

# Transparency: A New Role For Police Consent Decrees

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*In the late 1990s and early 2000s, strong, bilateral public sentiment against racial profiling by police led to numerous judicial consent decrees designed to prevent profiling. This Note examines three such consent decrees, of varying effectiveness and provenance, governing three major metropolitan police departments over roughly the same time period. These decrees, covering the Los Angeles Police Department, the New Jersey State Troopers, and the New York Police Department, have recently, or will soon, reach the end of their terms. In light of longstanding resistance on the part of local government and the police departments themselves, there is some debate over whether they should be renewed. The effectiveness of such decrees in serving their intended purpose has never been adequately tested. This Note examines the available data and finds that these three very different consent decrees have had no cognizable effect on racial disparity in policing. This note argues, therefore, that the DOJ and the public should abandon the idea that police consent decrees will alter racial disparity, and instead use such decrees as a means of requiring the recording and public release of data, thus forcing openness and transparency in law enforcement.*

## I. INTRODUCTION

In the late 1990s and early 2000s, a consensus had been reached in the United States concerning racial profiling. As one pair of scholars put it, “[b]y September 10, 2001, virtually every-

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one, from Jesse Jackson to Al Gore to George W. Bush to John Ashcroft, agreed that racial profiling was very bad.”<sup>1</sup>

Many events and years of history led to this point. By 1968, a national history of police abuse motivated the U.S. Supreme Court in *Terry v. Ohio*<sup>2</sup> to set a legal standard for police conduct when stopping drivers and pedestrians. Under *Terry*, the standard for detaining citizens is “reasonable suspicion.”<sup>3</sup> Since then, however, Supreme Court decisions have significantly expanded police flexibility in stops and searches.<sup>4</sup> Public pushback against such increased police authorization, in combination with certain high-profile stories of corruption and violence against minorities, led to the 1994 passage of the Violent Crime Control and Law Enforcement Act.<sup>5</sup> Section 14141 of this Act allows the U.S. Attorney General to bring an action for equitable relief against police departments for unconstitutional patterns or practices of conduct.<sup>6</sup> The passage of this Act enabled the Department of Justice (“DOJ”) to bring the Los Angeles and New Jersey cases which are the focus of this Note. And it was the broad public sentiment against such practices<sup>7</sup> that led to the remarkable bipartisan consensus against racial profiling which emerged early in 2001.

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1. Samuel R. Gross & Deborah Livingston, *Racial Profiling Under Attack*, 102 COLUM. L. REV. 1413, 1413 (2002).

2. 392 U.S. 1, 30 (1968).

3. Andrew Gelman, Alex Kiss, & Jeffrey Fagan, *An Analysis of the NYPD's Stop-And-Frisk Policy in the Context of Claims of Racial Bias*, Columbia Pub. Law Research Paper No. 05-95 at 3 (2006), available at <http://ssrn.com/abstract=846365>.

4. For example, in *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000), one of the most recent expansions, the Supreme Court held that the defendant’s “presence in an area of heavy narcotics trafficking,” as well as his “unprovoked flight upon noticing the police,” satisfied the reasonable suspicion standard.

5. See David Johnston & Steven A. Holmes, *Experts Doubt Effectiveness of Crime Bill*, N.Y. TIMES, Sept. 14, 1994, at A16.

6. See 42 U.S.C. § 14141 (2000). Section 14141 states

(a) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

7. For example, a 1999 Gallup poll found that 81 percent of those polled, across racial lines, disapproved of racial profiling (defined as the police practice of stopping

In the years of broadening consensus, a series of lawsuits alleging racial profiling were brought against municipal police departments, both by the DOJ under section 14141 and by certain independent civil rights groups such as the Center for Constitutional Rights in New York City. Rather than being fully tried in open court, many of these lawsuits were settled when the respondent police department agreed to be bound by a “consent decree,” an enforceable legal agreement often overseen by an appointed “monitor” and a federal judge.

Like much else, the nation’s broad consensus against racial profiling changed on the morning of September 11, 2001. Overnight, American attitudes about racial profiling were entirely reversed, with most favoring increased police measures against people of Arab background, including U.S. citizens.<sup>8</sup> Even Arab citizens themselves supported such heightened scrutiny: a *Detroit Free Press* poll of over 500 Arab-Americans found that 61 percent favored extra police scrutiny for people with Middle Eastern features or accents.<sup>9</sup>

This newfound acceptance of racial profiling is broad and far-reaching. As one recent commentator put it, “[m]any Americans view Islam and Muslims as a direct threat to civic culture: one in four support the registration of every Muslim’s home in a federal database . . . .”<sup>10</sup> Government officials,<sup>11</sup> academics,<sup>12</sup> the press,<sup>13</sup>

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people of particular racial or ethnic groups in the belief that they are more likely to commit certain crimes). See Gross & Livingston, *supra* note 1, at n.1 (citing Gallup Poll, Sept. 24, 1999-Nov. 16, 1999).

8. In a poll taken September 14, 2001, 58 percent of those polled favored “requiring Arabs, including those who are U.S. citizens, to undergo special, more intensive security checks before boarding airplanes in the U.S.” Gross & Livingston, *supra* note 1, at n.2 (citing Gallup Poll, Sept. 14, 2001).

9. David A. Harris, *New Risks, New Tactics: An Assessment of the Re-Assessment of Racial Profiling in the Wake of September 11, 2001*, 2004 UTAH L. REV. 913, 914 (citing Dennis Niemic & Shawn Windsor, *Arab Americans Expect Scrutiny, Feel Sting of Bias*, DETROIT FREE PRESS, Oct. 1, 2001, at 1A).

10. Murad Hussain, *Defending the Faithful: Speaking the Language of Group Harm in Free Exercise Challenges to Counterterrorism Profiling*, 117 YALE L.J. 920, 924 (2008) (citing William Kates, *Poll: Many Would Limit Some Rights of Muslims*, PHILA. INQUIRER, Dec. 19, 2004, at A32; Lydia Saad, *Anti-Muslim Feelings Fairly Commonplace*, Gallup Poll, Aug. 10, 2006, available at <http://media.gallup.com/WorldPoll/PDF/AntiMuslimSentiment81006.pdf>).

11. In the weeks after 9/11, “federal dragnets targeted thousands of immigrants from Muslim-majority countries, detaining some for as long as five years.” See Hussain, *supra* note 10, at 924.

and even civil libertarians<sup>14</sup> have joined the chorus. In light of such arguments from so many different sectors of society, it can no longer be said that there is an American consensus that racial profiling is inherently wrong.<sup>15</sup>

Considering this dramatic reversal in the terror context, it makes sense to ask whether this change in social sentiment tells us anything about racial profiling generally. In the policing context, the argument is ongoing between those sympathetic to the “rational police actor” model, which would permit police to consider race, and those hostile to racial profiling in any situation. The strong pre-9/11 anti-profiling movement led to numerous consent decrees designed to prevent racial profiling by police. This Note will examine three consent decrees, of varying effectiveness and provenance, governing three major metropolitan police departments over roughly the same time period. These

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12. See, e.g., PHILIP B. HEYMANN & JULIETTE N. KAYYEM, *PROTECTING LIBERTY IN AN AGE OF TERROR* 102 (MIT Press 2005) (arguing that “[g]iven what we know about terrorist organizations, who and how they recruit and how they plan their attacks, groups of persons identifiable by some unchosen characteristic may reduce the pool of people on which law enforcement must concentrate”); Gross & Livingston, *supra* note 1, at 1437 (“The September 11 attacks and the threat of future terrorism clearly require an intensive investigation. Given the extremity of the threat and identity of the known terrorists, the government is justified in focusing that investigation on Middle Eastern men despite the fact that the public decision to do so has caused understandable pain and anxiety for many Arab Americans.”).

13. See Timothy M. Ravich, *Is Airline Passenger Profiling Necessary?*, 62 U. MIAMI L. REV. 1, 40–41 (2007) (citing Editorial, *The ‘Profiling’ Debate*, WALL ST. J., Aug. 19, 2006, at A10) (arguing that avoiding racial profiling in airport screening has led to “a policy of random searches that focuses scarce resources as much on eight-year-old girls as on 22-year-old men with Pakistani passports”); Stuart Taylor Jr., *The Case for Using Racial Profiling at Airports*, NAT’L J., Sept. 22, 2001, at 2877 (arguing that “the mathematical probability that a randomly chosen Arab passenger might attempt a mass-murder-suicide hijacking — while tiny — is considerably higher than the probability that a randomly chosen white, black, Hispanic, or Asian passenger might do the same”).

14. Floyd Abrams, the celebrated First Amendment lawyer, said that in the wake of the bombings, “it seems entirely appropriate to look harder at such people. Remember, Justice [Robert] Jackson said ‘the Constitution is not a suicide pact.’” Gross & Livingston, *supra* note 1, at 1414 (citing Henry Weinstein et al., *Racial Profiling Gains Support as Search Tactic*, L.A. TIMES, Sept. 24, 2001, at A1).

15. This is not to say, of course, that arguments against profiling have disappeared in the wake of 9/11. In fact, the voices in opposition have made themselves plainly heard in the ongoing debate. See, e.g., David Rudovsky & R. Richard Banks, *Racial Profiling and the War on Terror*, 155 U. PA. L. REV. 173, 177 (2007) (arguing that “[t]he most notorious and ineffective government national security programs have been built on racial stereotypes,” and citing the Palmer raids and the Japanese internment as examples); Ravich, *supra* note 13, at 7–9 (summarizing the main concerns still voiced by profiling critics after 9/11).

three consent decrees, covering the Los Angeles Police Department (“LAPD”), the New Jersey State Troopers, and the New York Police Department (“NYPD”) have recently, or will soon, reach the end of their terms. In light of longstanding resistance on the part of local government and the police departments themselves, the question of whether or not they should be renewed is a timely one.

In considering whether to renew any program, the first question must be whether such a program is having the intended effect. Curiously, despite the inflamed rhetoric on both sides, the efficacy of such police department consent decrees has never been tested. This Note examines the available data and finds that three very different consent decrees in three very different jurisdictions over a number of years have had no cognizable effect on racial disparity in policing. Therefore, even if there was consensus that racial profiling is inherently wrong in all situations, the DOJ and the public should abandon the idea that police consent decrees will alter racial disparity. This Note proposes that section 14141 be used as a means of requiring the recording and public release of data, thus forcing openness and transparency in law enforcement.

Part II of this Note surveys the background and current state of the law in New Jersey, Los Angeles, and New York, summarizing the events that led to the three consent decrees and their varying structures and requirements. Part III seeks to determine whether the consent decrees accomplish their purpose, first by evaluating law enforcement compliance and then by examining available data to measure any changes in policing. Part IV demonstrates that the consent decrees have not reduced racial disparity in policing, but argues that by mandating data collection and distribution, the consent decrees have performed a valuable transparency function and should continue to be so utilized.

## II. HISTORY AND CURRENT STATE OF THE LAW

### A. LOS ANGELES

#### 1. *Life History of the Los Angeles Consent Decree*

In a sense, racial profiling as a national issue can be traced to the headquarters of the Los Angeles Police Department. When

the Los Angeles consent decree was renewed in 2006, the *Los Angeles Times* wrote that the judge's ruling marked the latest salvo in

a generations-long struggle to impose reforms on the often-reluctant LAPD. After the Watts riots in 1965, the McCone Commission suggested a sweeping set of societal initiatives to combat poverty and address strained relations between the police and minority communities. Its recommendations were largely disregarded. Then, in 1991, after the King beating, the Christopher Commission proposed another set of recommendations, intended to reinforce civilian control over the LAPD and to respond to the department's reputation for brutality and racism. Some of its recommendations, such as creating a term of office for the chief, were adopted by voters in the wake of the 1992 riots. But others, including the adoption of a computerized officer tracking system, remain unfulfilled even today . . . .<sup>16</sup>

The Los Angeles consent decree grew out of a wide-ranging scandal involving the Rampart Division of the LAPD. In 1998, members of the Rampart Division, and in particular the Community Resources Against Street Hoodlums ("CRASH") anti-gang unit, were accused of falsifying evidence, shooting and beating suspects,<sup>17</sup> covering up unjustified shootings, framing suspects,<sup>18</sup> and lying in court to secure convictions.<sup>19</sup> The scandal broke when Officer Rafael Perez, caught stealing cocaine from an LAPD evidence room,<sup>20</sup> testified about widespread gross misconduct; it ended with over 100 convicts released from prison<sup>21</sup> and \$70 million in settlements.<sup>22</sup>

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16. Patrick McGreevy, *LAPD Faces 3 More Years of Scrutiny*, L.A. TIMES, May 16, 2006, at B1.

17. Patrick McGreevy, *Case Not Closed Yet for LAPD*, L.A. TIMES, Apr. 20, 2006, at B1.

18. Jeremiah Marquez, *\$70 Million Will Settle Rampart Scandal Costs*, CONTRA COSTA TIMES (Walnut Creek, CA), Apr. 1, 2005, at f4.

