

## **Social Sciences Report to the Traffic Stop Task Force—Eric Jakobsson, April 14, 2015**

### **Abstract and Summary:**

From a legal perspective, the entire discussion of this issue must be in the context that police officers are legally entitled to make traffic stops based not only on traffic safety but also if there is probable cause to believe that the car contains people who have committed a crime, or may do so in the near future. The Supreme Court has repeatedly upheld this view. On the other hand, these stops must not be made on the basis of race.

The fact is that during the time that this legal doctrine has been upheld, throughout the nation and in Urbana, African-Americans are stopped in their cars by police officers out of proportion to their numbers in the population. Further, their cars and persons are subject to search out of proportion to the numbers of stops. It is illuminating to consider the motives for the stops; whether they are purely for traffic safety or whether they have an investigatory component; that is, whether part of the reason for the stop is due to a suspicion by the officer that the stop might yield evidence to solve a non-traffic crime, or whether the stop is solely motivated by dangerous driving or equipment violations. The literature suggests that the racial disparities show up almost entirely in stops with an investigative component, as opposed to purely safety stops. This suggests a further question: To what extent are the suspicions behind the investigatory stops warranted, and to what extent are they based purely on the race of the driver? To the extent they are warranted, they may help to deter or solve crimes that jeopardize the public safety. To the extent they are on the basis of race, they needlessly create animosity between the African-American community and the police, and unfairly impose an economic and psychological cost on members of the African-American community.

We do not expect to finally resolve the above issue in this report, but the literature suggests ways to resolve it. The literature suggests that “hot-spot policing” in which resources are concentrated in areas that have more calls for service does reduce crime, but may also exacerbate community-police tensions in those communities which have more calls for service. Community policing, on the other hand, seems to have little effect on crime rates but does serve to reduce community-police tensions.

Other people than the author may interpret the data differently, but to the author of this section the data suggest that “hot spot policing” is justified to reduce crime, but that it should be accompanied by community policing to reduce community-police tension, plus much greater transparency than we have so far had with respect to the criteria used by officers when making stops with an investigatory component.

No discussion of this topic would be complete without making reference to the recent Justice Department Report on Ferguson, Missouri. We do not see evidence that the Urbana Police Department and the Champaign County court system exhibit the systematic and purposeful targeting of African-Americans exhibited by their counterparts in Ferguson. On the other hand, given the pervasive racial biases that persist in our society, it would be naïve to assume that our local criminal justice system is completely free of such biases, or that we could not benefit from a thorough examination of our system in that regard.

## Literature Review

There is ample evidence that, around the United States, African-American drivers are subject to traffic stops out of proportion to their representation in the population.<sup>1</sup>

One hypothetical reason for the disparity might be driving habits. One might reasonably guess that death rates for drivers would be a good measure of reckless driving. Statistics gathered by the Centers for Disease Control over a several year period show no significant difference in age-adjusted driver deaths between African-Americans, Hispanic-Americans, and European-Americans.<sup>2</sup> African-Americans are not more reckless drivers than European-Americans.

Although Asian-Americans are not the topic of our study, it is notable that traffic stops of Asian drivers in Urbana are only about one-half of their proportion in the population. The national highway death data also show that Asian-Americans are only about half as likely, relative to their proportion in the population, to be drivers in fatal accidents. So it does appear that Asian-Americans, as a group, are safer drivers than other ethnic groups in the United States, and possibly also in Urbana.

Note that the statistics cited above are age-normalized. Younger drivers have more accidents than older drivers (except for drivers over 75 year old).<sup>3</sup> The African-American population in the U.S. is younger than the White population. Thus the fractional population of African-Americans is higher in the “dangerous driving” age range (up to 24) and lower in the “safe driving” age range (35-74).<sup>4</sup> This effect is large enough to account for part, but not nearly all, of the racial discrepancy in traffic stops over the United States.

