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## Remarks on Racial Profiling in Missouri

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## REMARKS ON RACIAL PROFILING IN MISSOURI

JEREMIAH W. (“JAY”) NIXON\*

Thank you for the opportunity to speak on the important topic of racial profiling.

As some of you may recall, two years ago the legislature passed, and Governor Carnahan signed, a law requiring all law enforcement officers to keep statistics of every traffic stop, documenting the stops by race. The law was prompted by a perception that law enforcement was inappropriately making traffic stops based on the driver’s race or ethnic group. The legislature gave my office the responsibility to implement the racial profiling law. This required designing the reporting mechanism, training police statewide on the requirements of the law, compiling the data, and analyzing the findings to present to the governor and the legislature.<sup>1</sup>

Law enforcement in Missouri has taken on this new challenge. We are into our third year of collecting data. Our first year’s report included four months of data (August-December 2000). Our second report, which is due June 1, 2002, will include data from every stop for a complete year.<sup>2</sup>

Missouri has taken as comprehensive an approach to this issue as any state in the nation, and I am proud of our leadership role. But that is not to say this is an easy issue. Let’s face it; racial profiling mixes two very difficult topics—race and statistics. Both are easily misunderstood. Both can be difficult topics for public discussions, and the events since September 11 have added a new dimension to the discussion, making the issue even more controversial. As is often the case, however, difficult issues can provoke thought and increase understanding. In Missouri, I hope we are moving toward two important goals: increased trust in law enforcement by people of color and recognition by law enforcement that racial profiling does sometimes exist.

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\* Attorney General of the State of Missouri. Originally elected to the office of Attorney General in 1992, General Nixon is serving his third term in that office.

1. MO. REV. STAT. § 590.650 (2001).

2. This speech was given prior to presentation of the second report. Now, both the first and second reports have been released. MISSOURI ATTORNEY GENERAL’S OFFICE, 2000 ANNUAL REPORT ON MISSOURI TRAFFIC STOPS (2001) [hereinafter 2000 ANNUAL REPORT], *available at* <http://www.ago.state.mo.us/rpexecsummary.htm>; MISSOURI ATTORNEY GENERAL’S OFFICE, ANNUAL REPORT ON 2001 MISSOURI TRAFFIC STOPS (2002) [hereinafter 2001 ANNUAL REPORT], *available at* <http://www.moago.org/rpexecsummary2001.htm>.

As our work began, I knew it was important to have a group of advisors that would bring together diverse points of view. I established the Attorney General's Advisory Committee on Racial Profiling. I selected eighteen Missourians representing law enforcement groups, community leaders, and activists from throughout the state to sit on this committee. We had the Deputy Sheriffs' Association in the rooms with the ACLU. Black peace officers were represented, as was the Missouri Police Chiefs' Association.

Needless to say, this was a group that did not always see eye-to-eye on issues. Racial profiling is not a visible problem to most whites; thus, there has been a tendency for many to dismiss or belittle such claims. Police have defended their practices as practical, calculated crime-stopping techniques. Through the year, however, we found that people of good will—despite differing affiliations and views on an issue—can find common ground and learn from one another. I know I learned a great deal. I am very proud of this group. All came into this with some preconceived notions, yet we ended with increased respect for each other and our understanding of the issues.

As most of you are aware, profiling became a national issue after New Jersey was placed under a court order to stop what appeared to be an established procedure by the Highway Patrol to target African-Americans in rental cars. This was a profile used by the DEA to describe drug couriers on the New Jersey turnpike. Thus, an aggressive war on drugs placed a national spotlight on this police profiling standard.<sup>3</sup>

This approach has produced a number of problems and evoked a continuing debate throughout the country. In Missouri, the legislative response to this debate focused first on gathering data. Let me share with you some of the information we documented in Missouri's first report, presented June 1, 2001, documenting four months of traffic stops. Law enforcement reported 453,189 traffic stops that resulted in 31,906 searches and 23,716 arrests. That data was compiled in an eight-volume, 1329-page report, which is available on our website, <http://www.moago.org>.<sup>4</sup>

Statewide data showed that black drivers were 30% more likely than whites to be stopped, based on their proportion in the population. And when black drivers were stopped, they were 70% more likely than white drivers to be searched. Hispanic drivers statewide were no more likely than whites to be stopped but twice as likely to be searched.<sup>5</sup>

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3. See Joint Application for Entry of Consent Decree, *United States v. New Jersey*, No. 99-5970 (D. N.J., approved Dec. 30, 1999), available at <http://www.usdoj.gov/crt/split/documents/jerseysa.htm>.

4. 2000 ANNUAL REPORT, *supra* note 2.

5. *Id.*

In St. Louis City, the Police Department stopped black drivers 10% more than white drivers, based on their proportion in the population. Those black drivers who were stopped were more than four times as likely to be searched as white drivers who were stopped.<sup>6</sup>

In St. Louis City, Hispanic drivers were about 38% less likely than white drivers to be stopped. But of those drivers stopped, Hispanics were 1.5 times more likely to be searched than white drivers who were stopped.<sup>7</sup>

In St. Louis County, black drivers were stopped 40% more often than white drivers based on their proportion in the population. They were 34% more likely to be searched.<sup>8</sup>

Clearly we see in many reports from around the state a disproportionate number of stops of African-Americans, as well as a disproportionate number of searches of African-Americans and Hispanics. But what does this all mean? The answer depends on who you ask.