19. Rick Orlov, *LAPD Consent Decree Wins Council OK*, L.A. DAILY NEWS, Nov. 3, 2000, at N1.

20. Beth Barrett, *Rampart Scandal Haunts LAPD*, L.A. DAILY NEWS, Oct. 2, 2004, at N10.

21. *Id.*

22. Marquez, *supra* note 18.

In 2000, the DOJ, which had been looking into LAPD misconduct since 1996, released a scathing letter to the Los Angeles City Council (“City Council”).<sup>23</sup> The letter alleged that “[s]erious deficiencies in city and LAPD policies and procedures for training, supervising and investigating and disciplining officers foster and perpetuate officer misconduct . . . .”<sup>24</sup> According to the DOJ, LAPD officers were regularly making false arrests, using excessive force, conducting stops without reasonable suspicion, and engaging in improper searches and seizures.<sup>25</sup> The DOJ was continuing its investigation into whether the department “discriminate[d] on the basis of race or national origin in its law enforcement activities.”<sup>26</sup>

The DOJ letter constituted an ultimatum to the City Council, “telling officials to reform the LAPD or face a [section 14141] lawsuit alleging a pattern or practice of constitutional violations by its officers.”<sup>27</sup> The City Council President designated four officials to negotiate with the DOJ and to design an agreement that would forestall a federal civil rights lawsuit.<sup>28</sup> DOJ officials insisted that any deal with the city be “in the form of a consent decree filed with a federal judge, not in a more informal memorandum of understanding, as advocated by Mayor Richard Riordan and Police Chief Bernard C. Parks.”<sup>29</sup> When it became clear that the City Council had the votes needed to approve the consent decree, the Mayor and Police Chief backed down and agreed.<sup>30</sup> On September 19, 2000, the City Council approved a legally binding agreement, to be filed in federal court and implemented under the watch of an independent monitor. Lawmakers went beyond even the Justice Department’s recommendations and imple-

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23. Jim Newton, *Council Backs U.S. Demand to Reform Police*, L.A. TIMES, May 10, 2000, at A1.

24. *Id.*

25. *Id.*

26. *Id.*

27. Tina Daunt, *4 Named to Negotiate on Police Reform*, L.A. TIMES, May 12, 2000, at B1.

28. *Id.*

29. Tina Daunt, *U.S. Presents Demands to LAPD*, L.A. TIMES, June 2, 2000, at B1.

30. Tina Daunt, *Riordan, Parks Give in on LAPD Consent Decree*, L.A. TIMES, Sept. 16, 2000, at A1.

mented a series of reforms aimed at preventing police corruption and ensuring citizens' civil rights.<sup>31</sup>

On November 3, 2000, Judge Gary A. Feess, Jr. was randomly selected at the Federal Courthouse in Los Angeles to oversee the implementation of the consent decree. "A former federal prosecutor and a former Superior Court judge, Feess [was] intimately familiar with the workings of the Los Angeles Police Department . . . [,] [having] served as deputy general counsel to the Christopher Commission, which investigated the department after the Rodney G. King beating"<sup>32</sup> and "oversee[ing] pretrial proceedings in all Rampart-related civil rights cases."<sup>33</sup> Both sides praised Judge Feess for his fairness, toughness, and experience.<sup>34</sup> Judge Feess quickly made it clear that he would not authorize any consent decree without final approval over the selection of an independent monitor.<sup>35</sup> The City of Los Angeles ("City") and the DOJ selected Michael Cherkasky, a former New York City prosecutor working for a risk mitigation and corporate security firm, to oversee the consent decree.<sup>36</sup> A June 13, 2001 meeting between Judge Feess and Cherkasky went well, and two days later, Judge Feess signed off on the consent decree.<sup>37</sup>

## 2. *Structure and Requirements of the Los Angeles Consent Decree*

The consent decree that emerged from the Rampart scandal<sup>38</sup> resolved all United States claims in the case and required the City and the LAPD to implement a number of remedial measures. The decree made the City responsible for providing the necessary support to enable the LAPD to fulfill its obligations under the

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31. Tina Daunt, *City Agrees to U.S. Reforms for LAPD*, L.A. TIMES, Sept. 20, 2000, at A1.

32. Tina Daunt, *Judge Is Assigned to Enforce Police Reform*, L.A. TIMES, Nov. 4, 2000, at B1.

33. *Id.*

34. *Id.*

35. David Rosenzweig, *Judge to Have Last Word on LAPD Consent Decree Monitor*, L.A. TIMES, Feb. 9, 2001, at B2.

36. Tina Daunt, *Consent Decree Gets Federal Judge's OK*, L.A. TIMES, June 16, 2001, at C1. For an extensive profile of Cherkasky, see Tina Daunt, *N.Y. Mob Prosecutor to Take on the LAPD*, L.A. TIMES, July 24, 2001, at C1.

37. *See* Daunt, *supra* note 36.

38. Consent Decree, *United States v. Los Angeles*, No. 00-11769 GAF (C.D. Cal. June 15, 2001), available at [http://www.lapdonline.org/assets/pdf/final\\_consent\\_decree.pdf](http://www.lapdonline.org/assets/pdf/final_consent_decree.pdf) [hereinafter *Los Angeles Consent Decree*].



agreement.<sup>39</sup> The City would establish a database (known as “TEAMS II”) of LAPD officers, supervisors, and managers to help identify and modify at-risk behavior.<sup>40</sup> The City was to follow a detailed timeline for the implementation of the TEAMS II database.<sup>41</sup> In addition, the LAPD was to issue annual performance evaluations for all sworn employees.<sup>42</sup> LAPD supervisors would oversee all booking, search, and arrest procedures.<sup>43</sup> The LAPD would prohibit the use of race, color, ethnicity, or national origin as a factor in conducting stops or detentions,<sup>44</sup> and as a means to this end, LAPD officers were to complete a detailed report for each motor vehicle or pedestrian stop, collecting data on, among other things, the race of the person stopped.<sup>45</sup>

As for compliance, the City was to file with the Court a status report every six months, delineating steps taken to comply with the agreement,<sup>46</sup> and the DOJ would have access to all City staff, facilities, and documents necessary to evaluate the compliance of the City and the LAPD.<sup>47</sup> The agreement was to terminate five years from the effective date unless the DOJ made a motion to extend the term. If the City contested to such a motion, the Court was to hold a hearing, at which the burden would be on the City “to demonstrate that it has substantially complied with each of the provisions of the agreement and maintained substantial compliance for at least two years.”<sup>48</sup>

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39. *Id.* ¶ I(A)(11).

40. *Id.* ¶ II(A)(39).

41. *Id.* ¶ II(A)(50).

42. *Id.* ¶ II(B)(54).

43. *Id.* ¶ III(B)(70–3).

44. *Id.* ¶ III(H)(103).

45. *Id.* ¶ III(H)(104–5).

46. *Id.* ¶ XII(A)(176).

47. *Id.* ¶ XII(A)(177).

48. *Id.* ¶ XII(B)(179).

## B. NEW JERSEY

### 1. *Life History of the New Jersey Consent Decree*

The history of the New Jersey consent decree goes back nearly two decades.<sup>49</sup> In 1990, “seventeen minority defendants filed a consolidated motion to suppress evidence [against them], claiming that they were victims of selective enforcement of traffic laws because of their race.”<sup>50</sup> The judge in this case, *State v. Soto*,<sup>51</sup> took seriously “expert evidence that indicated that it was highly unlikely that the wide disparity between the rates at which white and African-American drivers were being stopped on the Turnpike could have occurred randomly.”<sup>52</sup> After six years of lengthy hearings and voluminous testimony, the judge found that the defendants had “established a prima facie case of selective enforcement which the State has failed to rebut requiring suppression of all contraband and evidence seized.”<sup>53</sup> The defendants’ arguments in *Soto* were based largely on statistics. This case, more than perhaps any other, placed statistics in the center of the racial profiling debate.<sup>54</sup>

In the wake of *Soto* and under the authority of section 14141, the Civil Rights Division of the DOJ began an investigation into the patterns and practices of the New Jersey State Police (“the State Police”) to determine whether they “use[d] race-based profiles to stop black and Hispanic motorists.”<sup>55</sup> In the midst of this investigation, on April 23, 1998, two white State Troopers fired eleven shots into a van they had pulled over on the New Jersey turnpike, missing the driver but seriously injuring three minority

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49. For an extensive examination of the history of racial profiling by the New Jersey State Police, see David Kocieniewski & Robery Hanley, *An Inside Story of Racial Bias and Denial; New Jersey Files Reveal Drama Behind Profiling*, N.Y. TIMES, Dec. 3, 2000, at 153.

50. New Jersey Advisory Committee on Police Standards, *Report and Recommendation to Governor Jon S. Corzine Pursuant to Executive Order No. 29*, Dec. 7, 2007, at 17, available at [http://www.state.nj.us/acps/njacps\\_final\\_report.pdf](http://www.state.nj.us/acps/njacps_final_report.pdf).

51. 324 N.J. Super. 66 (Law Div. 1996).

52. New Jersey Advisory Committee, *supra* note 50, at 17.

53. *Soto*, 324 N.J. Super. at 69.

54. For more on *Soto*, see William H. Buckman, *Racial Profiling: Truth and Consequences*, 233 N.J. LAW. 16, 17–18 (2005); Abraham Abramovsky & Jonathan I. Edelstein, *Pretext Stops and Racial Profiling After Whren v. United States: The New York and New Jersey Responses Compared*, 63 ALB. L. REV. 725, 743–44 (2000).

55. David Voreacos, *Peek at N.J. Troopers' Future? Federal Cuffs Chafe Pittsburgh Police*, N.J. REC., Mar. 8, 1999, at a01.

passengers.<sup>56</sup> The shooting brought racial disparity in policing to the forefront.

On April 20, 1999, the New Jersey Attorney General's office issued a report admitting that racial profiling among state troopers "is real — not imagined."<sup>57</sup> The report "mark[ed] the state's first official admission that its troopers sometimes stop minority motorists based on nothing more than the color of their skin,"<sup>58</sup> while being careful to say that the worst sort of profiling was limited to a small number of troopers.<sup>59</sup> Two days later, the four subjects of the shooting on the Turnpike brought suit against the State Police, alleging, among other things, that "the officers forced them to lie naked and bloody in a ditch despite their pleas for medical care."<sup>60</sup> Four days later, "lawyers at the U.S. Justice Department conclude[d] they ha[d] sufficient evidence for a civil rights lawsuit against the New Jersey State Police," and negotiations began at once on the structure of the proposed consent decree.<sup>61</sup>

In late December 1999, under mounting pressure and faced with the threat of a DOJ lawsuit, New Jersey agreed to a consent decree mandating a series of reforms designed to eradicate racial profiling.<sup>62</sup> The consent decree was filed in the U.S. District

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56. Christopher Mumma & Ovetta Wiggins, *Two Troopers Indicted in '98 Shootings*, N.J. REC., Sep. 8, 1999, at a01. For a detailed description of the incident, see Jim Dwyer, *Cops Ignored Pleas—Passenger*, N.Y. DAILY NEWS, Apr. 30, 1998, at 8.

57. New Jersey Office of the Attorney General, *Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling*, Apr. 20, 1999, at 4, available at [http://www.state.nj.us/lps/intm\\_419.pdf](http://www.state.nj.us/lps/intm_419.pdf).

58. Kathy Barrett Carter, *N.J. Troopers Show Bias in Stops, State Concedes*, NEWARK STAR-LEDGER, Apr. 21, 1999, at 1.

59. Mumma & Wiggins, *supra* note 56. See also, Carter, *supra* note 58, at 1.

The product of two months of work by more than 70 investigators from the State Police and the Division of Criminal Justice in the Attorney General's Office, the report concludes that those engaging in racial profiling are divided into two categories. There is a small group of hard-core profilers engaged in "willful misconduct." There is also a larger group that, consciously or unconsciously, targets minority motorists because of lack of supervision, pressure to make arrests, a desire to advance personally and simple reliance on racist stereotypes rather than sound policing techniques.

*Id.*

60. Debra Lynn Vial, *4 Subjects of Turnpike Shooting File Lawsuit*, N.J. REC., Apr. 23, 1999, at a01.

61. Mumma & Wiggins, *supra* note 56, at a01.

62. Tom Avril, *N.J., U.S. Agree on Steps to Prevent Profiling*, PHILA. INQUIRER, Dec. 23, 1999, at A01.

Court in Trenton,<sup>63</sup> and was to be overseen by Judge Mary L. Cooper and an independent monitor, who would be chosen by the parties.<sup>64</sup> The parties eventually agreed to an independent monitor team of James D. Ginger, a Texas criminal justice professor and former police officer who was currently monitoring the Pittsburgh consent decree, and Alberto Rivas, a Newark lawyer and former Assistant United States Attorney for the District of New Jersey.<sup>65</sup> The parties allowed the two, who had not met prior to their appointment, to independently determine how they would carry out their duties.<sup>66</sup>

## 2. *Structure and Requirements of the New Jersey Consent Decree*

The consent decree resolved all United States claims against the State of New Jersey by altering “certain policies, practices, and procedures relating to the manner in which . . . New Jersey manages and operates the . . . State Police.”<sup>67</sup> New Jersey State Troopers were not to rely on the race or national or ethnic origin of a motorist in deciding whether to stop a vehicle, except when looking out for a specific suspect identified by race or origin. Reasonable suspicion was required for troopers to request a search.<sup>68</sup> Every time a stop was made, troopers were to document the race or national or ethnic origin of the motorist, the reason for the stop, and all post-stop action taken.<sup>69</sup> Further, the State was to develop a computerized program tracking stops, misconduct investigations, and all other relevant material relating to each individual trooper, allowing supervisors to identify officers whose behavior was problematic.<sup>70</sup> The State Police were to develop and

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63. *Id.*

64. *Judge Picked to Rule on Trooper Reforms*, NEWARK STAR-LEDGER, Dec. 30, 1999, at 42.

