to ensure high-quality training consistent with best practices nationally. Ultimately, anti-bias training must be designed to address the assumptions, perceptions, and bias issues encountered in police work and must also provide law enforcement officers with training on stop, search, and seizure issues as they relate to bias in police work, including cultural differences.

Finding 5: Data Collection
Because Vermont does not mandate race data collection, and only a few law enforcement agencies are collecting data voluntarily, it is not possible to assess statistically the extent of the problem of racial profiling in Vermont. Instead, the public and the Committee have anecdotal evidence that, while important, better reflects beliefs about racial profiling than statistically demonstrable facts.

The Committee concludes that the collection of race data for traffic stops by all law enforcement agencies will lead to more effective policing. Race data collection would provide valuable information as to the nature and extent of any problem that might exist. In particular, data collection could provide law enforcement agencies with early warning systems that identify racial profiling behavior and deter inappropriate conduct. Data collection could also enhance community confidence and reduce misperceptions about the nature and extent of profiling activity that some members of the community hold.

Recommendation 5:
The Committee strongly endorses the practice of data collection, and it considered at length whether data collection should be mandatory or voluntary. The Committee found no simple answer to this question. A law mandating collection could standardize the types of data collected and provide consistency in data collection, input, analysis, and reporting, thus promoting more accurate and statistically significant comparisons. A mandate would also promote transparency on an issue of great concern to many community members regarding an important aspect of law enforcement activity. A mandatory system would be cost-effective insofar as it avoids the pitfalls associated with comparing different collection, input, analysis and reporting methods, and using different services for data analysis. It would also ensure consistency in the quality of the data collected. Requiring all law enforcement agencies to collect race data for traffic stops would be the most consistent and fair approach and provide optimal data control and reliability.

Disadvantages to mandatory data collection include the perceived implication that Vermont law enforcement officers engage in discriminatory policing methods and therefore cannot be relied upon to institute appropriate voluntary monitoring. In addition, a single approach to data collection may not fit the needs of all local law enforcement agencies, particularly those of small or rural communities.

The primary advantage of voluntary data collection is that it is more likely to gather the support, and therefore cooperation, of rank-and-file officers who are required to use it. Those who engage in programs voluntarily may be more inclined to feel invested in them and are therefore more likely to support and follow applicable protocols. The Committee heard testimony that when the

police devise their own data collection systems they tend to include more variables than those present in mandatory systems.

There are, however, disadvantages to voluntary data collection. Agencies may choose not to institute the practice, even if doing so is in the best interests of the agency and the community. It is a reasonable concern that law enforcement agencies most likely to engage in profiling may be least likely to collect data voluntarily. In addition, voluntary data collection often results in law enforcement agencies collecting different information, which makes statistically significant comparisons and analysis of the data difficult or impossible. Without participation by all agencies, and without a data collection system used consistently across agencies, the data collected cannot yield a full understanding of the extent of racial profiling in the state, thus compromising its usefulness in assessing how best to address the problem. There is also the possibility that persons of color will assume that agencies that do not participate in voluntary data collection do not take civil rights concerns seriously.

After weighing the advantages and disadvantages of mandatory data collection, the Committee recommends a multi-level approach. First, it recommends that the Vermont State Police be required to collect this data. The State Police provide primary police services to approximately 45 percent of the state's population, covering 80 percent of its landmass. The agency processes approximately 75 percent of the emergency calls in Vermont. Also, the majority of interactions between Vermont state troopers and the community involve highway stops. Because the State Police are Vermont's largest law enforcement service provider and have the highest volume of interactions with vehicle drivers, the State Police are in the best position to collect significant statistical data. It should be noted that the State Police already have video cameras in all front-line patrol cars for the purpose of protecting troopers from personal danger and from unfounded claims of inappropriate conduct.

Second, the Committee recommends that all other law enforcement agencies in the state be strongly encouraged to voluntarily collect race data. Again, implementing the practice of data collection will assist both law enforcement agencies and the public in understanding the nature and scope of alleged bias-based policing. This step may instill public confidence, creating a foundation for optimally effective law enforcement.

