

# A DEPARTMENT IN DENIAL

## THE SAN FRANCISCO POLICE DEPARTMENT'S FAILURE TO ADDRESS RACIAL PROFILING

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## Executive Summary

Racial profiling by law enforcement has long plagued communities of color, yet until recently was virtually ignored by the media, courts, and public officials. In the last few years, the issue seized the attention of the public as never before, due in no small part to the data first released in New Jersey and Maryland showing extreme racial profiling problems within the state police departments. Since then, some state and local agencies across the country and within California have begun collecting data aimed at determining the extent to which racial profiling occurs within individual police departments. This report analyzes the first year of data collected by the San Francisco Police Department and the Department's continual failure, despite clear direction from the Police Commission, to adequately address the issue of racial profiling.

In early May 2002, the *San Francisco Chronicle* reported on a preliminary release of the first three months of traffic stop data collected by the San Francisco Police Department ("SFPD"). The data was collected pursuant to the direction of the Police Commission in order to determine the extent to which racial profiling is a problem within the SFPD. This mid-year release of data showed significant disparities between how African American and Latino drivers are treated when compared to whites.<sup>1</sup> It provided strong evidence that, despite the City's stated commitment to promoting diversity and fighting discrimination, racial profiling may be a significant problem within the Police Department.

This preliminary snapshot of the data raised the concern of members of the community and the Police Commission. The issue was discussed at the Police Commission meeting the day the data was released and in June, Commission Vice President Connie Perry again asked Chief Fred Lau<sup>2</sup> for a report on the racial profiling issue. She was told that Chief Earl Sanders would issue a report within a month. During this same time ACLU staff met with Chief Sanders to discuss the issue of racial profiling. Chief Sanders promised to issue a report by mid September at the latest and to start the process of reviewing the Department's policy on the use of race. **To this date – over five months after the initial data release and three months after the Department promised to address the issue in a report, SFPD has not issued the promised report and has not taken any steps to address the issue of racial profiling.**<sup>3</sup>

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<sup>1</sup> Susan Sward, "S.F. Traffic Stops Show Racial Disparities," *San Francisco Chronicle*, 5/8/02.

<sup>2</sup> Fred Lau was San Francisco Police Chief until July 13, 2002 when then-Assistant Chief Earl Sanders became Chief. Throughout this report, both are referred to as "Chief."

<sup>3</sup> To be clear, while the data strongly suggests that there is a racial profiling problem within the San Francisco Police Department, that does not mean that the majority or even a large number of San Francisco Police Officers are racist. Racial profiling as a problem goes far beyond overt racism. Rather, racial profiling is the use of race – both conscious and unconscious – in determining who to stop, search, interrogate, or arrest in the absence of a suspect description identifying a suspect, in part, by race. Police officers are drawn from society and reflect both societal and institutional biases. While discriminatory stereotypes cause significant problems in all aspects of society, the impacts are exacerbated when the stereotypes are acted on by police officers acting under color of law.

Since a report does not appear to be forthcoming from SFPD at this time, the ACLU has prepared this comprehensive report on racial profiling in San Francisco.<sup>4</sup> This report analyzes traffic stop data collected by SFPD, and obtained by the ACLU through Public Records Act requests, for a complete year – from July 1, 2001 through June 30, 2002. The data covers over 50,000 traffic stops in all regions of the city. The analysis looks at how often and why motorists of different races are stopped as well as how motorists are treated once the decision to effectuate a stop has been made. The principle findings of this report are as follows:

- African Americans motorists are significantly more likely to be stopped by San Francisco police officers.<sup>5</sup>
- This is true in every police district in the city.
- African Americans are 3.3 and Latinos 2.6 times more likely to be searched following a traffic stop than whites.
- African Americans are more than twice as likely as whites to be asked their consent to be searched without any probable cause of a crime.
- Although African Americans and Latinos are disproportionately subjected to intrusive stops and searches, San Francisco police officers are significantly less likely to find any evidence of criminality as a result of searching African Americans and Latinos.
- The problem may be much greater than the data reflects due to rampant under-reporting of stops and searches by San Francisco police officers.

**In short, the data suggests that, despite the Department’s stated commitment to ending the practice, racial profiling is a significant problem within the Department. Further, the problem may be much greater than the data reflects due to the failure of SFPD officers to consistently fill out data collection forms, as they are required to do. If the SFPD takes its stated commitment to ending racial profiling seriously, it will take quick action and seriously address the issue.**

This report is comprised of four sections. Part I looks at the history of the SFPD data collection program and the continued neglect of the problem. Part II provides an analysis of the first year of data collected by SFPD. Part III looks at the inadequacies in SFPD’s current data collection effort and the rampant under-reporting of stops and

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<sup>4</sup> This report focuses on data on African American and Latino motorists. Traffic stop data was also collected for Asian Americans and an “other” category. The data generally shows that Asian Americans are, on a citywide basis, stopped and searched at lower rates than other racial and ethnic groups. This report does not examine the reasons for this, and the overall data does not mean that Asian Americans are never victims of racial profiling in San Francisco.

<sup>5</sup> The comparison baselines used in this report are the year 2000 census for stop data and the stop rate for the search data as explained in more detail in Section II.

searches by SFPD officers. Part IV rebuts law enforcement responses to the data. Part V discusses policy changes that should be immediately adopted to address these issues.

## I. San Francisco's Failure to Address the Problem.

While the findings of this report suggest a substantial racial profiling problem in San Francisco and significant non-compliance by SFPD with the data collection program, the urgency of the problem and need for strong action by the Police Commission can only be fully appreciated in light of the history of the Department's consistent failure to address the issue or comply with basic directives from the Police Commission.