65. News Release, United States Department of Justice, *Independent Monitor Team Chosen to Monitor New Jersey's Efforts to Implement Terms of Consent Decree Entered Into With the Justice Department*, Mar. 29, 2000, available at <http://www.usdoj.gov/opa/pr/2000/March/150cr.htm>.

66. Charles Toutant, *Texas and Newark Lawyer Gear Up for Joint Monitoring of State Police*, 160 N.J. L.J. 193 (2000).

67. Stipulation of Settlement, *United States v. State of New Jersey*, Civil No. 99-5970 (D.N.J. Dec. 30, 1999), available at <http://www.nj.gov/oag/jointapp.htm>.

68. *Id.* ¶¶ 26–28. This provision tracks the language of *Terry v. Ohio*, 392 U.S. 1, 30 (1986).

69. *Id.* ¶¶ 29.

70. *Id.* ¶¶ 40–46.

make available complaint forms regarding trooper misconduct, and establish and operate a 24-hour toll-free hotline for reporting the same.<sup>71</sup> The State Police were also to improve the training of recruits and incumbent troopers in such matters as cultural diversity, communication, and nondiscrimination.<sup>72</sup>

By way of compliance, the State Police were to issue reports to the public on a semiannual basis, containing statistics on motorist stops and outcomes, by race.<sup>73</sup> Further, an Independent Monitor — to be selected by the parties and approved by the Court — was to monitor and report on the State's implementation of this Decree.<sup>74</sup> The consent decree was to continue for a term of five years. However, if the State remained in substantial compliance for at least two years, it could request and the Court could approve a shortening of the term.<sup>75</sup>

### C. NEW YORK CITY

#### 1. *Life History of the New York Consent Decree*

Unlike Los Angeles or New Jersey, the New York consent decree stemmed from a class action lawsuit: *Daniels v. City of New York*.<sup>76</sup> In 1999, the Center for Constitutional Rights (“CCR”) filed suit against the New York City Police Department (“NYPD”), charging the department with illegal racial profiling.<sup>77</sup> CCR further challenged the NYPD policy of “conducting stop-and-frisks without reasonable suspicion of criminal activity as required by the Fourth Amendment.”<sup>78</sup> CCR asked the U.S. District Court for the Southern District of New York to disband the

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71. *Id.* ¶¶ 58–59, 62.

72. *Id.* ¶¶ 93–101.

73. *Id.* ¶ 114.

74. *Id.* ¶¶ 115–21.

75. *Id.* ¶ 131.

76. 198 F.R.D. 409 (S.D.N.Y. 2001).

77. Press Release, Center for Constitutional Rights, *CCR Achieves Historic Settlement In Street Crimes Unit Class Action* (Sept. 18, 2003), <http://ccrjustice.org/newsroom/press-releases/ccr-achieves-historic-settlement-street-crimes-unit-class-action> [hereinafter CCR Press Release].

78. Center for Constitutional Rights, *Daniels v. the City of New York* (last visited Aug. 25, 2008) available at <http://ccrjustice.org/ourcases/past-cases/daniels%2C-et-al.-v.-city-new-york> [hereinafter CCR Daniels Page].

NYPD's specialized Street Crimes Unit ("SCU")<sup>79</sup> and bar the NYPD from stopping and searching persons based on race or nationality "without the reasonable articulable suspicion required by the Fourth Amendment."<sup>80</sup>

The *Daniels* case and the subsequent widespread determination to reform the NYPD were spurred on by a number of notorious incidents, including the February 1999 shooting death of an unarmed African immigrant named Amadou Diallo in the vestibule of his Bronx apartment building.<sup>81</sup> The killing, by four plainclothes SCU officers, sparked outrage across New York City and the nation,<sup>82</sup> and brought the discussion of racial profiling to the fore.<sup>83</sup> Shortly after the shooting, the NYPD released statistics revealing an enormous number of stops and searches, mostly of black and Latino men, very few of which resulted in arrest.<sup>84</sup> In April 2002, while the *Daniels* case was still in progress, the NYPD disbanded the SCU.<sup>85</sup> And on September 18, 2003,<sup>86</sup> "after . . . the depositions of top NYPD officials and . . . tens of thousands of pages of discovery, the City agreed to settle the case."<sup>87</sup> The out-of-court consent decree was approved on December 12, 2003, by Judge Shira Scheindlin of the Southern District of New

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79. The SCU was "an elite commando unit of more than 300 police officers that patrolled the streets at night in unmarked cars and in plain clothes." *Id.* For an in-depth portrait of the SCU at the time of the shooting, see David Kocieniewski, *Success of Elite Police Unit Exacts a Toll on the Streets*, N.Y. TIMES, Feb. 15, 1999, at A1.

80. *Daniels*, 198 F.R.D. at 411.

81. Michael Cooper, *Officers in Bronx Fire 41 Shots, and an Unarmed Man Is Killed*, N.Y. TIMES, Feb. 5, 1999, at A1.

82. See Ginger Thompson, *1,000 Rally to Condemn Shooting of Unarmed Man by Police*, N.Y. TIMES, Feb. 8, 1999, at B1; Kevin Flynn, *Police Killing Draws National Notice*, N.Y. TIMES, Feb. 8, 1999, at B5; Andy Newman, *Prayer in New York, Protest in Washington*, N.Y. TIMES, Feb. 16, 1999, at B5.

83. For a consideration of the many strong reactions, see Joel Dreyfuss, *Wake-up Call*, SALON.COM, Feb. 12, 1999, <http://www.salon.com/news/1999/02/12newsc.html>.

84. "In 1997 and 1998, 35,000 of the 45,000 stop-and-frisks reported by the SCU did not result in an arrest. A statistical analysis of reported stop-and-frisks released by the New York State Attorney General in December 1999 revealed that the SCU stopped 16 African-Americans for every arrest made." CCR *Daniels* Page, *supra* note 78.

85. *Id.* See also David Hinckley, *Cautionary Tale: Springsteen and Diallo*, N.Y. DAILY NEWS, Sept. 24, 2004, at 41.

86. CCR press release, *supra* note 77.

87. CCR *Daniels* page, *supra* note 78.

York.<sup>88</sup> Judge Scheindlin oversaw the settlement through its expiration on December 31, 2007.<sup>89</sup>

## 2. *Structure and Requirements of the New York Consent Decree*

The stipulation of settlement that ended the *Daniels* case,<sup>90</sup> in addition to providing the plaintiffs with damages<sup>91</sup> and attorneys' fees,<sup>92</sup> required a number of concessions from the NYPD. The NYPD was to have a written policy prohibiting the use of profiling, complying with the New York State and United States Constitutions.<sup>93</sup> The Commissioner of the NYPD was to issue a message concerning this new policy to be distributed to all NYPD officers and read aloud at roll call in all commands.<sup>94</sup> The NYPD was to train officers and recruits regarding the following: the legal bases for stop, question, and frisk ("SQF") activity, the law of search and seizure, cultural diversity, integrity, and ethics.<sup>95</sup>

NYPD officers would record each incident of SQF activity on a UF-250, an NYPD form that required the officer to note the race of the subject.<sup>96</sup> The NYPD would compile and maintain a UF-250 database, which would be provided to Class Counsel on a quarterly basis.<sup>97</sup> The NYPD Quality Assurance Division ("QAD") was to conduct internal audits to determine whether UF-250s have been properly completed and whether SQFs were based upon reasonable suspicion.<sup>98</sup> The result of these audits would be

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88. *Id.*

89. *Daniels v. City of New York*, No. 99 Civ. 1695, 2007 WL 2077150 (S.D.N.Y. July 16, 2007).

90. Stipulation of Settlement, *Daniels v. New York*, No. 99 Civ.1695 (S.D.N.Y. Sept. 24, 2003), available at [http://ccrjustice.org/files/Daniels\\_StipulationOfSettlement\\_12\\_03\\_0.pdf](http://ccrjustice.org/files/Daniels_StipulationOfSettlement_12_03_0.pdf) [hereinafter *Daniels* Stipulation of Settlement].

91. The ten named plaintiffs in the case received a total of \$167,500 from the NYPD. CCR Press Release, *supra* note 77.

92. *Daniels* Stipulation of Settlement, *supra* note 90, ¶ P.

93. *Id.* ¶ C(1).

94. *Id.* ¶ C(4).

95. *Id.* ¶ E(3–5).

96. *Id.* ¶ F(1). This was a particular concern, and a fundamental one. Investigators for the Civilian Complaint Review Board had determined by April of 2000 that in nearly half of the SQF cases they investigated, no UF-250 report was ever filed. William K. Rashbaum, *Review Board Staff Faults Police on Stop-and-Frisk Reports*, N.Y. TIMES, Apr. 28, 2000, at B1.

97. *Daniels* Stipulation of Settlement, *supra* note 90, ¶ F(5).

98. *Id.* ¶ D(1).

provided to class counsel.<sup>99</sup> In addition, the NYPD would maintain misconduct investigation and disciplinary files regarding SQF activity for all NYPD officers and supervisors.<sup>100</sup> Finally, the NYPD was to engage in public education efforts, including participation with plaintiffs in joint public meetings, providing SQF workshops in high schools, and developing pamphlets regarding SQF encounters between police and citizens.<sup>101</sup> Disputes were to be resolved by the Court, which was empowered to order specific performance.<sup>102</sup> The stipulation was to terminate on December 31, 2007,<sup>103</sup> and no provision was made for any extension of its terms.

#### D. SUMMARY — COMPARISON AND CONTRAST

The Los Angeles and New Jersey consent decrees are very similar in design and objective, which is no surprise considering that both grew out of lawsuits brought by the DOJ and settled at close to the same time, December 1999 in the case of New Jersey<sup>104</sup> and June 2001 in the case of Los Angeles.<sup>105</sup> The differences in the operation of these consent decrees are a result of the actions of the two judges and three monitors who oversaw their terms.<sup>106</sup>

The New York consent decree, on the other hand, was its own creature. The product of a civil suit, with no monitor and no system of enforcement, the prosecution of this decree would rest almost entirely in the hands of the judge. Even the judge would be limited by the terms of the exceedingly weak agreement, which contained no “remedies or obligations regarding any trends or patterns reflected” in the database, “[did] not require any specific

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99. *Id.* ¶ D(4).

100. *Id.* ¶ I(2).

101. *Id.* ¶ G(2–4).

102. *Id.* ¶ L(2)(b).

103. *Id.* ¶ O(2).

104. *See supra* Part II.B.1.

105. *See supra* Part II.A.1.

106. Also significant would be the monitors’ budgets, which were quite divergent. Los Angeles paid \$11 million for 5 years of monitoring, while New Jersey paid only \$1.8 million over the same period. *See infra* note 167. New York, without a monitor, paid nothing and, it might be argued, received nothing in return. *See infra* Part II.D.2.



outcomes[,] and [made] no specific assurances with respect to the supervision, monitoring and training of NYPD officers . . . .”<sup>107</sup>

### III. THE IMPACT OF CONSENT DECREES ON RACIAL DISTRIBUTION OF POLICE ACTION

This part examines state compliance with the consent decree in the three jurisdictions, with an eye on the power of the decrees to compel action. This part also considers the data produced under the terms of the three decrees and argues that these data reflect no cognizable change in the racial distribution of police action in any of the three jurisdictions after five years.

This part will compare data from two different points in the history of each consent decree — an early point, either 2002 or 2003, and a later point, either 2006 or 2007. This bitemporal analysis is designed to demonstrate what changes in policing, if any, result from four years of life under a court-ordered consent decree. Section A will consider how the consent decrees approach the collection and distribution of data. Section B will analyze LAPD compliance and data collected in Los Angeles. Section C will examine New Jersey State Trooper compliance with the consent decree and the available New Jersey data. Section D will consider what may be inferred from the spotty compliance and extremely limited data provided by the NYPD.

#### A. A NOTE ON HOW THE CONSENT DECREES APPROACH DATA

The Los Angeles consent decree contains detailed requirements for tracking the behavior of individual officers and supervisors, by way of a computer information system called TEAMS II.<sup>108</sup> Further, LAPD officers are required to complete a detailed electronic or written report for every motor vehicle or pedestrian stop.<sup>109</sup> As in New Jersey, the consent decree also orders the LAPD to prepare “semiannual public reports . . . includ[ing] ag-

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107. *Daniels v. City of New York*, No. 99 Civ. 1695, 2007 WL 2077150, at \*1 (S.D.N.Y. July 16, 2007).

108. *See Los Angeles Consent Decree*, *supra* note 38, ¶¶ 39–54. LAPD failure to implement many of the TEAMS II components is one of the main reasons the consent decree was extended in 2006. *See supra* Part II.B.1.

109. *Los Angeles Consent Decree*, *supra* note 38, ¶¶ 104–05.

gregate statistics . . . broken down by the race/ethnicity/national origin of the citizens involved, for arrests . . . and uses of force.”<sup>110</sup>

The New Jersey consent decree very generally requires state troopers to “document the race, ethnic origin, and gender of all motor vehicle drivers who are the subject of a traffic stop,” as well as “the reason for each stop and any post-stop action that is taken.”<sup>111</sup> The State is required to “develop and implement an early warning system, called the ‘Management Awareness Program,’ that uses computerized information on traffic stops, misconduct investigations, and other matters” to identify problem officers.<sup>112</sup> Finally, the State Police are to issue “semiannual public reports containing aggregate statistics on certain law enforcement activities, including traffic stop statistics.”<sup>113</sup>

The New York consent decree provides only that “the NYPD shall continue to compile a database consisting of all of the UF-250 reports . . . [and a] CD ROM of the UF-250 Database shall be provided to Class Counsel on a quarterly basis . . . within six months of the end of the quarter to which the reports correspond.”<sup>114</sup> There is no requirement to make any information available to the public.

