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United States Congressional Black Caucus
Honorable Chair and Members

Dear Honorable Members of the Congressional Black Caucus:

Thank you for allowing me the opportunity to address this Committee in support of the bills sponsored by the Honorable Representative Conyers, as well as the Honorable Representative Holmes-Norton, as ways to combat racial profiling.

I am an attorney who specializes in criminal defense and civil rights law in the State of New Jersey. I have been involved in racial profile challenges since the first such challenge I filed in March of 1990. The first challenge that I filed in 1990 ultimately prevailed and became known as *State v. Soto*, 324 N.J. Super. 66 (Law Div. 1996). *Soto* was a watershed case and has had national implications. In essence, *Soto* found that the New Jersey State Police had operated based upon a racially selective profile on the southern end of the New Jersey Turnpike, one of the busiest arteries in the county.

Subsequent to *State v. Soto*, along with other attorneys, I have litigated other profiling matters in the civil and criminal courts in New Jersey. Those challenges, brought since 1999, resulted in even greater exposés of the outrage and injustice of profiling.

While New Jersey may not have invented profiling, it certainly honed it to a fine art. Sadly, however, the science of profiling developed by the New Jersey State Police was a project which was funded in great part with federal tax dollars.

The materials unearthed in New Jersey show explicit, outrageous racial profiles. One hand-out provided to New Jersey State Troopers was entitled Occupant Identifiers for a Possible Drug Courier. This hand-out instructed officers to be on the alert for Columbian males, Hispanic males, Black males and Hispanic males traveling together, and my favorite, Hispanic male and female posing as a couple. I was always greatly impressed by the fact that somehow law enforcement were able to discern that a Hispanic male and female were posing as a couple as they drove by and 65 miles per hour. Another hand-out proclaimed Hispanics mainly involved.

Ultimately, in that first successful profile challenge, *Soto*, the New Jersey State Police admitted that they were funded by the DEA to go around the county and teach other law enforcement

agencies these techniques. The DEA used other State Police agencies, such as the New Mexico State Police, as their proxies to travel around the country, from the mid-80's on, to teach these purported drug interdiction techniques. It is therefore no coincidence that profiling is a national phenomenon. Funded by a federal agency, the flawed, racial biased training behind these programs was promulgated by the DEA and various State Police agencies.

The training and activities funded by federal tax dollars through the DEA, using local and State Police agencies as proxies, did not begin or end with mere written hand-outs. The DEA, in conjunction with some State Police agencies, most particularly the New Jersey State Police and the New Mexico State Police, produced professional looking training videos. These videos were produced in conjunction with a DEA program known as Operation Pipeline, an effort specifically designed to train local and state law enforcement officers to interdict drugs on the highways. However, as with the other training aids I have already discussed, these training videos were racially oriented as well.

During the course of *Soto*, myself and co-counsel were able to obtain a copy of the DEA training video Operation Pipeline geared for the southwestern United States. We were informed that, in actuality, the DEA, along with other State Police agencies, produced four training videos for Operation Pipeline, namely, one geared for the Southwest, one geared for the Northwest, one geared for the Northeast, and one for the Southeast. We were only able to get our hands on the one geared for the Southwest and were told by the New Jersey State Police that they had lost any other copies.

However, the Southwestern version of Operation Pipeline was quite telling. The training video instructs officers on, among other things, conversational techniques to employ to develop probable cause to search a vehicle and/or to convince motorists to consent to a search of their vehicle. Yet, since the video was geared to the Southwest, it is striking how the video focused on Hispanics as suspects. In a series of role-playing vignettes, an officer would walk up to the side of the vehicle and begin engaging actors/motorists in conversation. In the video, every time the officer approached the vehicle, he said something to the effect of, Do you know why I stopped you Mr. Hernandez, Do you know why I stopped you Mr. Medina, Do you know why I stopped you Mr. Rodriguez. Caucasian or other ethnic names were not used. In this way viewers of the video were trained with the wink and nod suggestion that they were looking for Hispanics. One can only imagine what the training videos focused on for the other sections of the country. In one of the explicit written hand-outs that I have already discussed, entitled Occupant Identifiers for a Possible Drug Courier, an explicit discussion was offered of the type of motor vehicle infractions that can be used to stop motorists an officer wants to stop. Indeed, the hand-out ended by instructing officers not to write the same tickets for every stop lest a discernable pattern develop which could be used as a defense later. Operation Pipeline was in effect at least until the late 90's. It may still be in effect. I appeared on a radio talk show only last year with a police spokesman who spoke of the program in the present tense and defended same.