Certainly not all examples of disproportionate stops are the result of racial profiling. In some instances the numbers can be explained because police, at the request of neighborhood residents, have focused attention on crime-prone neighborhoods. To the extent that those may be minority neighborhoods, an agency's figures may be skewed somewhat. It is appropriate for law enforcement to place officers in high-crime areas. It is also appropriate for law enforcement to conduct searches of those who may have outstanding warrants. This may explain a portion of the high numbers of searches. However, it is not appropriate for an African-American driving home from work to be stopped *because of his skin color*.

Unfortunately, the statistics alone cannot always tell which stops are appropriate and which are not. Data alone cannot prove racial profiling, but they can be the basis for community discussion and internal agency reviews. We now have a system, when used properly, that allows a local department to look closely at the statistics to determine areas of concern.

In some communities, the police have met with the NAACP and other community groups to review the data together. This is an important step. Dialogue on this issue is important. It prompts understanding and self-examination.

Analysis of the statistics, though difficult, is also important. The legislature asked that I provide statewide analysis, and I have done my best to do so. Our office has relied on the expertise of two criminal justice professors from the University of Missouri-St. Louis, Dr. Scott Decker and Dr. Richard Rosenfeld. In addition, Dr. Jack McDevitt from Northeastern University in

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6. *Id.*

7. *Id.*

8. *Id.*

Boston is helping them. They assisted us in developing the appropriate reporting forms and in compiling and analyzing the statistics. They are currently compiling the statistics for 2001.<sup>9</sup>

While the data analysis can be challenged from any number of perspectives, one thing was absolutely clear after the numbers came in: the results of our study did nothing to *disprove* the use of racial profiling. The disparities in the data—the *level* of disproportion in the stops and searches—as well as the anecdotal evidence helped me with the analysis.

The Advisory Committee provided invaluable information and insights into the situation faced by many minorities. Highly respected members of Missouri's minority community told me of their personal experiences on our roadways. As ministers, university students, lawyers, and even judges presented me with anecdotal evidence of profiling, I began to see a problem.

Many people will deny a problem, noting quite accurately that anecdotes are not evidence. But anecdotes do, at a minimum, convey people's perceptions. Anecdotal information, combined with the levels of disproportion in the data, led me to believe that African-Americans and Hispanics have been the target of racial profiling in Missouri.

Since our first report was released on June 1, 2001, our world has changed in many ways. The issue of racial profiling has taken on a new perspective because of the terrorist attacks. It has been said that a liberal is a conservative who has just been arrested, and a conservative is a liberal who has just been mugged. Whatever your politics, as we seek to protect Americans from terrorism, we know that we should not blanket all people from the Middle East as suspects.

There is a difference between inappropriate profiling and what the Supreme Court defines as "narrowly tailored" profiling.<sup>10</sup> Good law enforcement sometimes requires narrowly tailored profiling—certainly there are times when a person's race or nationality is one of several factors considered by law enforcement in "hot pursuit" situations. It would be foolish not to acknowledge the fact that Al Queda specifically targeted young, Islamic men from Middle Eastern countries to train as terrorists. Good law enforcement requires that one know the difference between overly broad dragnet approaches and hot pursuit situations. This is not always easy, but it is the goal.

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9. The annual report for 2001 was not complete at the time of this speech, but has since been published. 2001 ANNUAL REPORT, *supra* note 2.

10. *Cf. United States v. Arvizu*, 534 U.S. 266, 277 (2002) (examining a series of factors for stopping a vehicle, each "susceptible of innocent explanation," but when taken together in the totality of the circumstances, sufficed to form a particularized and objective basis for a reasonable stop within the meaning of the Fourth Amendment).

In Missouri, we will continue our efforts to document and analyze the data collected from traffic stops as they relate to the race of the driver. More than ninety-five percent of all law enforcement agencies are cooperating.<sup>11</sup> The law allows the governor to withhold funding from those few agencies that are not cooperating,<sup>12</sup> and I will forward a list of those that are not cooperating to the governor this year, just as I did last year.<sup>13</sup>

The racial profiling laws in Missouri have opened a dialogue on this important topic. The laws are not perfect and the process is not without critics. But an important topic is now being discussed throughout our state and changes are being made. As an example, last year the legislature passed laws to require additional law enforcement training on the prohibition of racial profiling, respect for racial and cultural differences, and the use of effective, non-combative methods for carrying out law enforcement duties in a racially diverse environment.<sup>14</sup>

I am convinced that racial profiling is an issue that must be addressed if we are to build trust of law enforcement among all the communities in our state. To fight crime, to have safe neighborhoods for all, there cannot be an inherent distrust of the police. Law enforcement and all Missourians are reminded of a very important tenet of our democracy—that in our country we enjoy the presumption of innocence. That should apply to all people regardless of color, religion, or nationality.

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11. 2000 ANNUAL REPORT, *supra* note 2.

12. MO. REV. STAT. § 590.650 (2001).

13. See the annual reports for the list of agencies not cooperating each year. 2000 ANNUAL REPORT, *supra* note 2; 2001 ANNUAL REPORT, *supra* note 2.

14. MO. REV. STAT. § 590.090 (2001).