In the actual event, the data released in all three jurisdictions is extremely raw and difficult to work with. To begin with, data is released only in PDF form, making it very time-intensive to transfer into any sortable format. In addition, the data released to the public tends to be quite shallow, with some figures bordering on misleading.<sup>115</sup> In this sense, the monitors — as data custodians — act as buffers between the public and the information. Further, because the bulk of the raw data is never released, it

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110. *Id.* ¶ 156.

111. Stipulation of Settlement, *supra* note 67.

112. *Id.*

113. *Id.*

114. *Daniels* Stipulation of Settlement, *supra* note 90, ¶ F(5).

115. See, e.g., New Jersey’s *Dispositions* section breaks out *Summons Moving*; *Summons Nonmoving*; *Warnings Moving*; *Warnings Nonmoving*; *Summons Moving & Warnings Moving*; *Summons Nonmoving & Warnings Nonmoving*; and *Summons &/or Warnings/Moving &/or Nonmoving*; each of these is then broken down by racial group and racial group as percentage of that particular disposition. What would be much more significant statistically, it seems, would be the percentage of each disposition received by each racial group, *i.e.*, “row percentages” as opposed to “column percentages.” See Aggregate Data Reports available at <http://www.nj.gov/lps/aggregate-reports.htm>.

often takes a study of the study<sup>116</sup> to bring important information to light, and then only in mediated form.<sup>117</sup> These caveats aside, we turn to the available data and examine its contents.

## B. LOS ANGELES

### 1. *Compliance with the Los Angeles Consent Decree*

Judge Feess was given responsibility for overseeing the Los Angeles consent decree, and was assisted in this task by an independent monitor who was to “report to Feess quarterly on the LAPD’s compliance.”<sup>118</sup> The independent monitor, Michael Cherkasky, had to “develop a set of criteria to measure the Police Department’s compliance with the outlined reforms . . . [,] warn city and police officials if there [were] violations of the consent decree, and report disputes over compliance [issues]” to Judge Feess.<sup>119</sup> Cherkasky’s office has submitted reports on LAPD compliance, at first semiannually, then quarterly, since January 1, 2001.<sup>120</sup>

The first report was primarily an audit of the system as it existed when the monitor began his work.<sup>121</sup> The second report found that the LAPD had “enacted many reforms ordered by [the] federal decree but [was] still backlogged when it [came] to investigating misconduct.”<sup>122</sup> The report found the department had

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116. See, e.g., Analysis Group, Inc., *Pedestrian and Motor Vehicle Post-Stop Data Analysis Report* (July 2006), available at [http://www.analysisgroup.com/AnalysisGroup/uploadedFiles/Publishing/Articles/LAPD\\_Data\\_Analysis\\_Report\\_07-5-06.pdf](http://www.analysisgroup.com/AnalysisGroup/uploadedFiles/Publishing/Articles/LAPD_Data_Analysis_Report_07-5-06.pdf); Greg Ridgeway, *Analysis of Racial Disparities in the New York Police Department’s Stop, Question, and Frisk Practices* (2007), available at [http://www.rand.org/pubs/technical\\_reports/TR534/](http://www.rand.org/pubs/technical_reports/TR534/).

117. See Sean Gardiner, *Frisk Management: How the NYPD’s Blackly Grim Stop-and-Frisk Numbers Got Whitewashed*, VILLAGE VOICE, Dec. 12–18, 2007, at 1 (criticizing the Ridgeway study).

118. David Rosenzweig, *ACLU Seeks Role in Enforcing Police Reform Pact*, L.A. TIMES, Dec. 19, 2000, at B3.

119. Daunt, *supra* note 36.

120. “The LAPD shall prepare and publish on its website semiannual public reports.” Los Angeles consent decree, *supra* note 38, ¶ 156.

121. Office of the Independent Monitor of the Los Angeles Police Department, *1st Quarterly Report*, available at [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/9010](http://www.lapdonline.org/search_results/content_basic_view/9010).

122. *LAPD Progress Mixed; Report: Strides Made in Some Mandated Reforms, but Backlog Remains*, LONG BEACH PRESS-TELEGRAM (CA), Feb. 16, 2002, at A2.

“continued to make significant progress on reform and . . . instituted aggressive changes.”<sup>123</sup>

The monitor’s third report, however, evinced a growing frustration, concluding, “[t]he LAPD is non-compliant with a number of provisions of the consent decree. Of equal or greater seriousness is the presence of a vocal minority inside the LAPD that continue to fight to preserve the insular culture that led to the adoption of the Decree.”<sup>124</sup> The report “slammed the department for being behind in . . . data collection . . . [noting that] [o]nly one-third of more than 330,000 scan forms, which officers filled out during stops,” had been processed.<sup>125</sup>

Beginning with the fourth report, for the quarter ending June 30, 2002, the monitor has provided a quarterly “report card” grading LAPD compliance with each of the terms of the agreement. The report card results are summarized below in Table 1.

Table 1: LAPD Compliance with the Terms of the Consent Decree<sup>126</sup>

	Report #	Date	Positive	Negative	Total terms Evaluated	Percent Positive
Period I	4	4/1/02—6/30/02	46	43	89	51.7%
	5	7/1/02—9/30/02	67	64	131	51.1%
Period II	6	10/1/02—12/31/02	74	68	142	52.1%
	7	1/1/03—3/31/03	74	75	150	49.7%
	8	4/1/03—6/30/03	71	72	143	49.7%
	9	7/1/03—9/30/03	68	66	134	50.7%
	10	10/1/03—12/31/03	80	69	149	53.7%

123. Office of the Independent Monitor of the Los Angeles Police Department, *2nd Quarterly Report* at 1, available at [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/9010](http://www.lapdonline.org/search_results/content_basic_view/9010).

124. Office of the Independent Monitor of the Los Angeles Police Department, *3rd Quarterly Report* at 29, available at [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/9010](http://www.lapdonline.org/search_results/content_basic_view/9010).

125. Mariel Garza, *LAPD Reform Attitude Blasted*, L.A. DAILY NEWS, May 16, 2002, at N8.

126. This data is collected from the appendices of the Independent Monitor’s quarterly reports, available at [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/9010](http://www.lapdonline.org/search_results/content_basic_view/9010).

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	11	1/1/04—3/31/04	85	61	146	55.5%
	12	[MISSING]				
Period III	13	7/1/04—9/30/04	99	49	148	66.9%
	14	10/1/04—12/31/04	113	47	160	70.1%
	15	1/1/05—3/31/05	114	49	163	70.0%
	16	4/1/05—6/30/05	101	55	156	64.7%
	17	7/1/05—9/30/05	111	45	156	71.2%
	18	10/1/05—12/31/05	117	43	160	73.1%
	19	1/1/06—3/31/06	122	40	162	75.3%
	20	4/1/06—6/30/06	133	32	165	80.1%
Period IV	21	7/1/06—9/30/06	53	24	77	68.8%
	22	10/1/06—12/31/06	47	23	70	67.1%
	23	1/1/07—3/31/07	51	24	75	68.0%

From the monitor's report cards, a pattern emerges. LAPD compliance can be broken into four time periods. Period I, covering Reports 4 and 5, show a ramping up of the level of monitor analysis, from 89 to 131 terms of the consent decree examined and a consistent rate of roughly 51 percent compliance. Period II, from Report 6 to Report 11 shows a consistency of terms examined (ranging from 134 to 150) and of compliance (ranging from 49.7% to 55.5%). Period III, from Report 13 to Report 20, manifests a trending upwards of terms examined (from 148 to 165) and a steady and significant rise in compliance, from 66.9% to 80.1%. Period IV, from Report 21 to Report 23, demonstrates the halving of terms examined (from an average of 159 in Period III to an average of 74 in Period IV, presumably due to streamlining) and a leveling off of compliance (at roughly 68%).

Despite these modest improvements, the monitor, Michael Cherkasky, and Judge Garry Feess insisted that the LAPD had yet to meet the terms of the consent decree. In his 11th quarterly report of March 31, 2004, Cherkasky "faulted the department's inability to implement a computerized risk-management system . . . [and] scolded the department's Critical Incident Investigation Division, which looks into officer-involved shootings, for contin-

ued shortcomings in the handling of major use-of-force incidents.”<sup>127</sup> Further, Cherkasky hinted that such issues might require an extension of the consent decree beyond its original timeline.<sup>128</sup>

In March of 2006, the City of Los Angeles, with the backing of the Justice Department, moved to loosen some of the consent decree requirements, but Judge Feess rejected the motion, telling city officials,

[t]here has been 40-plus years of debate in this community about how it is policed . . . And time after time after time, those reports were nodded to and nothing was ever done. This consent decree is going to effect real reform and it’s not going to be extinguished until that happens.<sup>129</sup>

Judge Feess then gave the LAPD two months to show why the consent decree should not be extended by two years due to non-compliance, as permitted under its terms.<sup>130</sup> “It appears to the court,” he wrote in his order, “that major tasks established by the consent decree remain uncompleted, most notably the implementation of the TEAMS II system.”<sup>131</sup> In May 2006, after hearing from the City and the DOJ, Judge Feess extended the consent decree for three years, rebuking LAPD efforts to trim the decree requirements and openly questioning the Justice Department’s commitment to its own case.<sup>132</sup>

## 2. Los Angeles Data

The Los Angeles consent decree has provided the public with a true abundance of data. This section will compare data collected in the last six months of 2002 with data from the first six months of 2007 in order to demonstrate how the detail provided in both

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127. Andrew Blankstein, *Key Period Begins in Reform of LAPD*, L.A. TIMES, June 14, 2004, at 1.

128. *Id.*

129. Patrick McGreevy, *Plan to Change LAPD Consent Decree Rejected*, L.A. TIMES, Mar. 22, 2006, at B-6.

130. Patrick McGreevy, *U.S. Oversight of LAPD May Be Extended*, L.A. TIMES, Mar. 28, 2006, at B-1.

131. *Id.* Teams II is the computer system designed to track the actions of individual officers and act thereby as an early-warning system for problem officers.

132. McGreevy, *supra* note 16.

driver and pedestrian stops answers certain questions while generating many others. Why, for instance, have the figures in the “Initial Reason for Stop” category changed so dramatically over the course of four years?<sup>133</sup> In the “If Search Was Conducted, What Was Discovered” category, why was the subcategory “Nothing” from the 2002 report dropped in 2007, replaced by the nonsensical “Vehicle” category (if one is searching a car, that is presumably a common finding)?<sup>134</sup> If it is no longer acceptable to find “Nothing,” the moral hazard is not difficult to discover. Also significant, while overall driver stops rose by 15.7%, arrests rose by 92.3% over the same time period, from 8,239 in 2002 to 15,842 in 2007.<sup>135</sup>

As opposed to driver stops, which rose by a modest 15.7%, pedestrian stops rose by 77.5% from 2002 to 2007, from 76,215 to 135,263.<sup>136</sup> As in the driver data set, changes in the “Initial Reason for Stop” category were quite dramatic.<sup>137</sup> Pedestrian frisks rose by 135%, from 32,903 in 2002 to 77,252 in 2007, and police requests for a consensual search also more than doubled, from 15,616 in 2002 to 39,188 in 2007.<sup>138</sup> As in the driver data set, the subcategory “Nothing” was dropped from the “What Was Discovered?” category, replaced again by “Vehicle,” which if anything makes less sense if the search is of a pedestrian.<sup>139</sup>

As in New Jersey, a change in racial disparity in policing is not to be found in the LAPD data sets. The percentage of drivers stopped who were Hispanic decreased slightly, from 38.3% in

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133. Appendix A, *LAPD Driver Stop Data 2002, 2007*. As the Initial Reason for Stop, “Municipal Code Violations” rose from 2,417 in 2002 to 14,545 in 2007, while “Suspect Flight” dropped off the table, from 2,006 in 2002 to 123 in 2007, despite an overall increase in stops. Whatever the reason, these differences are vast enough to call into question the veracity of the entire data set. See Arrest, Discipline, Use of Force, Field Data Capture, and Audit Statistics Reports, available at [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/9016](http://www.lapdonline.org/search_results/content_basic_view/9016).

134. *Id.*

135. *Id.*

136. Appendix B, *LAPD Pedestrian Stop Date 2002, 2007*. See Arrest, Discipline, Use of Force, Field Data Capture, and Audit Statistics Reports, available at [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/9016](http://www.lapdonline.org/search_results/content_basic_view/9016).

137. *Id.* For example, “Call for Service” was recorded as the initial reason for the stop 2,240 times in 2002 and 15,784 times in 2007, a rise of 605%.

138. *Id.*

139. *Id.* Nonetheless, the LAPD managed to discover 135 vehicles in their 2007 pedestrian searches. “Nothing” was never found.

2002 to 37.4% in 2007.<sup>140</sup> The black percentage rose slightly, from 18.3% to 18.7%, as did the white percentage, from 32.6% to 34.4%.<sup>141</sup> For pedestrian stops, these very modest changes were reversed. The percentage of pedestrians stopped who were Hispanic rose from 42.6% in 2002 to 45.3% in 2007, while the black percentage dropped from 36.3% to 35.7%, and the white percentage dropped from 17.6% to 16.3%.<sup>142</sup> It is impossible to argue from this data that the Los Angeles consent decree had any effect one way or the other on racial disparity in policing.