San Francisco's efforts to address racial profiling began in September, 1999 when the Police Commission directed the Department to begin collecting data on *all traffic stops* in an effort to determine the extent to which racial profiling was a problem within the Department. The Commission set a goal of having a complete report on the issue by June 2001. This made San Francisco one of the first police departments to collect data and appeared to put it at the forefront in addressing racial profiling. In response to the Commission's action, the Department, while denying that racial profiling was a problem in San Francisco, pledged full cooperation with the Commission's directive.<sup>6</sup> **Unfortunately, over three years later, the Police Department has still failed to fulfill the original order of the Police Commission. Instead, the program has been undermined by continual non-cooperation, delays, and denial.**

In March, 2000, in response to an ACLU California Public Records Act Request for data that the Department had collected, Chief Lau responded that "the San Francisco Police Department will not be collecting and reporting data." Based on a "half-cocked" analysis of just one week's worth of citations, Chief Lau concluded that there was no problem of racial profiling in the Department and that more thorough data collection was unnecessary. *After the Department's refusal to collect data was made public*, Chief Lau admitted that he had not complied with the Commission's order saying: "Once in a while, we are not as complete as we should be."<sup>7</sup>

The Police Commission and the press properly criticized the SFPD's attempt to study the problem of racial profiling by simply reviewing a highly selective sample of citations. At the Police Commission meeting following a *Chronicle* article reporting on the woefully inadequate study, Commissioners Dennis Herrera and Connie Perry expressed disappointment at the Department's failure to carry out its mandates. The *San Francisco Chronicle* editorialized about the Department's failure to comply with the Commission's directive. Chief Lau and Chief Sanders promised to comply with the original order and do a thorough study.<sup>8</sup>

This was in March 2000 – nearly six months after the Commission initially ordered data collection. Yet it would still be more than a year before the Department began to collect any data at all. **In fact, the month data collection began – July 2001 –**

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<sup>6</sup> Police Commission minutes 9/15/99; Mary Fernandez, "S.F. Reacts to Racial Profiling Issue," *San Francisco Chronicle*, 9/16/99.

<sup>7</sup> Jaxon Van Derbeken, "S.F. Police Study of Race 'Profiling' Ripped by ACLU," *San Francisco Chronicle*, 3/28/00; SFPD Response of ACLU Public Records request.

<sup>8</sup> Police Commission minutes 3/29/00; *San Francisco Chronicle*, "SFPD Reporting Weakly," 3/29/00.

**was a month later than had originally been scheduled – back in September 1999 – for the Department to report on the conclusions of its year-long study.**

Data collection continued (with extreme shortcomings as described in detail below) and in May 2002, the *San Francisco Chronicle* obtained the first three months of data, which was collected from June 2001 through September 2001.<sup>9</sup> This initial information showed that African Americans were significantly more likely to be stopped by the police than white motorists, that African Americans and Latinos were more likely to be searched than white motorists, and, perhaps most troubling, police were *less likely* to find contraband as a result of searches of African Americans and Latinos than during searches of whites.

Chief Lau responded by proclaiming that the extreme disparities were “not the result of racial profiling.” Instead of confronting the problem posed by the disparities, the SFPD offered up numerous hypothetical reasons for the disparity that were, in fact, contrary to what the data showed. For example, the Department claimed that the search data was skewed because a higher percentage of African Americans are on probation and parole. The data, however, shows that *even accounting for probation and parole status*, African Americans were nearly three times more likely to be searched following a traffic stop than whites. While the numerous hypothetical explanations for the data are addressed in more detail below, the reaction by the Department over the past three years has been utterly consistent: **The pattern of delay, deny, explain, and delay some more, has been the Department’s consistent response to this issue over the past three years.**

The pattern has continued to this day. Following the May 2002 *Chronicle* article on the first three months of data, ACLU staff sent a letter to Chief Sanders detailing the problem, the inadequacies of the explanations offered by the Department, and recommending specific policy changes. Following the letter, ACLU staff met with Chief Sanders twice in early June. At these meetings, Chief Sanders promised to change the Department’s policy on racial profiling “as soon as possible” and to issue a report on racial profiling in 60-90 days. On June 12, 2002 Commissioner Perry asked Chief Lau for a report on racial profiling and Chief Lau promised that Chief Sanders would issue a report in a month.<sup>10</sup>

It is now nearly four months since that promise was made, yet no report appears to be forthcoming and, to our knowledge, no other substantive effort has been made to address the significant shortcomings in the SFPD general orders on racial discrimination. However, as detailed below, the data suggests that racial profiling *is* a real problem in the Department; one that requires a genuine commitment to change and significant policy reforms.

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<sup>9</sup> Susan Sward, “S.F. Traffic Stops Show Racial Disparities,” *San Francisco Chronicle*, 5/8/02.

