

# National Association for the Advancement of Colored People (NAACP)

- History

- Founded in Feb. 12. 1909, the NAACP is the nation's oldest, largest and most widely recognized grassroots-based civil rights organization.

- Mission

- To ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination.

- Presenters

- The Des Moines & Iowa-Nebraska NAACP Legal Redress Committees, Professors Russell Lovell and David Walker, co-chairs.
- President of Iowa-Nebraska NAACP, Betty Andrews (also serves as Criminal Justice Chair of Des Moines NAACP)

# NAACP Strategies

- Litigation—Examples
  - Moore et al. v. City of Des Moines et al. (Class action Federal Court Consent Decree that brought about the integration of the Des Moines Fire Department)
  - 4 Amicus Curiae Briefs in Iowa Supreme Court:
    - *Pippen v. State of Iowa* (Employment Discrimination)
    - *Rent-A-Center, Inc. v. Iowa Civil Rights Commission* (Employment Discrimination Arbitration Agreement)
    - *State v. Scottize Danyelle Brown* (Iowa Constitutional challenge to pretextual stop by Waterloo Police)
    - *State v. Peter Veal* (Constitutional challenges based on alleged violation of 6<sup>th</sup> Amendment's Impartial Trial Guarantee and fair cross-section requirement and 14<sup>th</sup> Amendment's protection against prosecutor's racially discriminatory peremptory strikes)
- Legislative Activity—Examples of Affirmative Agenda
  - Anti-Racial and Ethnic Profiling
  - Fair Chance in Employment (“Ban the Box”)
  - Des Moines Unbiased Policing Ordinance and University Heights Anti-racial Profiling Ordinance
  - Juvenile records confidentiality

# Disparities and Profiling

- Paul Butler, The Chokehold
- Senator Brad Zaun, Sponsor of SF2280: His son's experience on UI football team
- **Montray Little & Jared Clinton Stop** near Union Park in Des Moines
- **Justice Sonya Sotomayor**
- Disparities—Some Examples
  - African Americans constitute **3.5%** of Iowa's population and **25%** of Iowa's incarcerated population;
  - African Americans are **10 times** more likely to be arrested than persons of other races;
  - Traffic studies in Davenport and Iowa city found racial disproportionality in traffic stops and in search requests and searches
  - African Americans in Iowa are
    - **7-8 times** more likely than whites to be arrested for possession of illicit drugs even though the two groups use illicit drugs at the same rate, and
    - **8 times** more likely to be arrested for possession of a small amount of marijuana.

# Police Stop of Montray Little and Jared Clinton & New Era Policing Report: URL Links

- [https://www.youtube.com/watch?time\\_continue+15&v=qpdY1E1S](https://www.youtube.com/watch?time_continue+15&v=qpdY1E1S)
- [https://www.youtube.com/watch?time\\_continue+15&v=qpdY1E1S](https://www.youtube.com/watch?time_continue+15&v=qpdY1E1S)
- **Leadership Conference on Civil Rights: New Era Policing Report:**  
[https://policing.civilrights.org/report/Policing\\_Full\\_Report.pdf](https://policing.civilrights.org/report/Policing_Full_Report.pdf).

# Justice Sotomayor's Dissent in *Utah v. Strieff*, 136 S.Ct. 2056, 2069-71 (2016)

- “Writing only for myself, and drawing on my professional experiences, I would add that unlawful “stops” have severe consequences much greater than the inconvenience suggested by the name. This Court has given officers an array of instruments to probe and examine you. When we condone officers' use of these devices without adequate cause, we give them reason to target pedestrians in an arbitrary manner. We also risk treating members of our communities as second-class citizens.

# Justice Sotomayor Dissent in *Strieff*, continued

“Although many Americans have been stopped for speeding or jaywalking, few may realize how degrading a stop can be when the officer is looking for more. This Court has allowed an officer to stop you for whatever reason he wants—so long as he can point to a pretextual justification after the fact. *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). That justification must provide specific reasons why the officer suspected you were breaking the law, *Terry*, 392 U.S., at 21, 88 S.Ct. 1868 but it may factor in your ethnicity, [Citation Omitted], where you live, [Citation Omitted], what you were wearing, [Citation Omitted], and how you behaved, [Citation Omitted]. The officer does not even need to know which law you might have broken so long as he can later point to any possible infraction—even one that is minor, unrelated, or ambiguous. [Citations Omitted]

# Justice Sotomayor Dissent in *Strieff*, continued

- “The indignity of the stop is not limited to an officer telling you that you look like a criminal. See *Epp, Pulled Over*, at 5. The officer may next ask for your “consent” to inspect your bag or purse without telling you that you can decline. See *Florida v. Bostick*, 501 U.S. 429, 438, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). Regardless of your answer, he may order you to stand “helpless, perhaps facing a wall with [your] hands raised.” *Terry*, 392 U.S., at 17, 88 S.Ct. 1868. **If the officer thinks you might be dangerous, he may then “frisk” you for weapons. This involves more than just a pat down. As onlookers pass by, the officer may “feel with sensitive fingers every portion of [your] body. A thorough search [may] be made of [your] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.’ ”** *Id.*, at 17, n. 13, 88 S.Ct. 1868.