While the Committee believes that it is good public policy to support grassroots, community-based initiatives that generate data collection efforts such as those currently undertaken by four of Vermont's police agencies, it is concerned that many law enforcement agencies may not collect data collection voluntarily. Although the Committee believes that it is preferable for law enforcement agencies to take the lead, giving them the opportunity to customize the process in a manner responsive to local conditions and to be perceived by the community as proactive with respect to profiling issues, the concern remains that voluntary data collection may be inadequate to address the issue. Additionally, waiting until data collection is mandated may force the agencies into a defensive position that might be hard to overcome. Nonetheless, if all law enforcement agencies in the state have not voluntarily instituted data collection by 2012, the Committee recommends that the Vermont Legislature mandate data collection, or minimally, refer this recommendation to a state oversight commission, were one to be established. Such a requirement will ensure control of and confidence in the data and be fair and consistent both to law enforcement agencies and the public.

Finding 6: Equipment
Video camera recording devices are valuable tools to protect public safety and the personal safety and credibility of law enforcement officers. The public's confidence in law enforcement is boosted when it knows that police-public contacts during traffic stops are being recorded. Video recording can directly demonstrate an officer's actions as well as those of the person being detained or transported; it can show that officers are not engaging in proscribed behavior, and in the event of such behavior provide necessary documentation to facilitate supervisory measures. Recordings can also enhance officer safety and provide exonerating evidence when an officer is falsely accused of misconduct. Routine review of the tapes allows supervisors to monitor conduct and identify and improve officer interactions with the public.

All front-line cruisers for Vermont State Police have video equipment. The cameras are used to audit traffic stops and motor vehicle searches to provide professional feedback and corrective action for officers as well as corroborate citizen reports of trooper conduct during traffic stops. As a result, the cameras are used to hold troopers accountable to State Police policies and its code of conduct.

Many local Vermont police department vehicles, however, do not have cameras. And even where vehicles do have video cameras, the video recordings are not necessarily properly preserved or readily available.

Recommendation 6:
The Committee recommends that video cameras be installed in all front-line patrol vehicles and that the equipment receives adequate routine maintenance to ensure consistent operation. The Committee recognizes that the costs of video camera installation and maintenance are significant, but believes that they will remain a good investment when balanced against the protection they provide both to police and to the public.

As video recording is instituted, law enforcement agencies should develop policies and procedures to safeguard patrol car videotape evidence and ensure that the videotapes are preserved.

Conclusion

The Vermont Advisory Committee first looked at the issue of racial profiling at its March 2006 briefing. At that time, it learned that some members of the community felt targeted by law enforcement because of their race or nationality. As a result of these findings, the Committee convened additional briefings to gather more information about the extent of racial profiling in Vermont and to consider remedies to address the problem. The Committee learned that there remains a strong perception, particularly among persons of color, that police use racial profiling when making traffic and pedestrian stops. This perception extends also to how criminal matters are handled at other stages of the Vermont criminal justice system. At the same time, the Committee learned that many chief officers of Vermont's law enforcement agencies are committed to addressing this issue proactively and effectively.

Racial profiling and the public perception of racial profiling undermine the trust and cooperation that must exist between law enforcement agencies and the communities they serve. Preventing both actual and perceived profiling are equally important goals.

There appears to be a broad consensus that racial profiling, defined by Vermont's Attorney General as the "police practice of consciously or unconsciously identifying a particular racial or ethnic group as being more likely than others to be guilty of, or more prone to, committing criminal acts," has no place in law enforcement. A police officer does not engage in racial profiling every time he or she stops a person of color. But if the conscious or unconscious motive for the stop is the individual's race, color, or ethnic background, there is cause for concern that racial profiling has tainted police practice. There is ample evidence that racial profiling is not an effective law enforcement method and that in fact it distracts from the critical focus: stemming actual criminal behavior.

Discussions about racial profiling, however, often concentrate exclusively on the presence or absence of racial animus in conducting traffic stops; the focus is often on whether police officers are motivated by bias. These discussions often do not lead to solutions and may only result in some members of the public asserting, and police denying, that racial profiling occurs. Additionally, whether racial profiling is a matter of perception or reality may not ultimately matter if there is widespread belief that it occurs. Therefore, the dialogue must move past perception, rhetoric, and accusation and to comprehensive action that includes law enforcement officers and members of the community working together to build trust. A perception of cooperation and fairness can do much to counter, and perhaps eliminate, a perception of bias. In turn, that perception will strengthen community trust in law enforcement, encourage true cooperation, and allow and assist law enforcement to achieve its central and necessary goal, protecting the public.