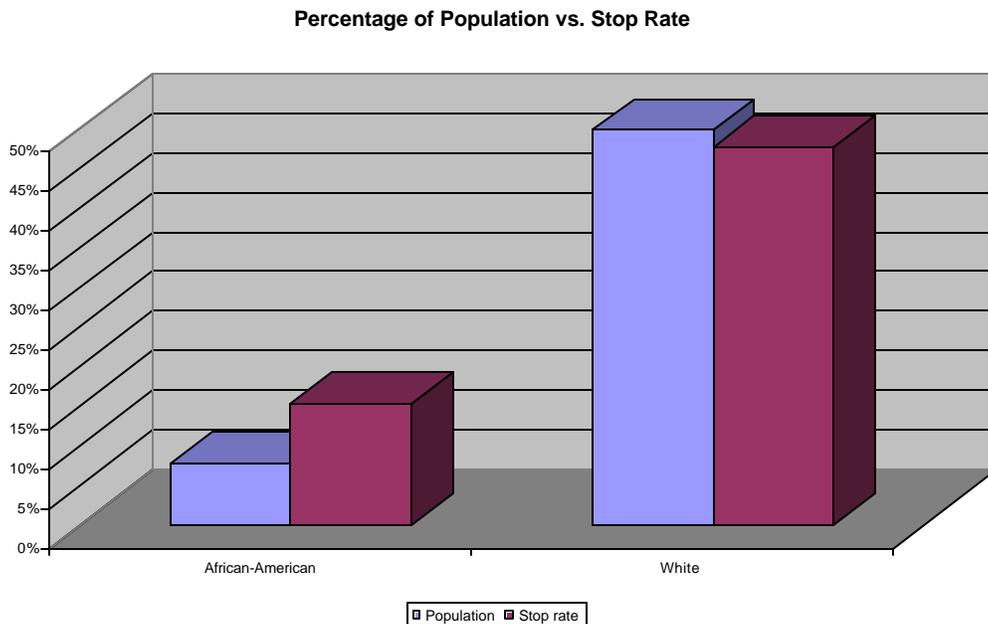
<sup>10</sup> Police Commission minutes 6/12/02.

## II. The Data Strongly Suggests a Racial Profiling Problem in the San Francisco Police Department.

The data collected by San Francisco police officers shows that African Americans are significantly more likely to be stopped by San Francisco police officers than whites, that African Americans and Latinos are significantly more likely to be searched, and that African Americans are significantly more likely to be asked to be searched in the absence of any probable cause of a crime. Despite this disparate treatment, SFPD officers are significantly less likely to find any contraband as a result of stops and searches of African Americans and Latinos. When so many significant pieces of evidence point in one direction – there can be little debate about the conclusion. The data strongly suggests a racial profiling problem within the SFPD.

### More Likely to Be Stopped

The data shows that African Americans are significantly more likely to be stopped by San Francisco police officers. While African Americans comprise 7.8% of San Francisco's population, African Americans represent 15.2% of the drivers stopped by SFPD. Whites, on the other hand, comprise 49.7% of the population and are stopped 47.6% of the time. This shows that African Americans are stopped at rates over twice their representation in the population, while whites are stopped at roughly their actual proportion of the population.<sup>11</sup>

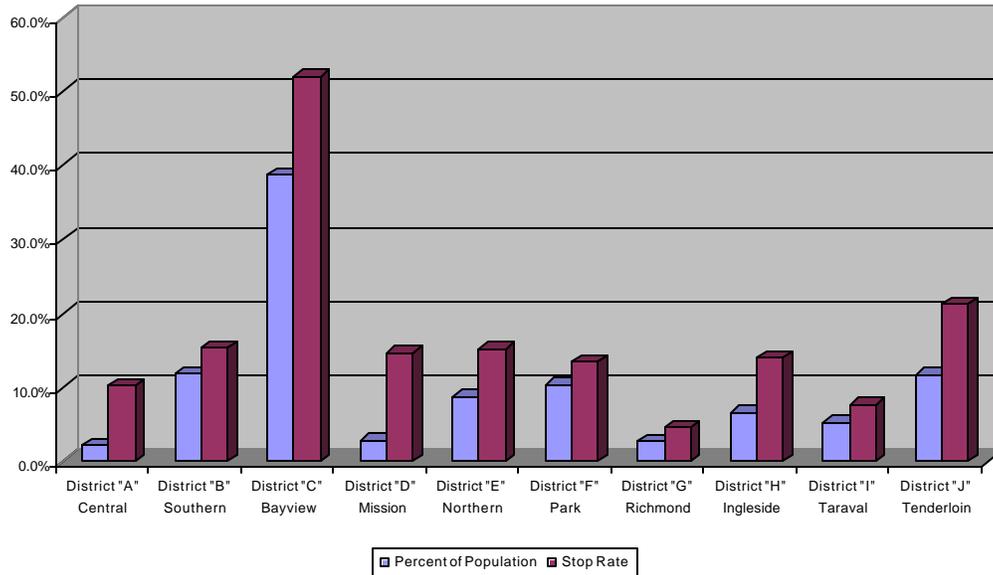


<sup>11</sup> The data shows that the stop rate for Latinos is slightly lower (11.1%) than their representation in the population (14%). The stop rate data does not conclusively prove or disprove profiling of Latinos because using the census as a benchmark likely underestimates the problem (see section IV below). Since the stop data for Latinos is inconclusive, we did not include that data in the discussion above.

While census data is not a perfect benchmark for comparing traffic stop data, a stop rate *approximately one hundred percent higher* than the census is certainly cause for concern. Moreover, relying on census data may actually *underestimate* the problem as explained in Section IV below.

Further, the gross numbers do not begin to tell the entire story. Not only are African Americans more likely to be stopped in San Francisco as a whole, but African Americans are more likely to be stopped in *every police district in the City*. As demonstrated in the graph and table below, the problem appears to be pervasive.

**District by District Breakdown African American Population and Stop Rate**



	Percent of Population	Stop Rate
<b>District "A" Central</b>	2.2%	10.3%
<b>District "B" Southern</b>	11.9%	15.3%
<b>District "C" Bayview</b>	38.8%	52.1%
<b>District "D" Mission</b>	2.9%	14.6%
<b>District "E" Northern</b>	8.8%	15.3%
<b>District "F" Park</b>	10.4%	13.5%
<b>District "G" Richmond</b>	2.7%	4.6%
<b>District "H" Ingleside</b>	6.6%	14.0%
<b>District "I" Taraval</b>	5.3%	7.7%
<b>District "J" Tenderloin</b>	11.7%	21.2%

The fact that African Americans are stopped at rates greater than the census in every police district strongly suggests that African Americans are the subject of racial profiling. The disparities cannot be explained away as the actions of a few problem officers, rather the data suggests that the problem is systemic and exists throughout the City.

