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RE: 2020 Massachusetts Uniform Citation Data Analysis Report Written Testimony of Josh Raisler Cohn, CPCS on the

My name is Josh Raisler Cohn, and I am a staff attorney at CPCS, the statewide public defender agency, a criminal defense trainer, and a member of our Race Equity Training Team.

As Arnie Stewart shared, we have an obligation to not simply reduce the consequences of racial profiling in policing to numbers and equations; while we are talking about numbers here, these numbers represent human lives. We remember Sandra Bland, Philando Castile, Daunte Wright and the thousands of people who lost their lives as a result of traffic stops, traffic stops that are often pretextual and steeped with racial motivations—conscious or unconscious. We must also remember that the disproportionate searches and arrests, which this report confirmed occur at a higher rate among Black and brown drivers, are a crucial component of the cascading use of race in criminal cases that disproportionately fill our prisons with Black and brown people.

Impact of Unreported Stops

Specialized police units, like Gang Units, Drug Units or the Community Action Team at the State Police, use pretext stops to investigate drivers for non-driving crimes, and are a major source of unreported stops. In Boston for example, officers in the Youth Violence Strike Force, sometimes called the Gang Unit, testify in court that they each make 1,000-2,000 car stops a year of mostly Black and brown drivers, yet they write less than 20 actual tickets and warnings during that same time.

In your study period there were 25,029 stops by the Boston police—more than any other city. Members of the Youth Violence Strike Force are likely pulling over an additional 15,000-30,000 Black and brown drivers every year that aren't documented in any way. That means there may be as many targeted, unreported stops in communities of color in Boston as there are the total reported stops. Including this data would dramatically impact the evidence of racial profiling in Boston, and for the statewide numbers, where just the Boston gang unit additional unreported stops could represent more than 5% of the total number of stops across the state in the study period. And these unreported stops mean there is substantial underreporting of stops of people of color.

Until these unreported stops are accounted for, this report must include information for best estimates of the scope of these unreported stops, and the impact that could have on the overall analysis.

Veil of Darkness analyses miss evidence of racial profiling.

It is inaccurate to hold up Veil of Darkness (VoD) as the ‘gold standard’ of assessing racial profiling. It is one of several tools that can be used, and research has shown that VoD may fail to capture evidence of racial profiling. The limitation that VoD does not actually control for an officer’s ability to see the race of the driver is critical, and needs more exploration in this study. This is even more concerning in a well-lit cities—which are a large portion of the stops, and with the prevalence of mobile data terminals, which allow officers to see demographic information and a picture of the registered owner by running the license plate, which they can do before pulling a car over.

Several studies have found racial profiling after a VoD analysis did not show racial profiling. Grogger and Ridgeway, who developed the approach, did not find evidence of racial profiling in Oakland CA traffic stops using their method. Jennifer Eberhardt and others at Stanford University who study race and policing conducted a more detailed study of racial profiling in Oakland, and found substantial evidence of racial profiling in traffic enforcement there.¹ The 2016 Stanford study found that “When OPD officers could identify the person’s race before a stop, they were much more likely to stop an African American, as compared to when officers could not identify the person’s race.”

William Horrace tested the VoD by looking at discretionary stops in Syracuse, NY.² A VoD analysis didn’t show evidence of racial profiling comparing stops before dark and after dark. However, his 2016 research controlled for whether the officer could actually see the race of the driver by mapping out the stop locations, and documenting whether the location of the stop was well lit or not, and then limiting the pool of stops to only those *not* in well-lit areas. When controlling for actual lighting conditions Dr. Horrace found that Black drivers were 15% more likely to be pulled over in daylight than in darkness. This study, like Eberhardt’s, actually addressed the issue of whether an officer can see the race of the driver, and both studies found evidence of racial profiling when the VoD analysis did not.

Veil of Darkness Limitations require additional analysis of racial disparities based on driving population benchmarks

Given these limitations, it is necessary to include other analysis beyond the VoD, including a residential comparison. The report presented a research question that was not answered: Question Two: “Are non-white motorists stopped more often than their representation in the driving population would predict?” The report’s own data shows substantial disparities. Statewide, where 92% of the drivers who receive citations are from Massachusetts, 16% of the stops were Black drivers, while Black people are about 9% of the state population. On a state level, that looks like significant evidence of racial disparity. Hispanic drivers are 15% of the

¹ REBECCA C. HETTY, BENOÎT MONIN, AMRITA MAITREYI & JENNIFER L. EBERHARDT, *DATA FOR CHANGE: A STATISTICAL ANALYSIS OF POLICE STOPS, SEARCHES, HANDCUFFINGS, AND ARRESTS IN OAKLAND, CALIF., 2013-2014* at 77 (2016), <https://stanford.app.box.com/v/Data-for-Change>. See also <https://news.stanford.edu/2016/06/15/stanford-big-data-study-finds-racial-disparities-oakland-calif-police-behavior-offers-solutions/>

² William C. Horrace & Shawn M. Rohlin, *How Dark Is Dark? Bright Lights, Big City, Racial Profiling*, 98 REV. OF ECON. & STAT. 226 (2016). <https://www.maxwell.syr.edu/news/article/veil-of-darkness>

stops, but 12% of the population. And white drivers are only 66% of the stops while representing up to 80% of the population.

That is evidence of racial disparities in statewide traffic stops and is consistent with the report's other findings, that once a stop occurs, drivers of color are more likely to be searched, arrested and ticketed than white drivers. These disparities should be discussed in the finding section of the report, including answering Question Two of the research questions with analysis of the statewide benchmark, and summarize the individual jurisdiction analyses of the two population-benchmark based methodologies.

Impact of Cognitive Bias on Research

It is important to address cognitive bias in research, including in this report. Factors like the source of funding, expected outcomes, and views of the issue can all have an unconscious impact on the analysis and findings.³ For example, the Report references "furtive gestures" as a potential influence on the conduct of officers post-stop, which are common, everyday body movements. These common movements are described as 'furtive' to assign suspicion to the action. "Furtive gestures" itself is a "vague and subjective term, which may be affected by unconscious bias and lead to racial and ethnic disparities in stop outcomes".⁴ Describing an action as a furtive gesture may be the result of cognitive bias by an officer in a traffic stop, and the use of the term may or may not indicate accepting the assumptions made by police officers on the part of the researchers.

Conclusion

Racial profiling in traffic enforcement is well documented, and this report shows disparities, both in overall stop rates and in the stop outcome. The failure to find statistically significant evidence of racial profiling using the VoD analysis inconsistent with the remaining results of the Report and with the lived experience of people of color throughout the Commonwealth, and points to the VoD not capturing existing evidence of racial profiling in this analysis.

Sincerely,

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Trainer/Race Equity Training Team

For any further questions, please contact Lisa M. Hewitt, General Counsel, by email at lhewitt@publiccounsel.net or by phone at 617-512-1248

³ Dror, Itiel E. "Cognitive and human factors in expert decision making: six fallacies and the eight sources of bias." *Analytical Chemistry* 92.12 (2020): 7998-8004.

⁴ Weston J. Morrow & John a. Shjarback (2019) Police worldviews, unconscious bias, and their potential to contribute to racial and ethnic disparities in New York Police Department (NYPD) stops for reason of "furtive movement", *Journal of Ethnicity in Criminal Justice*, 17:3, 269-298