### C. NEW JERSEY

#### 1. *Compliance with the New Jersey Consent Decree*

The New Jersey consent decree is characterized by a friendly and mutually complimentary relationship between the State Police and the independent monitor. From the first Monitor's Report, Mr. Ginger commended the police force for steps taken towards ending racial profiling. "Members of the monitoring team were unanimously impressed with the commitment, focus, energy and professionalism with which members of the New Jersey State Police and the Office of State Police Affairs applied themselves and their organizations to implementation of the changes . . . . Their commitment to 'doing the job right' is exceptional."<sup>143</sup> Still, this first report admitted that the department had been somewhat less successful in implementation than in commitment.<sup>144</sup> The second Monitor's Report contained more good news, highlighting new training programs and declaring that the State Police had complied with 88 percent of the first-phase reform tasks and about 50 percent of the second-phase tasks.<sup>145</sup> Over the

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140. Appendix A, *LAPD Driver Stop Data 2002, 2007*.

141. *Id.*

142. Appendix B, *LAPD Pedestrian Stop Data 2002, 2007*.

143. Public Management Resources & Lite, Greenberg, DePalma, & Rivas, *Monitors First Report, Long-term Compliance Audit, Civil Number 99-5970(MLC)*, v-vi (2000), available at [http://www.nj.gov/oag/monitors\\_report\\_1.pdf](http://www.nj.gov/oag/monitors_report_1.pdf).

144. Robert Hanley, *Monitors Commend Police on Effort to End Profiling*, N.Y. TIMES, Oct. 7, 2000, at B5.

145. Associated Press, *Minority Stops Climb on Turnpike*, THE PRESS OF ATLANTIC CITY, Jan. 11, 2001, at A1.



same time period, however, the percentage of those stopped who were minorities actually rose, from 38 to 40 percent.<sup>146</sup>

By 2004, the New Jersey Attorney General's Office and the U.S. Department of Justice moved jointly to end court oversight of the internal affairs unit of the State Police, claiming that the unit at least had made enough progress to no longer require federal oversight.<sup>147</sup> The monitors agreed, calling the unit "a 'shining star' of reform."<sup>148</sup> On April 8, 2004, U.S. District Judge Mary L. Cooper ruled that the internal affairs unit, "once denounced by investigators as slow and ineffective, had met its obligations under the decree and no longer required court monitoring."<sup>149</sup> Governor Jim McGreevy announced his pleasure with the State Police, but "minority leaders and civil rights groups complained that they'd never been given a chance to respond in court," and, in fact, had never been notified of the motion.<sup>150</sup>

The following Monitor's Report continued and even elevated its praise of the State Police, concluding that they had made "dramatic and remarkable improvement" and had made "remarkable progress" towards eradicating racial profiling.<sup>151</sup> Again, not everyone was convinced. Keith Jones, president of the New Jersey NAACP, and former deputy chief of the state Parole Board's juvenile division, said

I would hope that what the report suggests is true, but I worked 25 years in criminal justice and I don't buy it . . . . It took them a long time over many years to get to be the troubled agency it became and I don't believe that it's turned around overnight. You don't turn around a culture in four years.<sup>152</sup>

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146. *Id.*

147. Jonathan Schuppe, *Unit of State Police Asks End of Oversight; Monitors Cite Internal Affairs Improvements*, NEWARK STAR-LEDGER, Apr. 6, 2004, at 20.

148. Jonathan Schuppe, *Trooper Reforms Working, Feds Say; Major Progress Praised but Some Profess Doubt*, NEWARK STAR-LEDGER, July 20, 2004, at 1.

149. Jonathan Schuppe, *Judge Eases Monitoring of State Police by Court; Minority Leaders Will Fight Ruling on Consent Order*, NEWARK STAR-LEDGER, Apr. 9, 2004, at 1.

150. *Id.*

151. Public Management Resources & Lite, Greenberg, DePalma & Rivas, *Monitors' Tenth Report, Long-term Compliance Audit Civil Number 99-5970(MLC)*, v (2004), available at [http://www.nj.gov/oag/monitors\\_report\\_10.pdf](http://www.nj.gov/oag/monitors_report_10.pdf).

152. Schuppe, *supra* note 148.

In July of 2005, the monitors in their 12th Report announced “remarkable effects observed this reporting period: 100 percent compliance with all requirements of the decree.”<sup>153</sup> By the following year the DOJ, eager to end supervision of the State Police, asked New Jersey Attorney General Zulima Farber to petition the District Court to end all judicial oversight.<sup>154</sup> Farber was not certain, “concerned . . . that matters [might] slip back to the old ways of doing things if the changes have not filtered all down.”<sup>155</sup> But in December 2007 Governor Jon Corzine, after hearing from a panel specially appointed by him to study the matter, declared that he would “ask the federal government to halt its oversight of the New Jersey State Police because of sufficient reforms.”<sup>156</sup> No further action has taken place at this time.

## 2. New Jersey Data

This section compares information collected from May through October of 2003 and 2007. In examining the fairly minimal data provided by the New Jersey State Police, one is struck by how little there is of note. Categories are either so small as to be of no use statistically or too obscure to be of significance.<sup>157</sup> Some statistics, however, are noteworthy. In the four years between 2003 and 2007, motor vehicle stops overall rose by 34%, from 186,124 in two quarters of 2003 to 249,607 in the same two quarters of 2007.<sup>158</sup> Over the same period, vehicle searches for probable cause fell from 4,068 to 3,843,<sup>159</sup> while occupant searches nearly doubled, from 3,724 to 6,732.<sup>160</sup>

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153. Public Management Resources & Lite, Greenberg, DePalma, & Rivas, *Monitors' Twelfth Report, Long-term Compliance Audit Civil Number 99-5970(MLC)*, iv (2005), available at <http://www.nj.gov/oag/monitors-report-12.pdf> (emphasis added).

154. Rick Hepp, *AG Cautious on Call to End Monitoring of Trooper Stops*, NEWARK STAR-LEDGER, May 12, 2006, at 30.

155. *Id.*

156. David W. Chen, *Monitoring of Police Should End, Corzine Says*, N.Y. TIMES, Dec. 8, 2007, at B2.

157. Such as, for example, the categories “*Summons Moving & Warnings Moving; Summons Non Moving & Warnings Non Moving*” and “*Summons &/or Warnings / Moving &/or Non Moving*.” See Appendix C, *New Jersey State Police Stops 2003, 2007*.

158. Appendix C, *New Jersey State Police Stops 2003, 2007*. See State Police Consent Decree Aggregate Data Reports, available at <http://www.nj.gov/lps/8-aggregate%20data-rep.pdf> and <http://www.nj.gov/lps/16-aggregate-data-rep.pdf>.

159. *Id.*

160. *Id.*

Most significant is what did not change — namely racial disparity. The percentage of minorities who were stopped on New Jersey highways actually rose between 2003 and 2007. In 2003, 16.6% of drivers stopped were black and 9.5% were Hispanic. In 2007, 18.1% were black and 11.5% were Hispanic. The percentage of drivers stopped who were white fell from 68.3% in 2003 to 64.4% in 2007.<sup>161</sup> The minority percentage of occupants who were frisked also rose, the black percentage from 30.7% to 31.5%, and the Hispanic percentage from 22.6% to 24.7%, while the percentage of occupants frisked who were white fell from 45.5% to 39.8%.<sup>162</sup> The percentage of occupants searched by race changed little, the white percentage of those searched falling from 48.2% to 47.0%, the black percentage also falling, from 34.4% to 33.2%, and the Hispanic percentage rising from 15.3% to 17.1%.<sup>163</sup>

The numbers for arrests are even more notable. First, New Jersey State Police made 33.4% more arrests in 2007 (10,138) than during the same time period in 2003 (7,599).<sup>164</sup> Second, the minority percentages of those arrests rose significantly, the black percentage rising from 32.0% to 35.5% and the Hispanic percentage from 13.0% to 14.1%.<sup>165</sup> The white percentage of arrests in the same period fell from 52.0% to 48.4%.<sup>166</sup>

To judge by stops, searches, and arrests, then, the percentage of those subject to law enforcement procedures on New Jersey highways who were minorities actually *increased* after four years under the consent decree.

#### D. NEW YORK CITY

##### 1. *Compliance with the New York Consent Decree*

The stipulation ending the *Daniels* case handled issues of compliance with a light touch. There was no formal monitoring

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161. *Id.*

162. *Id.*

163. *Id.*

164. Appendix D, *New Jersey State Police Arrests 2003, 2007*. See State Police Consent Decree Aggregate Data Reports, available at <http://www.nj.gov/lps/8-aggregate%20-data-rep.pdf> and <http://www.nj.gov/lps/16-aggregate-data-rep.pdf>.

165. Appendix D. The Hispanic percentage is calculated by adding the *W.Hisp* and *B.Hisp* categories.

166. *Id.*

system in place, so NYPD compliance was essentially to be monitored by class counsel alone, with the court permitted to intervene only after a lengthy complaint process.<sup>167</sup> NYPD compliance data is sparse, which should not be surprising. The limited resources of class counsel did not permit the kind of thorough investigation undertaken by the New Jersey or Los Angeles monitors.<sup>168</sup> The NYPD, however, has also been much less forthcoming than either the New Jersey State Police or the LAPD.<sup>169</sup> From the very limited information that is available, it appears that NYPD compliance has been at best mixed. The department did issue a written policy prohibiting the use of profiling: City Council Bill 142-B, signed into law by Mayor Bloomberg on July 12, 2004, “codified the NYPD’s existing Operations Order 11, which prohibits the use of racial profiling defined as ‘the use of race, color, ethnicity, religion or national origin as the determinative factor for initiating police action.’”<sup>170</sup> And, the NYPD did produce a pamphlet

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167. The conditions were as follows,

*First*, plaintiffs must notify defendants, in writing, that they have failed to comply with the Agreement. If, after receiving written notification of noncompliance, defendants agree that they have not complied with a specific term of the Agreement, defendants shall specifically perform that term within a reasonable time period mutually agreed upon by the parties. If defendants dispute their noncompliance, plaintiffs may seek a court order directing specific performance if: (1) the parties cannot agree on a reasonable time period for defendants to perform; or (2) defendants fail to specifically perform the term within the agreed upon time frame. Upon the happening of any of the these [sic] events, plaintiffs: may apply to the Court for an order directing specific performance of that term or terms. Such application may not be made fewer than thirty days after the initial notification of non-compliance to the NYPD and Office of the Corporation Counsel.

Daniels v. City of New York, No. 99 Civ. 1695, 2007 WL 2077150, at \*2 (S.D.N.Y. July 16, 2007) (emphasis in original) (citations omitted).

168. Los Angeles signed an \$11-million, five-year contract with Cherkasky’s firm, Kroll Inc. See McGreevy, *supra* note 17. Ginger’s contract with New Jersey was more modest, but still amounted to \$1.8 million over five years. W. Zachary Malinowski, *Officer Linked to Scandal Is Now Advising Others*, PROVIDENCE J. BULL., Apr. 23, 2004, at A. By contrast, all monitoring in New York, the nation’s largest city, was presumptively to be performed by the Center for Constitutional Rights, with a total annual budget as of 2004 of \$2.5 million. Marcia Coyle, *Rights Center Tackles Guantanamo Detentions*, NAT’L L. J., Feb. 16, 2004, at 24.

169. For instance, the NYPD has recently fallen years behind in releasing SQF data as required under the terms of the stipulation. The information that has been released has been very incomplete and not entirely public. For an in-depth consideration of NYPD secretiveness, see Gardiner, *supra* note 117.

170. New York City Press Release number 183-04, available at: [http://home2.nyc.gov:80/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor\\_press\\_release&catID=1194&doc\\_name=http%3A%2F%2Fhome2](http://home2.nyc.gov:80/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fhome2).

regarding SQF encounters between police and citizens, entitled *Your Rights And Responsibilities When Interacting With The Police: A Community Guide*.<sup>171</sup> Nevertheless, there has been demonstrated noncompliance with arguably the most important feature of the entire stipulation: the compiling and maintenance of the UF-250 database and its provision to class counsel on a quarterly basis.<sup>172</sup>

In a letter dated January 18, 2007, plaintiffs notified defendants that they had not produced the UF-250 database for quarters dating back from 2003. . . .By letter dated February 16, 2007, plaintiffs sent ‘official notice of non-compliance with the Stipulation’ with regard to the production of the UF-250 database. In that letter, plaintiffs expressed their concern that without a date certain for production, the delay . . . ‘could extend beyond the term of the Stipulation and thereby effectively subvert it.’<sup>173</sup>

On July 16, 2007, Judge Scheindlin held a conference, at which she ordered the NYPD to produce the UF-250 data “in accordance with the scheduled [sic] proposed in the March 19th Letter, namely: Full year 2004 by August 1, 2007; and Full Year 2005 by October 1, 2007.”<sup>174</sup> Judge Scheindlin informed class counsel that if the NYPD did not perform as ordered, class counsel could then file for contempt, and if they did, “this Court will consider extending the term of the Agreement, among other sanctions.”<sup>175</sup>

This was a considerable threat, as the Judge had noted earlier in the opinion that she otherwise had no authority to extend the consent decree under any circumstances, writing that “the Agreement did not contain any provision for extending the

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nyc.gov%2Fhtml%2Fom%2Fhtml%2F2004b%2Fpr183-04.html&cc=unused1978&rc=1194&ndi=1. See also NYPD Operations Order 11, included in *Daniels* Stipulation of Settlement, *supra* note 90, as Exhibit A.