It is instructive to examine the case of one city with similar demographics to Urbana that, for a number of years, had no racial disparity in traffic stops. This is Iowa City, population approximately 72,000, home of the University of Iowa. A comprehensive study of racial disparity in traffic stops was done by Barnum, et al.<sup>5</sup> They found that from 2005 through 2007 there was only a very slight disparity in traffic stops, perhaps small enough to be accounted for by the black population being younger and therefore having a higher fraction of the population violating traffic laws. But in 2008 and 2009 there was a surge in violent crimes in the black neighborhood that was statistically modest but received prominent coverage in local news media. This resulted in increasing patrols in black neighborhoods and a significant increase in statistical racial disparity in stops. The crime incidence soon returned to its previous level, but the traffic stop disparity persisted through 2012, the last year covered by the study. It may persist to the present day.

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<sup>1</sup> <http://www.nij.gov/topics/law-enforcement/legitimacy/pages/traffic-stops.aspx>

<sup>2</sup> <http://www.cdc.gov/mmwr/preview/mmwrhtml/su6001a10.htm>

<sup>3</sup> <http://www.census.gov/compendia/statab/2012/tables/12s1114.pdf>

<sup>4</sup> [http://en.wikipedia.org/wiki/Demographics\\_of\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Demographics_of_the_United_States)

<sup>5</sup> Barnum, Chris, Robert Perfetti, and Matt Lint. "Iowa City Police Department Traffic Study." (2014).

This study illustrates both the strength and weakness of statistical analysis. The statistics are very good at telling us what happened but fall short in telling us why it happened. To what extent was the end of the surge in violent crime in Iowa City due to the increased patrols and arrests and to what extent did it simply “play itself out” or decline due to other factors? Is the continued increase in patrols and arrests in the black neighborhoods responsible for the sustained reduced crime rate, or is it a practice that has outlived its policy usefulness but is maintained for political reasons?

Weisburd and Eck<sup>6</sup> attempted to deal with the “why” issue by reviewing a broad range of studies on the relationship between police practices and crime rates. They concluded that employing a broad range of strategies in a coordinated focus on “hot spots” of crime is effective in reducing crime rates. Investigative traffic comprised a component in this strategy. They also found that community policing was not effective in reducing crime, at least in the short run, but did improve community-police mutual trust. It is reasonable to hypothesize that this increased trust could lead to a long-term reduction in crime by improving the effectiveness of enforcement, but long term trends are hard to deal with statistically since many factors are changing, for example the composition of neighborhoods, the overall economic climate, etc.

Epp et al<sup>7</sup> published a major study on the causes and effects of racial disparities in traffic stops. They concluded that there was no disparity in stops that were made for purely traffic safety reasons. Essentially all of the disparities were due to stops with an investigative component, where the officer used a minor safety issue as a reason to stop a vehicle that was suspected, for other reasons, to be connected to some illegal activity. They concluded that, due to the fact that in most stops the suspicions are not substantiated, these stops have a corrosive effect on relationships between the police and the black community. This is especially so because blacks are under-represented on police forces across the nation.<sup>8</sup> Thus many black residents have had the experience of being stopped by white officers on the basis of suspicions that proved to be unfounded.

It should be noted that the constitutional right of officers to make such pretextual stops, for minor moving or equipment violations that would not in themselves usually prompt a stop except for some other suspicion of illegal activity, are firmly rooted in settled law. The relevant Supreme Court case is *Whren vs. United States*, which was a unanimous decision.<sup>9</sup> Some legal scholars have criticized this decision.<sup>10 11 12</sup> However because it was

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<sup>6</sup> Weisburd, David, and John E. Eck. "What can police do to reduce crime, disorder, and fear?." *The Annals of the American Academy of Political and Social Science* 593.1 (2004): 42-65.

<sup>7</sup> Epp, Charles R., Steven Maynard-Moody, and Donald P. Haider-Markel. *Pulled Over: How Police Stops Define Race and Citizenship*. University of Chicago Press, 2014.