Less there be any misunderstanding, these techniques were not in any way good police practice. The actual hit rates of these profiles are, at best, one in thirty for something as minor as one marijuana cigarette. Law enforcement could obtain these types of hit rates by simply lowering a barrier across an artery like the New Jersey Turnpike and unconstitutionally searching everyone,

white, black, brown or other, as they passed or searching everyone randomly. Justice Department statistics now make clear that Caucasians are more likely to be carrying drugs than minorities.

Yet, profiles are justified on the supposition that they somehow increase the probability of netting contraband. In reality, the probability which profiles exploit is not a probability of finding more drugs, but a sad and cynical probability tied to our unfortunate legacy of racial inequality. Racial profiles exploit the sad and cynical probability that when an officer searches, stops, detains, humiliates and searches a minority person, the probability is greater that he or she did not stop and detain a person who has the political resources or financial wherewithal to challenge the injustice. Accordingly, law enforcement are able to publicize their arrest statistics from these outrageous and unworkable profiles while the overwhelming number of innocent victims are the silent and unseen collateral damage wrought by racial profiling. Only now, because of the light of recent tragic events have profiles and their true by-product of injustice become widely exposed.

It is for all of the reasons that I have described here that the forms of legislation proposed in the Conyers bill and the Holmes-Norton bill are absolutely necessary ingredients to any approach to end profiling. For example, one of the hardest fought aspects of the first *Soto* litigation was to obtain the raw statistics of police stop activity. In hindsight, it is clear to me why the State of New Jersey fought so long and hard the release of this material. The statistics were, as the trial judge set forth in his opinion, truly stark. They showed a pattern of law enforcement that concentrated on race and increased, almost exponentially, with the amount of discretion that devolved upon law enforcement officers. For example, in a study of drunk driving arrests in the State of New Jersey, the following facts emerged:

Statewide law enforcement arrests
(including the State Police) 12% black

Statewide *excluding* activities of the State Police 10.4% black

State Police (excluding all other police
departments in the State) 16% black

Troop D (that portion of the State Police which
patrolled the New Jersey Turnpike) 23% black

New Jersey State Police south of exit 7
(the southern half of the Turnpike) 34% black

New Jersey State Police general patrol
Troopers (as opposed to those who concentrated
primarily on traffic offenses) 41% black

New Jersey State Police, patrol-related,
southern 1/3 of the Turnpike 50% black

It was later discovered that in a combination of the techniques of interdiction that I have already described, that the general road patrol troopers were those troopers most heavily inundated with drug interdiction training in racial profiles *and* that the southern one-third of the New Jersey Turnpike was the area most emphasized by Turnpike troopers and State Police. Sadly, at hearings conducted by the New Jersey Legislative Black and Latino Caucus, profile victim after profile victim testified that when he or she complained to New Jersey State Police Officers and/or questioned why they were being stopped, the officer would then ask Have you been drinking, I smell alcohol on your breath. Thus, the correlation to the high number of African-American DUI arrests as compared to the rate of African-American DUI arrests state-wide.

From my study of the phenomenon of profiling, particularly since we now know that profiling is a national problem funded in part by the DEA, I am sad to say that the New Jersey statistics are probably not that far out of line with major arteries in areas around the country. It is therefore imperative that the types of concrete steps that these two bills would institute be taken to end profiling. Something as simple as making stop statistics public, will help bring fresh air and sunshine to this problem, if nothing else. Once stop statistics emerge, the American public, essentially fair at heart, will not tolerate racially biased law enforcement.

Thank you for the opportunity to address you.

Respectfully yours,

WILLIAM H. BUCKMAN

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