171. *Daniels* Stipulation of Settlement, *supra* note 90, ¶ G(4). Pamphlet available at [http://home2.nyc.gov/html/nypd/downloads/pdf/community\\_affairs/Rights\\_and\\_Responsibilities.pdf](http://home2.nyc.gov/html/nypd/downloads/pdf/community_affairs/Rights_and_Responsibilities.pdf).

172. *Daniels* Stipulation of Settlement, *supra* note 90, ¶ F(5).

173. *Daniels v. City of New York*, No. 99 Civ. 1695, 2007 WL 2077150, at \*2 (S.D.N.Y. July 16, 2007).

174. *Id.*, at \*4.

175. *Id.*

Agreement past December 31, 2007.”<sup>176</sup> The threat did not serve its purpose. The NYPD never released the data, and on January 1, 2008, the *Daniels* stipulation expired by its own terms.<sup>177</sup> Thirty days later, on January 31, 2008, CCR filed a companion case in the same court, alleging that the NYPD continues to engage in unconstitutional stops and frisks.<sup>178</sup> On September 10, 2008, in response to a CCR discovery request, Judge Scheindlin ordered the NYPD to release all UF-250 data. The data will no longer be protected by a protective order, and CCR plans to make it public along with its own analysis.<sup>179</sup>

## 2. New York Data

In contrast to Los Angeles and New Jersey, the New York consent decree has resulted in a virtual absence of public data.<sup>180</sup> The little that is available demonstrates a similar pattern of minimal change to racial disparities in policing. In 1998, 50.6% of those stopped by the NYPD were black. In 2006, after debates, commissions, two lawsuits, and five years under a consent decree, the percentage actually rose to 52%.<sup>181</sup> The Hispanic percentage dropped from 33% in 1998 to 29% in 2006, as did the white percentage, from 12.9% to 10.0%.<sup>182</sup>

However, one valuable piece of information has emerged from this consent decree. From 2002 to 2006, the number of stops made by the NYPD exploded from 97,296 to 508,540, a rise of 422%,<sup>183</sup> and a number so dramatic that it has reopened the debate over policing,<sup>184</sup> put the NYPD on the defensive, and laid the

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176. *Id.*, at \*3.

177. *Daniels* Stipulation of Settlement, *supra* note 90, ¶ O(2).

178. Press Release, Center for Constitutional Rights, *CCR Charges NYPD With Racial Profiling in Federal Lawsuit* (Jan. 31, 2008), available at <http://ccrjustice.org/newsroom/press-releases/ccr-charges-nypd-racial-profiling-federal-lawsuit>.

179. Press Release, Center for Constitutional Rights, *Court Compels NYPD to Release 10 Years of Stop and Frisk Data to CCR for Racial Profiling Class Action* (Sept. 11, 2008), available at <http://ccrjustice.org/newsroom/press-releases/court-compels-nypd-release-10-years-stop-and-frisk-data-ccr-racial-profiling>. Judge Scheindlin's order is available at [http://ccrjustice.org/files/JudgeScheidlin\\_Order\\_Re\\_UF-250\\_Data\\_9.10.2008.pdf](http://ccrjustice.org/files/JudgeScheidlin_Order_Re_UF-250_Data_9.10.2008.pdf).

180. See Gardiner, *supra* note 117.

181. See Appendix E, *New York City Stops and Searches by Race, 1998-99, 2002, 2006*.

182. *Id.*

183. *Id.*

184. Al Baker & Emily Vasquez, *Police Report Far More Stops and Searches*, N.Y. TIMES, Feb. 3, 2007, at A1 (quoting Professor Fagan of Columbia Law School, who said “it

groundwork for another lawsuit.<sup>185</sup> Considering the recalcitrance and foot-dragging of the NYPD in releasing this data, while under court order to do so,<sup>186</sup> it is difficult to imagine that this would ever have come to light without the pressure of the consent decree.

#### IV. PROPOSAL: THE VALUE OF CONSENT DECREES IS TRANSPARENCY

##### A. CONSENT DECREES HAVE NOT REDUCED RACIAL DISPARITY IN POLICING

The data collected from three consent decrees of significantly disparate design, strictness of requirements, and level of monitoring have shown no cognizable effect on racial disparity in police stops and searches. Therefore, at least as currently structured, such consent decrees are not by themselves effective weapons against racial disparity in policing.

As for racial profiling, it is no fiction. Police departments have admitted its existence and use.<sup>187</sup> Yet, there is still no scholarly agreement as to how to properly measure racial profiling through statistics. In addition, since courts have been extremely reluctant to rely on racial disparity alone to prove discriminatory intent,<sup>188</sup> social scientists and lawyers have been forced to attempt much more sophisticated statistical models to demonstrate racial profiling; these attempts have largely foundered on a lack of sufficient data.<sup>189</sup> One author concludes that,

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is an astonishing fact that stop rates went up by 500 percent when crime rates were flat"). See *infra* Part IV.B.

185. See Press Release, Center for Constitutional Rights, *supra* note 179.

186. See *Daniels v. City of New York*, No. 99 Civ. 1695, 2007 WL 2077150, at \*4 (S.D.N.Y. July 16, 2007).

187. See, e.g., New Jersey Office of the Attorney General, *supra* note 57, at 4 (admitting that racial profiling among state troopers "is real — not imagined").

188. A notable exception is *State v. Soto*, 324 N.J. Super. 66 (Law Div. 1996), the New Jersey case in which the court held statistical evidence sufficient to establish a prima facie case of discriminatory intent. See *supra* Part II.A.1.

189. See Robin Shepard Engel, Jennifer M. Calnon & Thomas J. Bernard, *Theory and Racial Profiling: Shortcomings and Future Directions in Research*, 19 JUST. Q. 249, 250 (2002) (critiquing existing racial profiling studies for methodological weaknesses and paucity of data), available at <http://www.informaworld.com/smpp/content?content=10.1080/07418820200095231>.

the new data on police searches from across the country do not provide reliable observations on the key quantities of interest necessary to resolve [whether racial profiling as an evidentiary matter is at play], specifically the comparative elasticities [*i.e.*, the effects of increased policing on the level of criminal activity] and natural offending rates within different racial groups.<sup>190</sup>

Essentially, then, since there is no reliable measure of racial profiling, we cannot say whether consent decrees help mitigate racial profiling in any way. What we can say for certain is that they do not alter the overall racial composition of those subject to police action. Yet if progress on racial profiling and racial disparity cannot be hoped for, what is the point of imposing consent decrees in the first place?

#### B. THE VALUE OF CONSENT DECREES LIES IN TRANSPARENCY AND INFORMATION

Perhaps the primary value of such agreements lies not in directly altering the behavior of police departments or individual officers, but in institutional transparency and the provision of information to the public. Such transparency dividends might not be entirely unexpected. After all, most consent decrees, including the three that form the focus of this Note, are not pure anti-profiling measures. The New Jersey consent decree grew out of *Soto*,<sup>191</sup> an anti-profiling class-action, but also out of the Turnpike shooting of three minority college students by white police officers.<sup>192</sup> The New York consent decree settled the profiling case of *Daniels v. City of New York*,<sup>193</sup> but the political pressure leading to settlement stemmed as much from police brutality as from racial profiling.<sup>194</sup> As for Los Angeles, the federal Violent Crime and

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190. BERNARD E. HARCOURT, *AGAINST PREDICTION: PROFILING, POLICING, AND PUNISHING IN AN ACTUARIAL AGE* 195 (Uni. of Chicago Press 2007).

191. 324 N.J. Super. 66 (Law Div. 1996).

192. *See supra* Part II.B.1.

193. 198 F.R.D. 409, 409 (S.D.N.Y. 2001).

194. Police brutality in New York at the time was epitomized by the cases of Abner Louima, a Haitian immigrant brutally assaulted in a Brooklyn station house, and Amadou Diallo, an unarmed Guinean shot dead on his stoop in the Bronx. For more on Diallo, see *supra* Part II.C.1.



Law Enforcement Act itself, whose Section 14141 led to many of the consent decrees currently in place, “was an outgrowth of the beating of Rodney King by Los Angeles police and the Christopher Commission’s subsequent finding that the Los Angeles Police Department had in effect condoned brutal conduct. . . .”<sup>195</sup>

If the value of the consent decrees is largely transparency, how do they perform in that regard? Fairly well. There is one indisputable piece of information arising from the data collected by way of the Los Angeles, New Jersey, and especially New York consent decrees — the police are conducting *many* more stops overall than they did five years ago.<sup>196</sup> This enormous increase in police activity comes at a time of steady crime rates, and has led to many legitimate questions that go beyond racial profiling.<sup>197</sup> This data has been made available solely through consent decree provisions, and where consent decrees or other forms of outside monitoring do not exist, the public will often have no idea what individual officers or police departments are up to.<sup>198</sup> Data collection thus in itself fosters more transparent and accountable policing, and ought to be promoted.<sup>199</sup>

The particular method used to gather information on police activity, however, is relatively unimportant. If the same information can be provided to the public through legislative enactment that might even be an improvement, as such requirements would provide for greater consistency over time and within jurisdictions. Unfortunately, the hurdles to passing such legislation can be sig-

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195. Debra Livingston, *Police Reform and the Department of Justice*, 2 BUFF. CRIM. L. REV. 815, 816 (1999).

196. See *supra* Part III.B.2 (New Jersey); Part III.B.3 (Los Angeles); and Part III.B.4 (New York).

197. See, e.g., Baker & Vasquez, *supra* note 184 (quoting Fagan); Gardiner, *supra* note 117 (condemning the RAND study and drawing some of its own conclusions from the limited available data).

198. See Livingston, *supra* note 195, at 818.

Scholars have long lamented that the ‘low visibility’ of much police work is a factor that complicates — or even frustrates — the supervision of line officers. In the words of one observer, because officers are sent into far-flung neighborhoods to perform their work, it remains hard to know precisely what they are doing and how they are doing it.

*Id.* (internal quotations omitted) (citations omitted).

199. This opinion is not universally shared. For instance, Los Angeles City Councilman Alex Padilla acknowledged LAPD concerns that the required collection of data (among other consent decree requirements) might impede officers’ ability to do their jobs. He then noted in response that “[t]he good cops have nothing to fear.” Orlov, *supra* note 19.

nificant. For example, U.S. Representative John Conyers introduced police data collection legislation three times in the late 1990s and early 2000s, but no federal measure was ever adopted.<sup>200</sup> At the state level, the California Legislature passed such a measure in 1998, only to have it vetoed by Governor Pete Wilson.<sup>201</sup> Still, legislative efforts requiring data collection have not been entirely without success.<sup>202</sup> Currently, more than half of all states collect some degree of police stop-search data.<sup>203</sup> However, where such legislative initiatives lack political support or are otherwise unfeasible, another method must be found.

Professor Garrett argues for police departments themselves to take the initial step of setting up systems for information-gathering and data disclosure.<sup>204</sup> There are examples of such voluntary data-collection initiatives undertaken by police departments.<sup>205</sup> These, however, are exceptional cases. Most police departments have been very reluctant to gather and especially to report such information, even under court order.<sup>206</sup> In light of such reluctance, and in recognition of certain failures of legislative will, litigation must continue to be used where necessary, leading to consent decrees that force the release of data.

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200. Melissa Whitney, *The Statistical Evidence of Racial Profiling in Traffic Stops and Searches: Rethinking the use of Statistics to Prove Discriminatory Intent*, 49 B.C. L. Rev. 263, n.84 (2008) (citing End Racial Profiling Act of 2001, H.R. 2074, 107th Cong. (2001); Traffic Stops Statistics Act of 1999, H.R. 1443, 106th Cong. (1999); Traffic Stops Statistics Act of 1997, H.R. 118, 105th Cong. (1997)).

201. Julie Ha, *Groups Seek Data on Race-Based Police Stops*, L.A. TIMES, Apr. 16, 1999, at B3.

202. See U.S. Department of Justice, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, Monograph NCJ 184768 at 28 (2000), available at <http://www.ncjrs.gov/pdffiles1/bja/184768.pdf> (noting that in response to disproportionate stops and searches of black motorists, North Carolina passed a law requiring state law enforcement to collect data on all routine traffic stops).

203. Whitney, *supra* note 200, at 275, (citing Suzanne Leone, *Massachusetts Addresses Racial Profiling Head On: The Advocacy of Chapter 228 of the Acts and Resolves of 2000*, 28 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 335, 335-36 (2002)); Racial Profiling Data Collection Resource Center at Northeastern University, <http://www.racialprofilinganalysis.neu.edu>.

204. See generally Brandon Garrett, *Remedying Racial Profiling*, 33 COLUM. HUM. RTS. L. REV. 41 (2001).

205. San Jose and San Diego, California, both undertook such projects in the early 1990s. See Ha, *supra* note 201.

206. New York is the most extreme example, but many other police departments have been less than completely forthcoming.

## V. CONCLUSION

Police department consent decrees such as those entered into by the New Jersey State Troopers and the Los Angeles and New York police departments have not proven effective in reducing racial disparity in stops and searches. Such agreements, however, have other aims as well, some of which they meet quite well. Foremost among these are data collection and transparency.<sup>207</sup> It is axiomatic that police departments and public administration generally must be accountable to the public they serve. Section 14141 should be used as a means of requiring the recording and public release of data, forcing openness in law enforcement. Society will decide what to do with the facts thus produced.<sup>208</sup> The collection and dissemination of stop-search data thereby ensure both the accountability of police departments and the institutional transparency that is at the heart of good government.