In Vermont, a few law enforcement agencies have been working toward creating and implementing effective solutions. While jurisdictions around the country have been forced, through lawsuits and consent decrees, to collect data on traffic stops, four Vermont jurisdictions have voluntarily begun a program to collect data. This program grew out of the grassroots efforts of the Uncommon Alliance, an organization comprised of local citizens working in association with the Burlington, South Burlington, University of Vermont, and Winooski police

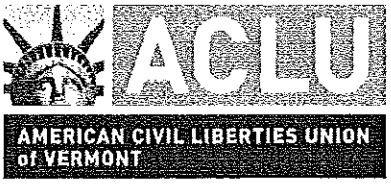
departments, the Chittenden County State's Attorney, and the Vermont State Police. The stated purpose of the Uncommon Alliance is to improve the interactions between police officers and members of racial and ethnic and religious communities. The next step will be to look at the data and understand what they mean. According to the South Burlington police chief, however, already there has been a "huge improvement in our relationship with the community of color just from having the discussion, not to mention actually putting the plan in motion." This is further proof of the effectiveness of perception in addressing matters of bias.

Collecting data on police traffic stops, however, does not address all aspects of racial profiling concerns – it is instead a starting point on the continuum of examining how persons progress through Vermont's criminal justice system. If people of color are disproportionately subject to traffic and pedestrian stops by police, disparities also may be occurring at other stages of the criminal justice system. The Committee learned that these disparities do, in fact, exist. Although the Committee briefings focused mostly on the issue of racial profiling with respect to surveillance and detention, there was discussion of the larger problem of racial bias and disparities in the criminal justice system, including the juvenile justice system and extending to criminal charging decisions, bail determinations, and sentencing. Officers of the court are not necessarily immune from preconceived notions concerning race and may make assumptions, consciously or unconsciously, as a result of cultural bias or misunderstanding.

The Attorney General suggested that there should be further inquiry into prosecution decisions, jury function, and sentencing outcomes. Specifically, he suggested that we need to ask whether, given similar evidence of the commission of a crime, prosecutors in Vermont charge African Americans and other persons of color at higher rates than white defendants; whether defendants of color who choose to go to trial are convicted at higher rates than white criminal defendants; and whether defendants of color are systematically treated more harshly than Caucasian defendants at sentencing. The Committee agrees that these questions warrant further inquiry. Until there is careful examination of patterns of traffic stops, prosecution decisions, and the other discretionary points in our criminal justice system, we will not have a full understanding of the nature and extent of any racial bias in the administration of justice in Vermont.

Our lawmakers, public officials, and law enforcement agencies must work together to develop policies, laws, and accountability measures that effectively combat both active racial profiling and perceived bias. In the end, the issue is one of safety, equity, and fairness – for both law enforcement officials and the members of the public they are charged to serve and protect.

Appendix: A



Testimony From Allen Gilbert, ACLU-VT executive director
To Vermont Advisory Committee, U.S. Commission On Civil Rights,
Burlington, Vt., June 12, 2008

The American Civil Liberties Union of Vermont has tracked the issue of possible racial profiling in Vermont for a number of years. We have been involved in discussions around the issue and around the question of collection of racial data.

Without statistics it is impossible to determine whether, and to what extent, racial profiling exists in Vermont. Anecdotally, the ACLU-VT receives a number of racial profiling complaints every year. The complaints concern law enforcement officers on the local, state, and federal level.

We applaud the recent decision of some Burlington area police departments to begin, voluntarily, to collect racial data when making stops. Some criminal justice experts believe data collection efforts are most effective when undertaken voluntarily, as opposed to a mandate through statute. However, we know that to have a fuller picture of any racial profiling, we need data from departments around the state. Eventually, statutory requirements may have to be put in place if comprehensive data collection is the goal.

We believe there is an issue concerning law enforcement that is beyond possible racial profiling and which Vermont needs to face. That is the issue of police accountability generally. Vermont does not license police officers, so there is not the oversight that is applied to most professionals in the state. Citizens have no place to file complaints, other than with the departments themselves or with the local bodies that oversee them. These avenues of redress are often seen by citizens as less-than-neutral. The Attorney General's Office is similarly not seen as a neutral arbiter or investigator, since it is part of the law enforcement community. Additionally, at times law enforcement has attempted to erect barriers to disclosure of internal police investigations, as happened this year in the Vermont Legislature.