Further, the data suggests that these disparities occur, in part, because African Americans are disproportionately subjected to pretext stops – a stop where an officer uses a minor vehicle code violation as a pretext for conducting an investigative fishing expedition in the absence of evidence of criminality. The vehicle code is littered with technical requirements – requirements such as not having bald tires, having functioning tail lights, and having one’s license plate illuminated. Studies show that members of all racial groups violate various provisions of the vehicle code at very high and similar rates.<sup>12</sup> This high and equal violator rate gives officers an extremely high degree of discretion in determining who to stop.

Officers conduct pretext stops to investigate activity completely unrelated to violations of the vehicle code, and when these stops turn out to be fruitless, officers often issue warnings. In San Francisco, African Americans are issued warnings 31.1% of the time compared with 21.6% for whites, suggesting that often officers are stopping African Americans for pretextual reasons.

### **More Likely to be Searched**

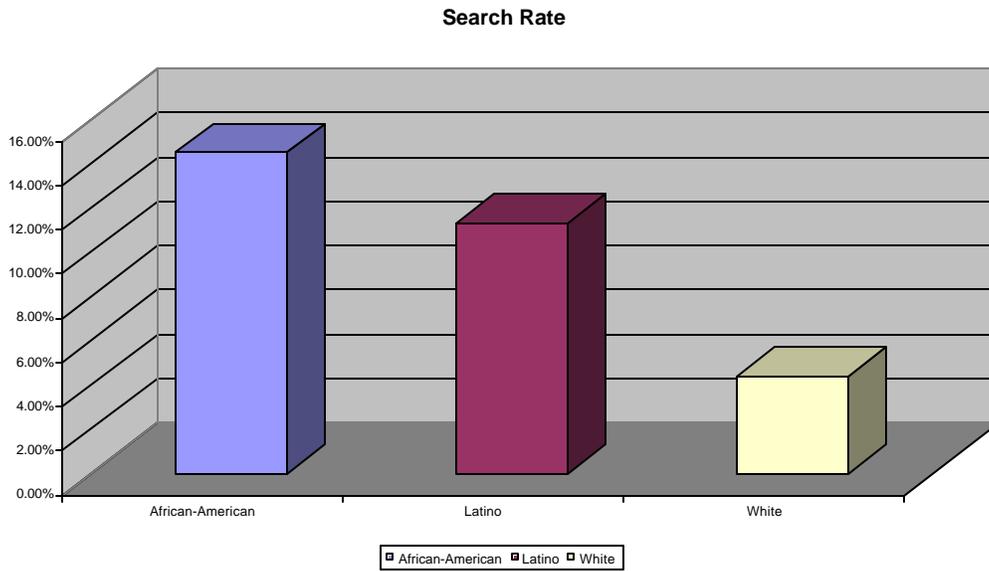
Racial profiling, of course, is not just an issue of people of color being stopped at disproportionate rates. It also encompasses how individuals are treated after the decision to stop has been made. One indication of how people are treated is whether they are searched or not.

If officers were treating drivers of all races the same way, we would expect the search rate to be relatively equal across racial lines. But San Francisco’s search rate shows that African Americans and Latinos are *significantly* more likely to be searched than whites.

While only 4.4% of white drivers are searched following a traffic stop, 14.5% of African Americans are searched and 11.3% of Latinos are searched. An African American is therefore 3.3 times more likely to be searched than a white driver and a Latino is 2.6 times more likely to be searched.

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<sup>12</sup> David Harris, *Profiles in Injustice*, 2002, p. 54-55 (discussing violator studies conducted in New Jersey by Professor John Lamberth).

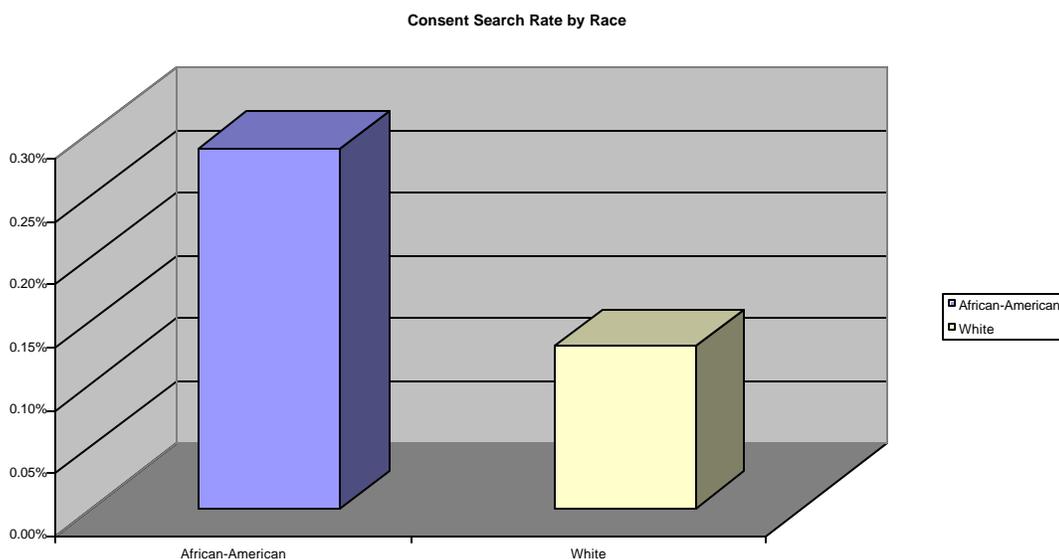


Further, searches of African Americans and Latinos account for 55.0% of the total searches while African Americans and Latinos only account for only 21.9% of the population.