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207. For the argument that raw data may have deeper meaning than is readily apparent, see Chris Anderson, *The End of Theory: The Data Deluge Makes the Scientific Method Obsolete*, WIRED, June 23, 2008; for a comprehensive examination of the possibilities and limitations of statistical evidence in the discrimination context, see Whitney, *supra* note 200.

208. For a good example of such a public reaction to hitherto hidden policing data, see Gardiner, *supra* note 117.

## APPENDICES

## APPENDIX A - LAPD DRIVER STOP DATA 2002, 2007

<b>LOS ANGELES POLICE DEPARTMENT, CITYWIDE FIELD DATA STATISTICS, 07/01/2002-12/31/2002; 01/01/2007-06/30/2007.</b>								
This data is collected from Arrest, Discipline, Use of Force, Field Data Capture, and Audit Statistics Reports, <i>available at</i> <a href="http://www.lapdonline.org/search_results/content_basic_view/9016">http://www.lapdonline.org/search_results/content_basic_view/9016</a> .								
<b>RACE OF DRIVER</b>	<b>Yr</b>	<b>Total</b>	<b>White</b>	<b>Black</b>	<b>Hisp.</b>	<b>Asian</b>	<b>Am. Ind.</b>	<b>Other</b>
<b>NUMBER OF DRIVERS</b>	02	244316	79664	44703	93510	13154	341	12944
	07	282765	97287	52961	105753	22851	454	3459
	02		32.6%	18.3%	38.3%	5.4%	0.1%	5.3%
	07		34.4%	18.7%	37.4%	8.1%	0.2%	1.2%
<b>INITIAL REASON FOR STOP</b>								
<b>Vehicle Code Moving Violation</b>	02	203597	68774	35783	76380	11041	308	11311
	07	168409	64044	27322	60325	14247	283	2188
<b>Municipal Code Violation</b>	02	2417	672	343	1103	167	3	129
	07	14545	7004	1718	3010	2562	27	224
<b>Suspect Flight</b>	02	2066	710	326	872	86	3	69
	07	123	15	33	72	2		1
<b>Consensual</b>	02	1330	435	248	553	46		48
	07	690	276	116	226	67	1	4
<b>Call for Service</b>	02	1255	267	194	703	31		60
	07	2440	663	371	1270	99	3	34
<b>Department Briefing (Crime Broadcast, Bulletins, Roll Call)</b>	02	417	97	102	186	16		16
	07	469	74	143	237	9		6
<b>Penal Code Violation</b>	02	1159	206	388	519	19		27
	07	2404	387	617	1293	78	2	27

2008]

## Police Consent Decrees

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<b>Equipment/ Registration Violation</b>	02	37671	10466	8304	15334	2018	33	1516
	07	91567	24386	22124	38275	5695	135	952
<b>Health &amp; Safe- ty Code Viola- tion</b>	02	1034	319	222	388	43	1	61
	07	639	143	213	247	31		5
<b>Other</b>	02	1626	358	405	768	37	2	56
	07	835	127	143	530	21		14
DRIVER REQUIRED TO EXIT VEHICLE?								
<b>Yes</b>	02	38197	5282	10150	21212	507	21	1025
	07	58061	9909	14536	30906	2013	56	641
PAT DOWN/FRISK SEARCH CONDUCTED?								
<b>Yes</b>	02	22101	2700	6877	11819	212	14	479
	07	30159	3503	9369	16480	549	18	240
DETAINEE ASKED TO SUBMIT TO CONSENSUAL SEARCH?								
<b>Yes</b>	02	10250	1221	3509	5190	97	7	226
	07	17081	2067	5297	9278	303	9	127
GRANTED?								
<b>Yes</b>	02	10163	1204	3483	5149	97	7	223
	07	16155	1826	5104	8846	249	9	121
WAS SEARCH CONDUCTED?								
<b>Yes</b>	02	31555	3791	8749	17998	321	17	679
	07	36540	4436	9583	21587	643	22	269

IF WARRANT- LESS SEARCH CONDUCTED, SEARCH AUTHORITY								
<b>Parole/ Probation</b>	02	2463	375	1229	807	16	1	35
	07	3636	420	1825	1342	31	2	16
<b>Odor of Contraband</b>	02	645	81	235	308	5		16
	07	1162	159	523	441	25		14
<b>Incident to Pat Down/Frisk</b>	02	5506	547	1824	2975	44	6	110
	07	5914	658	1899	3200	88	4	65
<b>Incident to Arrest</b>	02	7653	1167	1797	4362	74	7	246
	07	9305	1713	1806	5394	296	7	89
<b>Impound Inventory</b>	02	12575	1234	2670	8313	134	3	221
	07	14893	1622	2338	10645	202	7	79
<b>Visible Contraband</b>	02	332	48	113	158	5		8
	07	697	135	215	328	8		11
<b>Consent</b>	02	7615	885	2743	3757	69	4	157
	07	16170	1806	5155	8829	248	10	122
<b>Other</b>	02	229	30	85	100	1		13
	07	164	25	49	77	6		7
IF SEARCH WAS CONDUCTED, WHAT WAS SEARCHED?								
<b>Vehicle</b>	02	22474	2632	6077	13083	238	12	432
	07	27374	3140	6807	16787	438	15	187
<b>Belongings</b>	02	987	224	281	434	18	1	29
	07							
<b>Person</b>	02	19393	2445	6073	10220	182	14	459

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## Police Consent Decrees

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	07	24838	3222	7446	13457	489	16	208
<b>Container</b>	02	120	28	37	53	1	1	
	07	486	132	99	234	12		9
<b>Residence</b>	02	46	12	6	27			1
	07							
<b>Office</b>	02	9	3	2	4			
	07							
<b>Other</b>	02	58	11	13	31			3
	07	88	19	34	33			2
IF SEARCH WAS CONDUCTED, WHAT WAS DISCOVERED?								
<b>Weapons</b>	02	463	68	153	217	10		15
	07	429	58	122	232	11		6
<b>Money</b>	02	347	52	136	145	5		9
	07	549	89	184	260	16		
<b>Drugs</b>	02	1454	291	518	586	17	3	39
	07	2640	534	831	1181	57		37
<b>Alcohol</b>	02	485	54	132	289	5		5
	07	513	62	107	341	2		1
<b>Other Contraband</b>	02	377	102	111	148	4	2	10
	07	488	118	137	216	13		4
<b>Other Evidence of Crime</b>	02	430	58	142	224	2		4
	07	625	104	129	369	17		6
<b>Other Property</b>	02	1359	175	477	664	15	1	27
	07	1542	240	374	881	32	3	12
<b>Nothing</b>	02	30222	3819	8167	17068	407	22	739

<b>Vehicle [??]</b>	07	14250	1488	2235	10256	190	8	73
ACTION TAKEN:								
<b>Warning</b>	02	27318	7501	7076	10922	1787		32
	07	64698	24133	12552	20794	6492	102	625
<b>Citation</b>	02	210180	71447	35676	78909	12201	309	11638
	07	206574	71091	37603	78802	16016	344	2718
<b>Arrest</b>	02	8239	1745	1849	4209	160	11	265
	07	15842	3309	3364	8373	585	17	194
<b>Field Interview Completed</b>	02	5842	804	2140	2667	80	6	145
	07	20381	3034	6947	9644	550	18	188
<b>None</b>	02	1292	255	356	592	40	1	48
	07	1705	403	379	818	83	2	20
Notes: Chinese, Filipino, Japanese Am. Categories from 2002 merged to form an Asian category for comparison to 2007. This is not exact (e.g., in 2002 Vietnamese would presumably be put in the "Other" category, while in 2007 Vietnamese would be part of "Asian" category), but close.								

## APPENDIX B - LAPD PEDESTRIAN STOP DATA 2002, 2007

LOS ANGELES POLICE DEPARTMENT, CITYWIDE FIELD DATA STATISTICS, 07/01/2002-12/31/2002; 01/01/2007-06/30/2007.								
This data is collected from Arrest, Discipline, Use of Force, Field Data Capture, and Audit Statistics Reports, available at <a href="http://www.lapdonline.org/search_results/content_basic_view/9016">http://www.lapdonline.org/search_results/content_basic_view/9016</a> .								
RACE OF PEDESTRIAN	Yr	Total	White	Black	Hisp.	Asian	Am. Ind.	Other
<b>NUMBER OF PEDESTRIANS</b>	02	76215	13376	27664	32445	1169	154	1407
	07	135263	22004	48238	61307	2730	307	677
	02		17.6%	36.3%	42.6%	1.5%	0.2%	1.9%
	07		16.3%	35.7%	45.3%	2.0%	0.2%	0.5%
INITIAL REASON FOR STOP								
<b>Municipal Code Violation</b>	02	16502	2583	5212	8179	201	37	290



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	07	34233	5228	12252	16127	389	134	103
<b>Suspect Flight</b>	02	1009	104	414	481	5	1	4
	07	875	49	425	391	5	2	3
<b>Consensual</b>	02	6978	1108	2942	2817	42	8	61
	07	13180	1975	5288	5752	114	18	33
<b>Call For Service</b>	02	2240	312	934	929	21	6	38
	07	15784	3874	3950	7287	463	36	174
<b>Department Briefing</b>	02	1658	204	693	743	5	3	10
	07	2746	322	1135	1260	21	2	6
<b>Penal Code Violation</b>	02	15604	3196	5787	5995	272	41	313
	07	15061	1957	5382	7284	334	18	86
<b>Equipment/Registration Violation</b>	02	826	106	370	339	5	4	2
	07	4242	429	1737	2033	35	2	6
<b>Health &amp; Safety Code Violation</b>	02	4436	658	1917	1779	30	9	43
	07	8065	1025	4330	2594	80	10	26
<b>Other</b>	02	3779	952	1190	1516	18	5	98
	07	2132	486	552	1036	38	7	13
PAT DOWN/FRISK SEARCH CONDUCTED ?								
<b>Yes</b>	02	32903	3376	13429	15545	180	47	326
	07	77252	9198	30455	36275	931	111	282
DETAINEE ASKED TO SUBMIT TO SEARCH?								
<b>Yes</b>	02	15616	1652	6481	7260	83	15	125
	07	39188	4807	14969	18780	456	48	128
GRANTED?								
<b>Yes</b>	02	15522	1635	6435	7231	82	15	124
	07	37804	4574	14490	18140	434	46	120

WAS SEARCH CONDUCTED ?								
<b>Yes</b>	02	32569	3540	13560	14893	185	50	341
	20 07	67236	8859	25927	31139	918	106	287
IF WARRANT-LESS SEARCH CONDUCTED SEARCH AUTHORITY								
<b>Parole/ Probation</b>	02	5002	546	2807	1601	9	10	29
	07	11128	1437	5907	3712	45	10	17
<b>Odor of Contraband</b>	02	503	44	186	269		2	2
	07	1042	133	363	532	12	2	
<b>Incident to Pat Down/Frisk</b>	02	7972	594	3352	3896	47	10	73
	07	14751	1768	6000	6720	193	20	50
<b>Incident to Arrest</b>	02	10028	1323	3783	4696	63	20	143
	07	26269	4203	9336	11949	543	63	175
<b>Impound Inventory</b>	02	65	8	21	32	2		2
<b>Impound Authority</b>	07	159	29	21	106	3		
<b>Visible Contraband</b>	02	881	90	331	437	11	1	11
	07	2713	414	966	1280	33	9	11
<b>Consent</b>	02	12092	1304	5053	5555	67	11	102
	07	37321	4508	14282	17926	435	48	122
<b>Other</b>	02	235	36	79	110			10
	07	370	105	105	143	11		6
IF SEARCH WAS CONDUCTED WHAT WAS SEARCHED?								
<b>Vehicle</b>	02	629	90	210	308	7		14
	07	1280	259	348	634	25	1	13
<b>Belongings</b>	02	2414	531	931	892	22	7	31

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## Police Consent Decrees

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	07							
<b>Person</b>	02	31670	3318	13224	14600	171	48	309
	07	65952	8532	25640	30532	880	96	272
<b>Container</b>	02	369	68	171	118	1		11
	07	3958	953	1141	1723	100	15	26
<b>Other</b>	02	208	37	62	84	13		12
	07	1420	286	450	627	38	2	17
IF SEARCH WAS CONDUCTED WHAT WAS DISCOVERED ?								
<b>Weapons</b>	02	680	83	302	285	2	1	7
	07	1192	151	403	619	15		4
<b>Money</b>	02	646	53	323	260	4		6
	07	1413	158	684	535	28		8
<b>Drugs</b>	02	2721	351	1267	1067	10	3	23
	07	6525	960	3030	2439	71	7	18
<b>Alcohol</b>	02	738	83	255	382	1	2	15
	07	2773	386	783	1551	28	16	9
<b>Other Contraband</b>	02	1478	256	627	557	15		23
	07	2971	434	1093	1376	52	4	12
<b>Other Evidence of Crime</b>	02	879	103	244	505	6		21
	07	2210	353	540	1239	58	1	19
<b>Other Property</b>	02	1693	185	740	734	13	1	20
	07	3574	519	1256	1712	59	9	19
<b>Nothing</b>	02	25784	2799	10614	11927	147	43	254
<b>Vehicle [??]</b>	07	135	20	26	85	3		1
ACTION TAKEN:								
<b>Warning</b>	02	12552	1692	5514	5083	108	30	125
	07	23819	3420	11121	8964	224	26	64
<b>Citation</b>	02	42755	8763	13477	18447	945	93	1030
	07	43000	6447	11953	22885	1379	78	258
<b>Arrest</b>	02	12029	2042	4814	4847	79	26	221
	07	46779	8465	15632	21342	897	174	269
<b>Field Interview Completed</b>	02	19181	2668	7757	8414	96	28	218