We believe that the vast majority of Vermont law enforcement officers are fair, effective, and professional. However, all officers suffer when there is a public perception that the few bad actors are not held accountable and sanctioned. Currently in Vermont, citizens must usually resort to civil litigation when they complain of mistreatment. This has certainly been true in the area of use of force, where oversight of the use of weapons such as Tasers has been inadequate. There should be some agency, ombudsman, or civil rights officer to which members of the public can turn for redress.

Appendix: B

Middlebury Police Department
General Order

Subject: Undocumented Foreign Nationals **Number:** 2.48

Effective Date: 10-30--07

Approved & Ordered: _____
Chief of Police

I. Policy – Undocumented Foreign Nationals

The Middlebury Police Department exists to provide equality of service to all persons regardless of race, creed, nationality, sexual orientation, gender, or ethnic background. The Department operates within the scope of its jurisdiction and authority as granted by the State of Vermont and the charter of the Town of Middlebury.

The Department provides services consistent with its mission to all persons regardless of citizenship status, that is, the reduction of crime and disorder, improving highway safety, and assisting those in need.

It is essential to the mission of the Middlebury Police Department that victims report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial evidence; that persons report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed. These activities must be undertaken without hesitation and without fear that the victim, witness, or reporting person will be subject to prosecution or deportation for no reason other than immigration status.

Therefore, Department employees will act first and foremost in the best interests of our community and our mission when dealing with undocumented foreign nationals who come to the department for help or to make reports, giving full priority to public safety and justice concerns in preference over rigid enforcement of immigration regulations.

With respect to contact with undocumented foreign nationals, the department will act and refer undocumented foreign nationals to the respective Federal agency only when:

A. The person is known to have committed a crime against the statutes of the State of Vermont or is sought for prosecution by another jurisdiction; or

B. The person is suspected of conduct or conspiracy that is criminal in nature [other than that person's own immigration status] or which undermines homeland security; or

C. On incidental contact should the officer have reason to believe human trafficking or other criminal activity is afoot, or when the officer would otherwise have cause to seek identification and the person has no credible means of identification nor any U.S. citizen or consular official to provide identification, country of citizenship, residence, and purpose for their presence in the U.S.

II. Mexican Citizens

A. Matricula Consular de Alta Seguridad (Mexican Consular ID Card)

The government of Mexico provides a means of documenting, registering, and identifying Mexican nationals living and working outside of Mexico. The Middlebury Police Department accepts the validated Mexican Consular ID card, or "Matricula Card" as proof of identity and documentation.

III. Complaints / Information

A. Referral to Federal Agency

On receipt of a third-party complaint or information of undocumented foreign nationals, in the absence of any other criminal activity, log the information in the department dispatch records and refer the information to the Bureau of Immigration and Customs Enforcement.

B. Investigation

On receipt of a complaint or information of undocumented foreign national(s) suspected of criminal activity, assign an officer to investigate with a follow-up report to the Bureau of Immigration and Customs Enforcement or other applicable law enforcement agency.

IV. Consular Notification

The provisions of the U.S. Department of State publications *"Diplomatic and Consular Immunity"* and *"Consular Notification and Access"* are adopted by this department as procedures for managing foreign nationals.

A. Rights of Foreign Nationals

1. Whenever a foreign national is arrested or detained, advise the foreign national of the right to consular notification and access.

2. In some cases, consular notification is mandatory and the officer must make the notification. In other cases, once advised, the foreign national has the option as to whether or not to notify the consulate. This is dependent on the agreement between the US Government and the particular country. Refer to the list of mandatory notification countries found in the document "Consular Notification and Access" by the US Department of State.

   a. Non-mandatory notification

      - Offer, without delay, to notify the foreign national's consular officials of the arrest/detention. Suggested statements and translations are found in Part 4 of "Consular Notification and Access"
      - On request, notify the nearest consular officials of the foreign national's country without delay. Part 6 of "Consular Notification and Access" contain consulate and embassy contact information.

   b. Mandatory notification

      - Notify the foreign national's nearest consular officials, without delay, of the arrest/detention. Part 6 of "Consular Notification and Access" contains contact information. Sample FAX notification forms are in that document as well.
      - Tell the foreign national you are making the notification.

3. Provide the foreign national with access to embassy or consular officials without delay when notification is mandatory or requested by either the foreign national or embassy/consular officials.

B. Documentation

Make a written record of the notification or offer of notification and actions taken. Include this record with the incident report.