**More Likely to be Subjected to Consent Searches**

Not only are African Americans more likely to be searched, but they are more likely to be subjected to the type of searches in which officers have the most discretion – consent searches. A consent search occurs when an officer asks an individual for permission to conduct a search without any probable cause of criminality. Because there is no probable cause requirement and the drivers in question are not on probation or parole, officers have virtually unfettered discretion in determining who to ask for consent to search. In other words, these are situations when the officer has no legal cause whatsoever other than a minor traffic infraction in deciding whether or not they want to try to search the driver or vehicle. It is therefore one of the best barometers as to whether police actions are influenced by bias.

Here again, the data shows that African Americans are *significantly* more likely to be subjected to a consent search. In fact, African Americans are *over twice as likely* to be subjected to a consent search than whites.

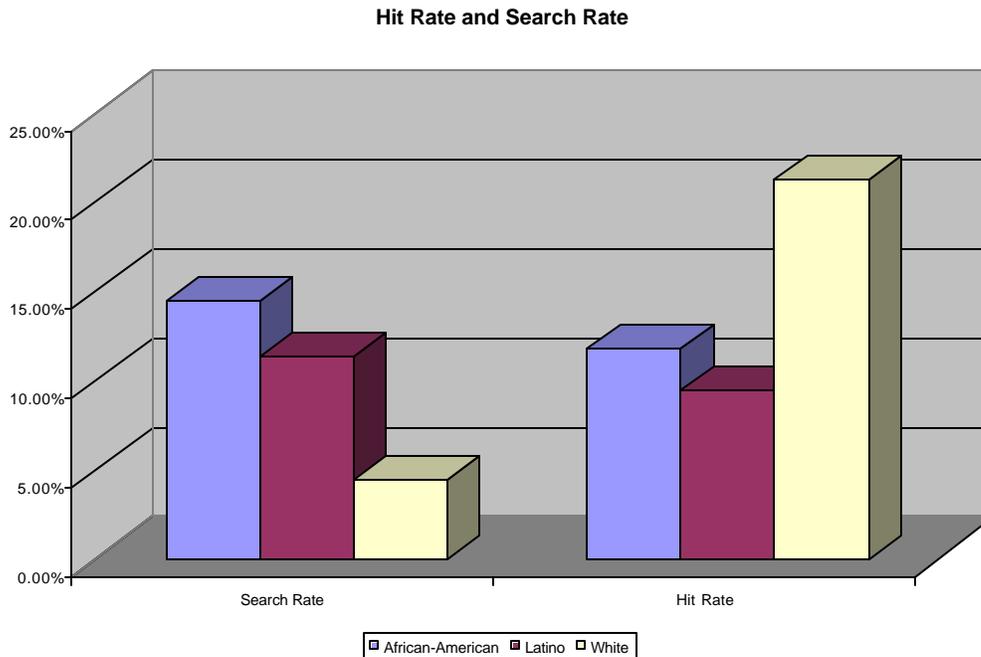


While the raw numbers for total consent searches are relatively small, they are representative of a trend. Moreover, as explained in detail below, the total numbers are underreported. In other words, consent search data that has been reported represents just the tip of the iceberg – the problem may be much greater than the data reflects.

### **Less Likely to be Found with Contraband**

The significant devotion of police resources (represented by the disparities in the stop and search rates) to stop and search African Americans and Latinos would lead one to believe that such tactics were effective – that police found more contraband – more drugs, guns, and dirty money – in their searches of African Americans and Latinos. The data, however, reveals that the opposite is true. Despite the fact that San Francisco police officers are stopping and searching African Americans and Latinos at alarming rates (as revealed by the data above), police are *significantly less likely* to find evidence of contraband following a search.

While police searching whites find drugs or other evidence of criminality 22.4% of the time, searches of African American drivers only yield evidence 15.4% of the time and searches of Latinos yield evidence at even lower levels – only 10.0% of the time.



Not only does the data suggest that San Francisco police officers are relying – at least in part – on race in determining who to stop and search, but the data shows that this practice is ineffective. Using race, rather than evidence of criminality, as a grounds for stops and searches may actually prove counterproductive, as precious police resources are wasted on low-yield police actions.

### III. Rampant Underreporting by San Francisco Police Officers Suggests that the Problem is Greater than the Data Reflects.

The above data strongly suggests that the SFPD has a racial profiling problem. Yet, as clear as the data is, it most likely underestimates the extent of the problem. This is because San Francisco police officers grossly underreported the number of individuals stopped and searched within the yearlong period studied.

San Francisco officers are required “by order of the Police Commission” to “collect data...on all civilians stopped for all traffic law enforcement purposes, *regardless of whether or not a citation is issued or other official action is taken.*” (Department Bulletin A01-37, 2/13/01, emphasis added). Given this requirement, one would expect the number of stops reported to greatly exceed the number of citations actually issued by San Francisco police officers – especially considering the large number of people who receive warnings or are stopped for non-moving violations.