	07	66922	9461	28217	28023	840	114	267
<b>None</b>	02	2555	300	1079	1125	17	7	27
	07	4601	846	1602	2048	68	6	31

## APPENDIX C - NEW JERSEY STATE POLICE STOPS 2003, 2007

<b>New Jersey State Police Stops, Entire Division Totals, 5/1/2003-10/31/2003; 5/1/2007-10/31/2007</b>								
This data is collected from State Police Consent Decree Aggregate Data Reports, available at <a href="http://www.nj.gov/lps/8-aggregate%20-data-rep.pdf">http://www.nj.gov/lps/8-aggregate%20-data-rep.pdf</a> and <a href="http://www.nj.gov/lps/16-aggregate-data-rep.pdf">http://www.nj.gov/lps/16-aggregate-data-rep.pdf</a> .								
	<b>Yr</b>	<b>Total</b>	<b>White</b>	<b>Black</b>	<b>Hisp.</b>	<b>Asian Ind.</b>	<b>Other Asian</b>	<b>Am. Ind.</b>
<b>Stops</b>								
	03	186,124	127,141	30,982	17,683	2,804	6,775	739
	<b>07</b>	<b>249,607</b>	<b>160,671</b>	<b>45,192</b>	<b>28,720</b>	<b>5,047</b>	<b>8,629</b>	<b>1,348</b>
Percentage	03		68.3%	16.6%	9.5%	1.5%	3.6%	0.4%
	<b>07</b>		<b>64.4%</b>	<b>18.1%</b>	<b>11.5%</b>	<b>2.0%</b>	<b>3.5%</b>	<b>0.5%</b>
Moving	03	162,358	111,894	25,835	14,907	2,650	6,378	694
	<b>07</b>	<b>208,241</b>	<b>135,001</b>	<b>36,176</b>	<b>23,321</b>	<b>4,667</b>	<b>7,826</b>	<b>1,250</b>
Percentage	03		68.9%	15.9%	9.2%	1.6%	3.9%	0.4%
	<b>07</b>		<b>64.8%</b>	<b>17.4%</b>	<b>11.2%</b>	<b>2.2%</b>	<b>3.8%</b>	<b>0.6%</b>
Nonmoving	03	21,214	13,467	4,759	2,444	143	363	38
	<b>07</b>	<b>36,277</b>	<b>22,791</b>	<b>7,855</b>	<b>4,571</b>	<b>303</b>	<b>678</b>	<b>79</b>
Percentage	03		63.5%	22.4%	11.5%	0.7%	1.7%	0.2%
	<b>07</b>		<b>62.8%</b>	<b>21.7%</b>	<b>12.6%</b>	<b>0.8%</b>	<b>1.9%</b>	<b>0.2%</b>
Other	03	2,552	1,780	388	332	11	34	7
	<b>07</b>	<b>5,089</b>	<b>2,879</b>	<b>1,161</b>	<b>828</b>	<b>77</b>	<b>125</b>	<b>19</b>
Percentage	03		69.7%	15.2%	13.0%	0.4%	1.3%	0.3%
	<b>07</b>		<b>56.6%</b>	<b>22.8%</b>	<b>16.3%</b>	<b>1.5%</b>	<b>2.5%</b>	<b>0.4%</b>
<b>Law Enforcement Procedures (Post-Stop Interaction)</b>								
Total	03	12,935	6,244	4,421	1,997	87	182	4
	<b>07</b>	<b>19,555</b>	<b>9,492</b>	<b>6,034</b>	<b>3,432</b>	<b>256</b>	<b>333</b>	<b>8</b>
Percentage	03		48.3%	34.2%	15.4%	0.7%	1.4%	0.0%
	<b>07</b>		<b>48.5%</b>	<b>30.9%</b>	<b>17.6%</b>	<b>1.3%</b>	<b>1.7%</b>	<b>0.0%</b>
Occupant Exit Vehicle	03	4,763	2,344	1,586	724	32	76	1

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	07	8,395	4,012	2,644	1,462	119	155	3
Percentage	03		49.2%	33.3%	15.2%	0.7%	1.6%	0.0%
	07		47.8%	31.5%	17.4%	1.4%	1.8%	0.0%
Occupant Protective Frisk (Pat-Down)	03	323	147	99	73	1	3	0
	07	372	148	117	92	6	9	0
Percentage	03		45.5%	30.7%	22.6%	0.3%	0.9%	0.0%
	07		39.8%	31.5%	24.7%	1.6%	2.4%	0.0%
Occupant Searched	03	3,724	1,795	1,281	570	27	50	1
	07	6,732	3,164	2,235	1,154	83	93	3
Percentage	03		48.2%	34.4%	15.3%	0.7%	1.3%	0.0%
	07		47.0%	33.2%	17.1%	1.2%	1.4%	0.0%
Force Deadly	03	0	0	0	0	0	0	0
	07	0	0	0	0	0	0	0
Percentage	03		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	07		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Force Physical	03	5	1	3	1	0	0	0
	07	6	2	3	1	0	0	0
Percentage	03		20.0%	60.0%	20.0%	0.0%	0.0%	0.0%
	07		33.3%	50.0%	16.7%	0.0%	0.0%	0.0%
Force Mechanical	03	0	0	0	0	0	0	0
	07	0	0	0	0	0	0	0
Percentage	03		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	07		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Force Chemical	03	6	3	2	1	0	0	0
	07	5	2	3	0	0	0	0
Percentage	03		50.0%	33.3%	16.7%	0.0%	0.0%	0.0%
	07		40.0%	60.0%	0.0%	0.0%	0.0%	0.0%
Consent to Search Vehicle Requested	03	14	5	6	3	0	0	0
	07	101	49	33	17	1	1	0
Percentage	03		35.7%	42.9%	21.4%	0.0%	0.0%	0.0%
	07		48.5%	32.7%	16.8%	1.0%	1.0%	0.0%
Consent Search of Vehicle Conducted	03	11	4	5	2	0	0	0
	07	62	35	18	7	1	1	0
Percentage	03		36.4%	45.5%	18.2%	0.0%	0.0%	0.0%

	07		56.5%	29.0%	11.3%	1.6%	1.6%	0.0%
Probable Cause Search of Vehicle Conducted	03	4,068	1,942	1,426	618	27	53	2
	07	3,843	2073	956	692	46	74	2
Percentage	03		47.7%	35.1%	15.2%	0.7%	1.3%	0.0%
	07		53.9%	24.9%	18.0%	1.2%	1.9%	0.1%
Drug Dog Employed	03	21	3	13	5	0	0	0
	07	39	7	25	7	0	0	0
Percentage	03		14.3%	61.9%	23.8%	0.0%	0.0%	0.0%
	07		17.9%	64.1%	17.9%	0.0%	0.0%	0.0%
<b>Dispositions (Summons/Warnings)</b>								
Total	03	186,124	127,141	30,982	17,683	2,804	6,775	739
	07	249,607	160,671	45,192	28,720	5,047	8,629	1,348
Percentage	03		68.3%	16.6%	9.5%	1.5%	3.6%	0.4%
	07		64.4%	18.1%	11.5%	2.0%	3.5%	0.5%
Summons Moving	03	58,356	37,219	9,538	6,160	1,514	3,511	414
	07	74,455	44,834	12,777	9,532	2,626	4,016	670
Percentage	03		63.8%	16.3%	10.6%	2.6%	6.0%	0.7%
	07		60.2%	17.2%	12.8%	3.5%	5.4%	0.9%
Summons Nonmoving	03	12,792	8,449	2,273	1,603	134	296	37
	07	23,570	14,845	4,392	3,344	311	582	96
Percentage	03		66.0%	17.8%	12.5%	1.0%	2.3%	0.3%
	07		63.0%	18.6%	14.2%	1.3%	2.5%	0.4%
Warnings Moving	03	36,374	27,319	5,325	2,360	293	976	101
	07	52,267	36,405	8,786	4,418	862	1,554	242
Percentage	03		75.1%	14.6%	6.5%	0.8%	2.7%	0.3%
	07		69.7%	16.8%	8.5%	1.6%	3.0%	0.5%
Warnings Nonmoving	03	5,253	3,571	1,100	478	20	77	7
	07	7,771	4,840	1,875	807	64	170	15
Percentage	03		68.0%	20.9%	9.1%	0.4%	1.5%	0.1%
	07		62.3%	24.1%	10.4%	0.8%	2.2%	0.2%
Summons Moving & Warnings Moving	03	1,954	1,320	282	193	48	100	11

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	07	2,129	1,481	298	204	47	91	8
Percentage	03		67.6%	14.4%	9.9%	2.5%	5.1%	0.6%
	07		69.6%	14.0%	9.6%	2.2%	4.3%	0.4%
Summons Non Mov- ing & Warnings Non Mov- ing	03	1,261	824	275	134	9	17	2
	07	849	478	228	116	10	17	0
Percentage	03		65.3%	21.8%	10.6%	0.7%	1.3%	0.2%
	07		56.3%	26.9%	13.7%	1.2%	2.0%	0.0%
Summons &/or Warn- ings / Mov- ing &/or Non Mov- ing	03	36,987	25,013	6,074	3,960	580	1,251	109
	07	26,012	16,495	4,511	3,578	455	829	144
Percentage	03		67.6%	16.4%	10.7%	1.6%	3.4%	0.3%
	07		63.4%	17.3%	13.8%	1.7%	3.2%	0.6%
Other	03	33,147	23,426	6,115	2,795	206	547	58
	07	62,554	41,293	12,325	6,721	672	1,370	173
Percentage	03		70.7%	18.4%	8.4%	0.6%	1.7%	0.2%
	07		66.0%	19.7%	10.7%	1.1%	2.2%	0.3%

## APPENDIX D - NEW JERSEY STATE POLICE ARRESTS 2003, 2007

New Jersey State Police Arrests, Entire Division Arrest Data, 01-MAY-2003 Through 31-OCT-2003; 01-MAY-2007 Through 31-OCT-2007.									
This data is collected from State Police Consent Decree Aggregate Data Reports, <i>available at</i> <a href="http://www.nj.gov/lps/8-aggregate%20-data-rep.pdf">http://www.nj.gov/lps/8-aggregate%20-data-rep.pdf</a> and <a href="http://www.nj.gov/lps/16-aggregate-data-rep.pdf">http://www.nj.gov/lps/16-aggregate-data-rep.pdf</a> .									
	Y r	Total	White	Black	W. Hisp.	B. Hisp.	Asn.	Am. Ind.	Other
<b>Total Criminal Arrest</b>	03	7599	3982	2411	900	111	160	3	32
	07	10138	4906	3603	1199	233	163	2	32
Percentage	03		52.0%	32.0%	12.0%	1.0%	2.0%	0.0%	0.0%
	07		48.4%	35.5%	11.8%	2.3%	1.6%	0.0%	0.3%
Patrol Related Arrests	03	4077	1970	1507	466	82	45	1	6
	07	7416	3319	2874	913	177	109	1	23
Percentage	03		48.3%	37.0%	11.4%	2.0%	1.0%	0.0%	0.0%

	07		44.8%	38.8%	12.3%	2.4%	1.5%	0.0%	0.3%
<b>Drugs</b>	03	502	307	134	47	6	7	0	1
	07	834	465	266	74	13	14	0	2
Percentage	03		61.2%	26.7%	9.4%	1.2%	1.0%	0.0%	0.0%
	07		55.8%	31.9%	8.9%	1.6%	1.7%	0.0%	0.2%
<b>Weapons</b>	03	52	20	20	10	1	1	0	0
	07	67	33	22	7	4	1	0	0
Percentage	03		38.5%	38.5%	19.2%	2.0%	2.0%	0.0%	0.0%
	07		49.3%	32.8%	10.4%	6.0%	1.5%	0.0%	0.0%
<b>DUI</b>	03	1632	1089	193	283	24	36	1	6
	07	2692	1568	432	543	68	62	1	18
Percentage	03		66.7%	12.0%	17.3%	1.0%	2.0%	0.0%	0.0%
	07		58.2%	16.0%	20.2%	2.5%	2.3%	0.0%	0.7%
<b>Other</b>	03	3523	1643	1353	409	75	37	1	5
	07	6515	2821	2586	832	160	94	1	21
Percentage	03		46.6%	38.0%	11.6%	2.0%	1.0%	0.0%	0.0%
	07		43.3%	39.7%	12.8%	2.5%	1.4%	0.0%	0.3%

APPENDIX E - NEW YORK CITY STOPS AND SEARCHES BY RACE,  
1998-99, 2002, 2006

		Total	% White	% Black	% Hispanic	% Other
<b>Population</b>	1998-99	7,332,564	43.4%	25.6%	23.7%	
<b>Stops</b>	1998-99	139,935*	12.9%	50.6%	33.0%	
<b>Population</b>	2002	8,084,316				
<b>Stops</b>	2002	97,296				
<b>Population</b>	2006	8,214,426	43.9%	25.1%	27.6%	12.0%
<b>Stops</b>	2006	508,540	10.0%	52.0%	29.0%	
1998-99 figures from The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York, Civil Rights Bureau,						
Office of the Attorney General of the State of New York (1999), available at <a href="http://www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html">http://www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html</a> .						
2002 figures from Al Baker and Emily Vasquez, <i>Police Report Far More Stops And Searches</i> , N.Y. Times, Feb. 3, 2007 at A1; New York State Department of						