V. Assist to Other Agencies

The Middlebury Police Department will provide mutual aid assistance, in a support role, on request to other law enforcement agencies in the investigation of immigration violations within the scope of department policies. In the absence of criminal activity or homeland security concerns, the department will not intercede without the active presence of the requesting law enforcement agency.

Appendix: C

BURLINGTON POLICE DEPARTMENT DEPARTMENT DIRECTIVE	Number: 01-DD06.10
Date Issued: 3/3/2002	Reviewed Date: 3/14/2006
Subject: BIAS FREE POLICING/POLICE SERVICES Chapter: 01	___ New: ___ Amends: _X_ Rescinds: 01-DD02-01
Authorized Signatures: Chief of Police: _____ Thomas R. Tremblay Legal Counsel: _____ Nancy Goss Sheahan, Esq.	Page 1 of 4

POLICY: The Burlington Police Department shall not condone the use of any bias based policing in the services our employees provide the community in connection with our law enforcement activities.

PURPOSE: The intent of this policy is to reaffirm Burlington Police Department's commitment to unbiased policing, to clarify the circumstances in which officers can consider race, ethnicity, gender or other potentially improper criteria when making law enforcement decisions, and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable and impartial way.

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I. Policing Impartially
II. Preventing Perceptions of Biased Policing
III. Compliance
IV. Supervision and Accountability
V. Cancellation
VI. Sources
VII. Contributors

I. POLICING IMPARTIALLY

A. Definition of "Bias-Based Policing" – conduct by law enforcement officers motivated solely by an individual's race, ethnicity, gender, age, sexual orientation, religion, disability, socioeconomic level, or other potentially improper criteria.

B. Investigative detentions, traffic stops, arrests, searches and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, arrests, nonconsensual searches, and property seizures.

C. Except as provided in I–D, officers shall not:

1. consider race, ethnicity, gender, or other potentially improper criteria in establishing either reasonable suspicion or probable cause;
2. consider race, ethnicity, gender, or other potentially improper criteria in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.

D. Officers may take into account the reported race, ethnicity, gender or other potentially improper criteria of a specific suspect or suspects based on relevant information that links a person or persons of a specific race, ethnicity, gender or other potentially improper criteria to a particular unlawful incident(s). **Race, ethnicity, gender or other potentially improper criteria can never be used as the sole basis for probable cause or reasonable suspicion or motivating factors in making law enforcement decisions.**

II. PREVENTING PERCEPTIONS OF BIASED POLICING

In an effort to prevent inappropriate perceptions of biased law enforcement, each officer shall do the following when conducting pedestrian and vehicle stops:

A. Be courteous and professional

B. Introduce him/herself to the citizen (providing name and agency affiliation), and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety. In vehicle stops, the officer shall provide this information before asking the driver for his or her license and registration.

C. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the citizen understands the purpose of reasonable delays.

D. Answer any questions the citizen may have, including explaining options for traffic citation disposition, if relevant.

E. Provide officer's name and badge number verbally, when requested. Officers may also provide the information in writing or on a business card.

F. Apologize and/or explain if the officer determines that the reasonable suspicion was unfounded (e.g. after an investigatory stop).

III. COMPLIANCE

The Burlington Police Department is committed to providing periodic cultural competency training for its officers. It is the goal of this department to ensure that all employees are sensitive to, and aware of, cultural diversity issues and what constitutes biased policing.

The Burlington Police Department is committed to the vigorous investigation of complaints of this nature and violations of this policy shall result in disciplinary action as set forth in the Department's Rules and Regulations (10-DD06.04) and Discipline (02-DD06.12).

IV. SUPERVISION AND ACCOUNTABILITY

Supervisors shall ensure that all personnel in their command are familiar with the content of this policy and are operating in compliance with it.

V. CANCELLATION

This directive rescinds 01-DD02-01 dated March 3, 2002.

VI. SOURCE

Racially Biased Policing: A Principled Response, from Police Executive Research Forum and COPS Office.