<sup>8</sup> <http://www.nytimes.com/interactive/2014/09/03/us/the-race-gap-in-americas-police-departments.html>

<sup>9</sup> [http://en.wikipedia.org/wiki/Whren\\_v.\\_United\\_States](http://en.wikipedia.org/wiki/Whren_v._United_States)

<sup>10</sup> Sklansky, David A. "Traffic stops, minority motorists, and the future of the Fourth Amendment." *The Supreme Court Review* (1997): 271-329.

unanimous, it is not likely to be overturned any time soon, so it is part of the legal context in which traffic stop disparities must be considered.

The sum total of the studies cited above presents a policy conundrum. Investigative stops in black neighborhoods with relatively high crime rates are constitutional and may effect an improvement in public safety in solving crimes that might otherwise go unsolved. On the other hand, they exacerbate tensions between the police and the black community because of the common experience of many black residents in being stopped by white officers when they have done nothing wrong. The whole situation is intensified by the racial and ethnic stereotypes that pervade American society.<sup>13</sup>

Because of the role of investigatory traffic stops in the criminal justice system, they unavoidably become entangled with other criminal justice issues, especially with how the criminal justice system deals with drug use and mental illness. While those issues are beyond the scope of the task force, perhaps they merit mention by virtue of how they interact with investigatory stops.

Carl Hart describes racial disparities in both the letter and the enforcement of drug laws in his book, "High Price".<sup>14</sup> Hart has a unique perspective as a black man who dealt drugs in his youth in Miami but ultimately became a respected neuroscientist whose work focuses on the science of addiction. He combines his personal experience with his professional expertise to analyze the problems with how our criminal justice system deals with drugs in the black community.

In addition to racial disparities in drug issues, mental health problems are under-treated in the African American community.<sup>15 16</sup>

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<sup>11</sup> LaFave, Wayne R. "The" Routine Traffic Stop" from Start to Finish: Too Much" Routine," Not Enough Fourth Amendment." *Michigan Law Review* (2004): 1843-1905.

<sup>12</sup> Donahoe, Diana Roberto. "Could Have, Would Have: What the Supreme Court Should Have Decided in Whren v. United States." *Am. Crim. L. Rev.* 34 (1996): 1193.

<sup>13</sup> Smedley, Audrey, and Brian D. Smedley. "Race as biology is fiction, racism as a social problem is real: Anthropological and historical perspectives on the social construction of race." *American Psychologist* 60.1 (2005): 16.

<sup>14</sup> Hart, Carl L. *High Price: A Neuroscientist's Journey of Self-discovery that Challenges Everything You Know about Drugs and Society*. Harper, 2013.

<sup>15</sup> Snowden, Lonnie R. "Barriers to effective mental health services for African Americans." *Mental health services research* 3.4 (2001): 181-187.

<sup>16</sup> Lasser, Karen E., David U. Himmelstein, Steffie J. Woolhandler, Danny McCormick, and David H. Bor. "Do minorities in the United States receive fewer mental health services than whites?." *International Journal of Health Services* 32, no. 3 (2002): 567-578.

Reflecting the interplay between all these issues, our jail and prison populations are over-represented in African-Americans and in people suffering from mental health and drug problems.<sup>17</sup>

Fortunately there is currently interest in Champaign County in criminal justice reform, which would improve how the criminal justice system deals with the issues described above. This is exemplified by the upcoming visit and presentation from Leon Evans, the CEO of the Center for Health Care Services in San Antonio, Texas.<sup>18</sup> He will talk about their very successful jail diversion program.<sup>19 20</sup>

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<sup>17</sup> [http://en.wikipedia.org/wiki/Incarceration\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Incarceration_in_the_United_States)

<sup>18</sup> <http://www.chcsbc.org/who-we-are/ceo-message/>

<sup>19</sup> <http://www.chcsbc.org/innovation/jail-diversion-program/>

<sup>20</sup> <http://www.npr.org/blogs/health/2014/08/19/338895262/mental-health-cops-help-reweave-social-safety-net-in-san-antonio>