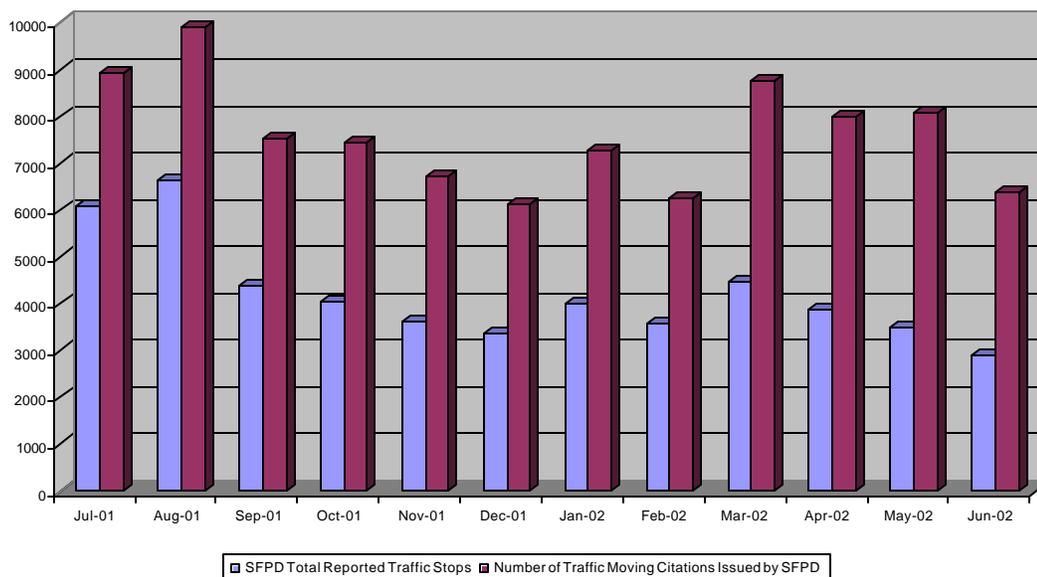
In order to test the reliability of the traffic stop data, the ACLU requested from the San Francisco Traffic Court records of citations issued by SFPD for moving violations for every month during the first year of data collection. We then compared the court

citation data to the data received from the Department as part of the data collection program. The data from the department reflected 50,419 stops made between July 1, 2001 and June 30, 2002 while the court citation data showed that 76,929 traffic citations were issued during that time period.

**In every month during the reporting period, there were substantially more citations issued than data collection forms filled out. Numerous stops by San Francisco Police Officers are not being recorded as required by the Police Commissions' directives.**

	Number of Traffic Moving Citations Issued by SFPD	SFPD Total Reported Traffic Stops
Jul-01	8949	6095
Aug-01	9922	6632
Sep-01	7523	4365
Oct-01	7425	4044
Nov-01	6730	3610
Dec-01	6113	3352
Jan-02	7263	4003
Feb-02	6257	3589
Mar-02	8772	4477
Apr-02	7975	3895
May-02	8083 (incomplete)	3476
Jun-02	6373 (incomplete)	2881
Total	76929	50419

**Total Reported Traffic Stops by SFPD vs. Total Citations For Moving Violations**



As evident from the above table and graph, the underreporting is astounding – and the data is even worse if we just compare reported moving violation citations with the citations actually issued. The court data only covers tickets for moving violations, and does not cover any of the other stops where police issue citations for non-moving violations, write accident reports, merely issue warnings, or take no action at all. Despite a Police Commission directive and a clear Department Bulletin, many San Francisco police officers have not complied with the requirements of the program. This is a strong indication that the problem is really *worse* than the data reflects. After all, it is the officers who refuse to fill out the forms that give most cause for concern.

#### IV. Data Denial – S.F.P.D. Makes Excuses Rather Than Confront the Facts.

When the *Chronicle* reported on the preliminary release of data, Chief Fred Lau and others sought to explain the data with theoretical arguments that raised hypothetical explanations for the disparities. After all, as Chief Lau said, where a “command staff is well represented by minorities and women...racial profiling will not be tolerated.”

Since the *Chronicle* article, other explanations have been offered to ACLU staff in discussions about the issue. Yet each of these theories (and other theories that have not been raised by SFPD but have been argued in other communities), as discussed below, fails to adequately explain away the problem.

## Probation/Parole Status

In the *Chronicle* article, departmental representatives claimed that a greater number of African Americans are on probation and parole and that this may account for the disparity. A close look at the numbers, however, reveals that this is untrue. In fact, even accounting for probation and parole status, African Americans are still 2.9 times more likely and Latinos and 2.4 more likely to be searched than whites.

	<b>African-American</b>	<b>Hispanic</b>	<b>White</b>
Search Rate (w/ pp)	14.5%	11.3%	4.4%
Search Rate (no pp)	12.0%	10.7%	4.2%

Further, the consent search rate numbers discussed in section II already account for probation/parole status.

## Localized Problems

A second argument that has been raised in conversations with ACLU staff is that localized problems account for the disparity – that there are particular hot-spots within the City with gang and drug problems – and that if these problems were taken into account, it would help to explain away the overall disparities in the stop rate.

This argument, while appealing on its face, is not supported by the data. As discussed above, African Americans are stopped at higher rates, not just in a few localized areas, but in every police district in the City. Again, the assertion crumbles when faced with the facts.

## Census Data Issues

Another commonly raised argument is that the census data does not accurately reflect the traffic flow and thus is not an accurate benchmark for analyzing traffic stop data. After all, the argument goes; not everyone drives, people come into the City from out of town, and the demographics of bordering communities may cause the traffic flow to have a different racial composition than the population. However, in San Francisco, the census data probably results in the problem being *underestimated* rather than overestimated for a couple of reasons.