International Association of Chiefs of Police website

VII. CONTRIBUTORS

Chief Thomas R. Tremblay

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Deputy Chief Stephen J. Wark

Lieutenant Kathleen P. Stubbing

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Appendix: D

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2005-1

ESTABLISHING AN OFFICIAL STATEWIDE POLICY DEFINING AND PROHIBITING THE PRACTICE OF "RACIALLY-INFLUENCED POLICING"

WHEREAS, selective enforcement, the discredited practice that is commonly referred to as "Racial Profiling," is a longstanding criminal justice issue that needs to be addressed by every police agency in every jurisdiction throughout the nation; and

WHEREAS, it is the sworn duty of every police agency and officer to protect the civil rights of all persons, and to safeguard the inalienable right to the equal protection of the laws; and

WHEREAS, if a police officer were to rely upon a person's race or ethnicity when making decisions and exercising law enforcement discretion, the result would be to undermine public confidence in the fairness and integrity of the criminal justice system, alienate significant segments of our society, foster disrespect for law enforcement authority and the institutions of government, and ultimately erode public support for law enforcement efforts to investigate and deter crime; and

WHEREAS, the law of selective enforcement under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution is complex and evolving. While judicial decisions interpreting the Constitution serve as important guideposts for the law enforcement community, the courts are not the sole guardians of the Constitution; the Executive Branch is equally sworn to uphold it. Furthermore, in New Jersey the Attorney General may establish law enforcement policies designed to safeguard civil rights that go beyond the requirements of federal and State constitutional law. It is, therefore, appropriate to promulgate a uniform and comprehensive statewide policy that explains in clear terms when and under what circumstances police officers are permitted to consider, and are prohibited from considering, a person's race or ethnicity; and

WHEREAS, the documented success of the New Jersey State Police in addressing the racial profiling issue by establishing a clear nondiscrimination policy, and by providing state-of-the-art training and effective management to all State Police members can and should serve as a model to be followed by other law enforcement agencies in New Jersey and throughout the nation; and

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., provides that it is the responsibility of the Attorney General, as the chief law enforcement officer of the State, to ensure the uniform and efficient enforcement of the criminal laws;

NOW, THEREFORE, I, PETER C. HARVEY, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., do hereby **DIRECT** the following:

1. Official State Policy Prohibiting Discriminatory Policing

a. No police agency or sworn officer or civilian employee of a police agency, while operating under the authority of the laws of the State of New Jersey, shall engage in or tolerate any practice or act constituting "racially-influenced policing" as described in Section 2 of this Law Enforcement Directive.

b. Every police agency operating under the authority of the laws of the State of New Jersey shall, within 60 days of the effective date of this Directive, promulgate and enforce a Rule, Regulation, Standing Operating Procedure, Directive or Order, in a form as may be appropriate given the customs and practices of the agency, which shall prohibit all sworn officers and civilian employees of the agency from engaging in or tolerating any practice or act constituting racially-influenced policing as described in Section 2 of this Law Enforcement Directive. Such Rule, Regulation, Standing Operating Procedure, Directive, or Order shall be consistent with the provisions of this Law Enforcement Directive, and with the training materials distributed by the Division Criminal of Justice in the Attorney General's Office, pursuant to Section 3a of this Directive, and shall provide that any sworn officer or civilian employee of the agency who knowingly violates the agency's Rule, Regulation, Standing Operating Procedure, Directive or Order shall be subject to discipline.

2. Conduct Constituting Racially-Influenced Policing

a. A sworn officer or civilian employee of a police agency acting under the authority of the laws of the State of New Jersey shall not consider a person's race or ethnicity as a factor in drawing an inference or conclusion that the person may be involved in criminal activity, or as a factor in exercising police discretion as to how to stop or otherwise treat the person, except when responding to a suspect-specific or investigation-specific "Be on the Lookout" (B.O.LO.) situation as described both in this Directive and in training materials developed by the Division of Criminal Justice pursuant to Section 3a of this Law Enforcement Directive.

b. Nothing in this Law Enforcement Directive shall be construed in any way to prohibit a police agency or sworn officer or civilian employee from taking into account a person's race or ethnicity when race or ethnicity is used to describe physical characteristics that identify a particular individual or individuals who is/are the subject of a law enforcement investigation, or who is/are otherwise being sought by a law enforcement agency in furtherance of a specific investigation or prosecution.

3. Development and Dissemination of Training Materials and Curricula

a. The Division of Criminal Justice shall within 30 days of the effective date of this Law Enforcement Directive develop and disseminate initial training materials, which shall consist of a video presentation in a DVD format and accompanying written reference materials (a Companion Guide and Skills Assessment), that explain and discuss the nondiscrimination policy set forth in this Law Enforcement Directive. A copy of these initial training materials shall be provided without cost to every police agency operating under the authority of the laws of the State of New Jersey. The Division of

Criminal Justice may periodically review and update these training materials to account for new developments in the law.

b. The Division of Criminal Justice shall within 90 days of the effective date of this Law Enforcement Directive develop curricula on the subject of racially-influenced policing for use in the pre-service training of police recruits. The Division shall submit this curricula to the Police Training Commission for its approval for use at all Police Academies that are subject to the jurisdiction of the Police Training Commission.

c. In order to institutionalize and build upon the successful reforms that have already been undertaken by the New Jersey State Police, the Division of State Police shall include the curricula developed by the Division of Criminal Justice on the subject of racially-influenced policing in the pre-service training of Trooper recruits in the State Police Training Academy. This comprehensive training on racially-influenced policing shall be included for all recruits who attend the State Police Academy in any class beginning on or after September 1, 2005.

4. Confirmation of Initial In-Service Training

a. Every police officer operating under the authority of the laws of the State of New Jersey, regardless of rank or duty assignment, shall participate in the training program developed by the Division of Criminal Justice within 180 days of the employing agency's receipt of the training materials described in Section 3a of this Law Enforcement Directive. The Chief Executive of every police agency operating under the authority of the laws of the State of New Jersey shall also designate those civilian employees of the agency (e.g., dispatchers) who will participate in this initial training program. A person shall be deemed to have participated in the training program by viewing the entire video presentation developed by the Division of Criminal Justice, or by reading the entire contents of the Companion Guide. The viewing of the video presentation may be done at such location(s) or time(s) as may be approved by the Chief Executive of the law enforcement agency, and may be accomplished in multiple sessions at which one or more employees view a selected portion of the video presentation during any one session.

b. Within 180 days of receiving a copy of the training materials described in Section 3a of this Law Enforcement Directive, the Chief Executive of every police agency operating under the authority of the laws of the State of New Jersey shall confirm in writing to the Attorney General that all sworn personnel and all appropriate civilian employees of the agency have either viewed the video presentation or read the entire Companion Guide. The Division of Criminal Justice shall prepare and disseminate forms to facilitate the confirmation process for State, county and local police agencies.

5. Notification of Criminal Investigations and Prosecutions for Official Deprivation of Civil Rights.

Whenever a law enforcement agency conducts a criminal investigation into possible commission of the crime of official deprivation of civil rights in violation of N.J.S.A. 2C:30-6, or pattern of official misconduct in violation of N.J.S.A. 2C:30-7 which is based on two or more violations of N.J.S.A. 2C:30-6, the law enforcement agency shall promptly notify the Director of the Office of Government Integrity, and shall provide such information as the Office of Government Integrity may require. Whenever a prosecuting authority files a complaint, accusation or indictment charging a violation of N.J.S.A. 2C:30-6, or N.J.S.A. 2C:30-7 which is based on two or more violations of N.J.S.A. 2C:30-6, the prosecuting authority shall promptly notify the Director of the Office of Government Integrity, and shall forward a copy of the charging documents to the Director. When the Director is notified of a criminal investigation or the filing of a criminal charge, the Office of Government Integrity shall promptly review the matter, and take such action as it determines to be appropriate. The Office of Government Integrity, in consultation with the Division of Criminal Justice and the County Prosecutors, may issue standards and procedures for these notifications and for its review of the offenses covered under this Section.

6. Questions and Controversies

All questions concerning the interpretation, implementation or enforcement of this Law Enforcement Directive shall be addressed to the Attorney General or his designee.

7. Effective Date

This Law Enforcement Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended, or superceded by Order of the Attorney General.

Given under my hand and seal, this 28th day of June, in the year of our Lord Two Thousand and Five, and of the Independence of the United States, the Two Hundred and Twenty-Ninth.

Peter C. Harvey
Attorney General

Attest:

Vaughn L. McKoy, Director
Division of Criminal Justice

Appendix: E

General Order: PR-346
South Burlington Police Department

Biased Free Policing

The purpose of this written directive is to establish the department's policy prohibiting bias policing, reaffirm the department's commitment to unbiased policing, and to reinforce procedures that will secure our commitment and serve to assure the public that our department is providing services and enforcing laws in a manner that is equitable.