First, the African American population in San Francisco is significantly younger than the white population.<sup>13</sup> With fewer African Americans of driving age, we would expect the number of African Americans on the road to be smaller than the overall census numbers. Second, national studies show that African Americans have lower car

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<sup>13</sup> According to the 2000 census numbers, 22% of African Americans living in San Francisco are under 18 while only 9% of whites living in the City are under 18. The Latino population is also significantly younger with 22.6% being under the age of 18.

ownership rates and drive less than whites, also suggesting that the percentage of African Americans who drive is lower than their representation in the population.<sup>14</sup>

Finally, the data shows extreme disparity in *every police district in the City*. Unless African Americans are driving in droves from the suburbs into every police district of the City in extremely high numbers (an extremely unlikely explanation given the studies about car ownership and drivership and suburban demographics), the census data allows for a reasonable measurement of the problem.

### **Higher Arrest Rates**

Some people point to higher arrest rates to justify disparate stop and search rates. The data shows that African Americans are more likely to be arrested following a traffic stop than whites. This fact, however, should not be used to justify disparate stops and searches. Arrests are a function of searches conducted. If African Americans are disproportionately targeted for searches, we would expect an extremely high number of African Americans to be arrested. The disproportionality of the arrests, however, suggests biases in policing rather than a higher rate of criminality among different racial groups.

The data shows that stops of African Americans lead to arrests 3.6% of the time while stops of whites lead to arrests 2.6% of the time. This is hardly surprising given the fact that African Americans are over three times more likely to be searched following a traffic stop. The New Jersey Attorney General has referred to the reliance on higher arrest rates to justify the disproportionate stopping and searching of African Americans and Latinos as “the circular illogic of racial profiling.”<sup>15</sup> These statistics do not justify racial profiling, but rather are a product of it.

### **Racially Diverse Police Force**

Members of the Police Department have made the argument that since San Francisco has a diverse police force, racial profiling cannot be a problem in the Department. This argument assumes, however, that racial profiling is strictly a problem of racist white police officers singling out people of color for disparate treatment. The problem, however, is deeper and broader than that.

Racial profiling occurs whenever police use race – whether consciously or unconsciously – to any extent in determining how to exercise their discretion, in the absence of a specific suspect description. It is a product of individual, institutional, and societal biases. Like white officers, officers of color are not immune from bias. For example, Captain Ron Davis, Regional Vice President of the National Organization of Black Law Enforcement Executives, who has worked extensively to combat the problem of racial profiling, believes no officer, regardless of race, is immune from the problem. In

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<sup>14</sup> Nationwide Personal Transportation Survey, Early Results Report, 1995, p. 27. The report also indicates that the same is true for the Latino population.

<sup>15</sup> Linda Hills and Ronda Trapp, “African Americans and Latinos...Some Common Misperceptions Surrounding Racial Profiling,” *San Diego Union Tribune*, 10/20/00.

speeches and interviews across the country, he recounts his experiences being a victim of racial profiling and yet engaging in the practice as an officer.<sup>16</sup> No one should be so naïve as to think that they are immune from the insidious impact of unconscious stereotyping that is so much a part of American society – including relatively tolerant San Franciscans and police officers of color.

The fact that San Francisco has a diverse police force does not mean that racial profiling is not a problem. Rather, it shows that *even in a racially diverse police force, racial profiling can be a significant problem.*

## V. Policy Recommendations

The data suggests that the San Francisco Police Department has a racial profiling problem and for the past three years has failed to address it in any meaningful way. Given the extreme disparities in how African Americans and Latinos are treated when compared to whites, the Police Commission should take immediate action and adopt the following policy recommendations. While there is no silver bullet to solving the problem of racial profiling, if adopted, these recommendations would go a long way towards achieving the goal of unbiased policing.

In addition to policies aimed at addressing the practice of racial profiling, the Police Commission should also establish an independent auditor reporting directly to the Police Commission to supervise the data collection program. The Department has shown over the past three years, that it either refuses or is unable to carry out the mandates of the Commission. Independent oversight of this program is needed.

### **Recommendations addressing tactics:**

#### 1. Clearly Define and Prohibit Racial Profiling

A necessary first step in addressing the problem of racial profiling is to properly define and prohibit the practice. SFPD's current policies do neither. None of the Department's General Orders specifically prohibit racial profiling. Further, the only sections that mention race simply prohibit stops that are "solely based upon the person's race..." (SFPD Roll Call Training Lesson – Airport Bureau Only; SFPD General Order 5.03IA – race does "not *alone* justify [a] ... detention."). While it is laudable that the Department prohibits the small segment of police action where officers base their decision solely on race, such a policy does little to address the real problem of racial profiling – where police action is based even partially on race.

A proper definition of racial profiling is the use of race by law enforcement in any fashion and to any degree when making decisions about whom to detain, interrogate, search or arrest, except when there is a specific suspect description identifying a particular suspect by race. This definition was originally promulgated by the U.S. Justice

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<sup>16</sup> Kevin Simpson, "Police Examine Racial Profiling," *The Panograph (Bloomington, Ill)*, 3/16/01; Deborah Kong, "Black Law Officers Target Racial Profiling," *Associated Press*, 10/20/01.

Department, and is currently being used by the Los Angeles Police Department and other agencies.<sup>17</sup>

This definition has also recently been incorporated into the Police Officers Standards Training (“POST”) program on racial profiling. The POST training specifically says that: “the 14<sup>th</sup> Amendment is also violated when law enforcement officers use a person’s race as a factor in forming suspicion of an individual, unless race was provided as a specific descriptor of a specific person in a specific crime.”<sup>18</sup>

*San Francisco’s current policy is inconsistent with the POST training its officers will be receiving and out of step with the Justice Department.*

It is critically important that police officers in San Francisco not be allowed or encouraged to rely on race in any circumstance except for one: where there is a specific suspect description. Assessing whether racial profiling has occurred in any particular vehicle stop is actually quite simple. The question is: would the officer have conducted him/herself in the same fashion if the motorist had been a different race? If the answer is no, then the officer has treated the person differently because of the color of their skin, and made assumptions about them based on race.