Definition of Bias Policing

The stopping, detaining, searching, seizing, questioning, arresting, of any person, based solely upon the race, religious beliefs, sex, age, national origin, sexual orientation, disability; or, the failure to adequately investigate, enforce or respond to a violation of law or complaint based solely on race, religious beliefs, sex, age, national origin, sexual orientation or disability; or, the failure to treat a person in a respectful or professional manner based solely upon race, religious beliefs, sex, age, national origin, sexual orientation, or disability.

346.1.0 Policy

A. No member of this agency shall engage in bias policing. Such practices are in violation of law, department policy, and/or law enforcement ethics, and are strictly prohibited.

B. Notwithstanding the above, race, religious beliefs, sex, age, national origin, sexual orientation, or disability may in some combination with each other or with other descriptors, facts and circumstances, form the basis of reasonable suspicion or probable cause. Race, religious beliefs, sex, age, national origin, sexual orientation, or disability may, in some combination with each other or with other descriptors, facts and circumstances, serve to identify a person. All enforcement action must be authorized by law. For example, one standard for stopping and detaining a person, or continuing the detention of a person, is articulable, reasonable suspicion that the person has committed, is committing, or is about to commit a violation of the law.

C. All employees are expected to be diligent in the execution of their duties that may include investigating suspicious persons, vehicles, and circumstances, enforcing the laws, and, where appropriate, lawful stopping, detaining, questioning, searching, seizing and/or arresting a person.

D. Employees will, as necessary and professionally appropriate, use techniques and strategies to advance the reality of unbiased policing. These techniques and strategies include, but are not limited to:

1. Be courteous, polite, and professional.

2. During an encounter, provide the employee's name and agency affiliation to citizens who are the subject of the action; or, answer questions posed by the citizen.

3. Ensure that the lengths of traffic stops, investigative detentions, field contacts, etc., are no longer than is reasonably necessary to take appropriate action.

4. Requesting the presence of supervisory or administrative ranked officers, or providing the name and contact information for the supervisor, to allow citizens to voice their field contact or enforcement related concerns

5. Notwithstanding the above, an officer should not offer any or all of the above if she believes that to do so may result in harm to property or to a person, including herself; or, if doing so is impractical; or, is prohibited by law, contract, policy; or, may jeopardize or prejudice an investigation, prosecution or legal/ personnel/ disciplinary action.

346.2.0 Training

A. Each member shall receive training on biased based issues as they relate to performing legitimate police duties. Topics included in the training will be making field/traffic contacts, asset seizures, and property forfeitures (Note: See Appendix on page 4 for DEA Adoption Guidelines regarding asset seizures).

B. It will be the responsibility of the Office of Professional Standards to ensure that members will be given the chance to receive annual training on related issues. The annual training will include a review of the department's policy on biased based profiling and any applicable legal updates that relate to this issue.

346.3.0 Policy Compliance

A. Violations of this policy may result in corrective action, and/or disciplinary action pursuant to the Department's Rules and Regulations. Disciplinary action may include letter of reprimand or warning, probation, transfer, demotion, suspension, and dismissal.

B. Supervisors shall ensure that all personnel in their command are familiar with the content of this policy. Supervisors should randomly review records such as reports of video/audio recordings, or otherwise monitor the conduct of the officers in their command for the purpose of ensuring compliance with this policy and to identify training issues.

C. Upon request, officers will explain how a person should make a complaint regarding an officer's conduct.

D. All sworn employees are required to report allegations, complaints, or knowledge of a suspected violation of this policy to their Chief or his designee. Failure to report a violation in accordance with policy, and the Department's Rules and Regulations shall be considered a separate violation of this policy.

E. The Department shall investigate reports of violations of this policy in accordance with its policies and procedures regarding investigations of police conduct.

346.4.0 Administrative Review

A. An ongoing administrative review will take place by the Prevention Services Division Manager.

B. The PSD Manager will include in his/her monthly report to the Chief of Police a summary of any biased based complaints that were received and the actions taken during the previous month.

C. During the annual review of citizen's complaints by the Administrative Services Division Manager he/she will make note of any patterns that suggest a need for further investigation and/or additional training. These results will be included in the annual report by the ASD Manager.

Approved By:___ Chief Trevor Whipple _____

Date Approved:____ April 30, 2007 _____

Appendix: F

Appendix: F Texas Code of Criminal Procedure, Articles 2.131 to 2.138

Art. 2.131. RACIAL PROFILING PROHIBITED.
A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING.
(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS.
(a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop;
and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.
(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT.

(a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY.

A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES.

The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.