Vague or confusing directives regarding racial profiling will not help communities develop positive working relationships with law enforcement. Effective training requires clear directives, and police officers in San Francisco should understand that no police officer in the City of San Francisco should be relying on race when making decisions about whom to stop and search. Officers can do their job by relying on actual evidence of criminal activity, rather than race, and by building positive relationships with the community that will ensure that residents will do everything in their power to assist the police in their effort to fight crime. Adopting a stated policy that clearly prohibits racial profiling will send a clear message to rank and file officers and the community that the Department takes the problem of racial profiling seriously. It will remove any ambiguity over what constitutes racial profiling and is an important step in eliminating the practice in the Department.

## 2. Ban Pretext Stops

Officers should not be allowed to use minor traffic violations as an excuse to stop, interrogate, and search motorists for purely imaginary criminal activity. African Americans tend to find themselves the victims of pretext stops, because officers are more likely to assume without any evidence that they are involved in criminal activity. As explained above, the data suggests that SFPD officers are using pretext stops in a racially biased way. The practice should be abandoned because it constitutes ineffective and discriminatory policing. The State of Washington has banned pretext stops and the San Francisco Police Department should do the same.

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<sup>17</sup> For an example, see Los Angeles Police Department Special Order No. 23: Policy Prohibiting Racial Profiling.

<sup>18</sup> POST Racial Profiling: Issues and Impact, Preparation Guide, p. 2.

### 3. Prohibit Consent Searches

The San Francisco Police Department should cease the practice of engaging in consent searches. Again, when officers are allowed to stop or search people without any evidence of criminal activity, African Americans inevitably find themselves the targets because of conscious and unconscious stereotypes regarding who seems like a potential criminal. This is borne out by the data, which shows that African Americans are significantly more likely to be subjected to a consent search than whites. Not only are consent searches used discriminatorily, but they are also an ineffective crime-fighting tool.

In April 2001, California Highway Patrol (“CHP”) Commissioner Spike Helmick announced a moratorium on consent searches within the CHP. In announcing the ban, Helmick recognized the problems inherent in consent searches commenting, “The whole idea of consent searches is bothersome to me, that you just ask a person if you can search their car.” Helmick also noted that a prohibition on consent searches would not affect CHP officer’s ability to do their jobs.<sup>19</sup> The San Francisco Police Department should follow the lead of the CHP and ban the practice of consent searches.

### 4. Incorporate Stop/Search Data into Early Warning System

The San Francisco Police Department’s early warning systems should be improved and expanded to monitor and re-train those officers who are taking enforcement actions against members of minority groups at rates that seem significantly disproportionate in comparison to similarly situated officers. The system should also be used to trigger intervention for officers who are the subject of complaints alleging racial bias. Officer identifying information collected on data forms will need to be incorporated into the early warning system.

### 5. Expand Data Collection Program

The disparities reflected in the vehicle stop and search data are extreme and suggest a very real problem with the use of race within the Department. There is no reason to believe that these disparities are limited to traffic stops. Data collection should be expanded to include pedestrian stops as well. Additionally, more data fields should be added to allow a more thorough analysis including length of detention, contraband seized as a result of searches, and passenger information. This expanded data collection program should be made permanent.

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<sup>19</sup> Matthew B. Stannard and Suzanne Herel, “ACLU praises CHP’s decision to stop voluntary searches of cars,” *San Francisco Chronicle*, 4/21/01.

## **Recommendations addressing data collection:**

1. Create Position of Independent Auditor Reporting to the Police Commission

To ensure the integrity of the data collection program and to help regain public confidence that the issue of racial profiling will be addressed in a serious manner, an independent auditor should be established to oversee the data collection program. This is simply good government. But, it will also address the failings of the SFPD to carry out the directives of the Police Commission. It has proven itself unable or unwilling to effectively administer the data collection program. The Police Commission should create a position of independent auditor, whose job is to ensure the integrity of the data collection program and analyze stop and search data. The auditor would do this in a number of ways. S/he would run comparisons between stop forms and dispatch data, compare number of citations with number of stop forms filled out by police district, beat, etc. Additionally the auditor would analyze traffic stop data city wide and by police district and beat as well as officer specific information and issue regular reports on racial profiling in San Francisco.

2. Require Quarterly Reporting to the Commission

The failures of the data collection program and the lack of a comprehensive report at this late date highlight the need for regular and frequent reporting of data to the Police Commission. The Commission should therefore require quarterly reports – to be prepared by the auditor – on the extent to which racial profiling is occurring and the extent to which the Department is complying with the Commissions directives.

3. Hold Individual Officers Accountable

The data shows that officers are routinely failing to fill out traffic stop data forms, undermining the entire effort and resulting in underreporting that is shocking and unacceptable. There must be consequences to this non-compliance. The Department should adopt a new General Order that includes discipline for officers who fail to fill out the data form.

4. Hold Supervisors and Officers Accountable

Supervisors must be held accountable for officers under their direction who fail to report traffic stops. Supervisors' identification should be listed along with the individual officer's identification on all traffic forms, and the auditor should analyze reporting patterns by supervisor and individual officer. Additionally, supervisors should be disciplined if they fail to actively monitor and take corrective action on any data non-compliance by officers under their command.