# St. Ambrose Professor Chris Barnum Studies: Davenport, Iowa City

- NAACP believes his data collection techniques that involve monitoring actual traffic flow on specific streets to determine the racial percentage of drivers provides reliable bases upon which to determine whether racial disparities exist.
- NAACP also believes his focus not only on the stops but also the discretionary actions taken by officers following the stop—like having the driver get out of the vehicle, frisking the driver, handcuffing, asking to search and searching the vehicle—is very important.
- We think Barnum's techniques are state-of-the-art and the disparities he finds reliable and accurate.



# Barnum's Iowa Studies Find Significant Racial Disparities

- Barnum's studies consistently find statistically significant racial disparities in the stop data for Davenport and Iowa City
- Importantly, Barnum's studies find significantly greater disparities in the treatment that African Americans experience AFTER the stop
- In our judgment stronger, more damning conclusions could be drawn.

# Huge Disparities in Iowa City PD Outcome Data Analyses

- “Unlike the analyses for traffic stops, an investigation of stop outcomes is not dependent on population baseline characteristics. Outcome assessment simply compares two or more groups using the proportion of traffic stops as the comparison benchmark.” IC officers disproportionately arrested and asked for consent to search minority drivers across all years of the study. On average the odds were about 2.80 times greater that minority drivers would be arrested. Likewise, the odds were roughly 3.45 times greater that ICPD officers would request a search from minority drivers compared to others, this despite “hit rates” that were actually higher for non-minority drivers.

# Anti-Racial and Ethnic Profiling Bill, SF2280

- Defines key terms, including “pretextual stop,” “discriminatory pretextual stop,” and “profiling”
- Prohibits law enforcement (LE) profiling on the basis of actual or perceived race, color, ethnicity, religion or national origin, including “while employed off-duty by a private employer and in uniform”
- Prohibits *discriminatory* pretextual stops
- Dep’t of Public Safety (DPS) oversees data collection by local LE agencies
- Dep’t of Human Rights (HR) Division of Criminal & Juvenile Justice Planning (Division) analyzes traffic stop data;
- Requires the collection of law enforcement officer stop data, including searches, seizures, use of force, and arrest

# Overview of SF2280 (cont.)

- Community Policing Advisory Board (CPAB) (not a citizen review board)
- Provides for training developed by Iowa Law Enforcement Academy (ILEA)
- Requires officer prevention and intervention when profiling occurs
- Individual officer stop data will be produced for misconduct investigation or ICRC investigation of charge of profiling
- Provides for enforcement through Iowa Civil Rights Commission

# 80G.3 Profiling and Discriminatory Pretextual Stops Prohibited

- “Profiling” means any of the following when an officer is deciding to initiate law enforcement activities, including the use and scope of such activities:
  - a. Consideration or reliance upon actual or perceived race, color, ethnicity, religion, or national origin;
  - b. Disparate treatment of a person;
  - c. Making or conducting a discriminatory pretextual stop.
- 80G.3 prohibits “Profiling,” whose subsection (c) includes Discriminatory pretextual stops.
- The NAACP bill also articulates what does *not* constitute profiling, *e.g.*, an officer’s reliance upon personal identifying information or a specific suspect description-based identification, or a person’s observed behavior linking that person to suspected unlawful activity

# 80 G.2 Pretextual Stops

- “Pretextual stop” means
  - a stop by an officer of a driver or a passenger, a bicyclist, or a pedestrian ostensibly for an alleged violation of traffic code,
  - When true motive is to allow the officer to question and probe for information that the person may have committed some *not* apparent or yet-to-be-identified law violation, *often* drugs, for which an officer lacks probable cause or reasonable suspicion.
- Whren v. United States, 517 U.S. 806 (1996), US Supreme Court held that pretextual stops are *not* unconstitutional (4<sup>th</sup> Amendment), but it emphasized that *discriminatory* pretextual stops do violate the Constitution (Equal Protection).
- Whatever may be gained, pretextual stops greatly undermine trust in law enforcement and respect for the criminal justice system.
- ***Remember: the Constitution sets the minimum floor for police conduct. The Court is NOT affirming pretextual stops are good policy. Legislature can bar or limit pretextual stops.***

# *Discriminatory* Pretextual Stops Do Violate the Constitution

- In *Whren* Justice Scalia wrote, “We of course agree . . . that **the Constitution prohibits selective enforcement of the law based on considerations such as race**. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”

# 80G.2 Discriminatory Pretextual Stops

## The Importance of Data Collection

Discriminatory pretextual stops are defined:

- involving disparate treatment by the officer *or*
  - for which the person's race, color, ethnicity, religion, or national origin was considered or relied upon or was a motivating factor in the officer's decision to make the stop or to take other action during a stop, including a request to consent to a search.
- 
- Evidence or proof are the heart of the matter: proving discriminatory motivation is difficult.
  - Data collection is vitally important to exposing racial disparities in law enforcement and raising questions about racial intent.
  - Experience demonstrates that racial disparities in stop data decrease significantly once data is collected.



# Profiling in “Law Enforcement Activities” Prohibited

- 80G.2, Section 5 provides, “An officer shall not engage in profiling in the course of performing law enforcement activities.”
- “Law enforcement activities” is broadly defined and means any of the following: traffic, bicyclist, or pedestrian stops by an officer; and actions during a stop, including asking questions, frisks, consensual and nonconsensual searches, seizing any property, removing occupants from a motor vehicle during a traffic stop, issuing a warning or citation, and making an arrest.” Road blocks, vehicle check points, and security checks where every person is treated the same are excluded.
- **Compare Des Moines Unbiased Policing Ordinance** which bars discrimination not only in law enforcement but also in the delivery of police services.

# 80G.4: Community Policing Advisory Bd.; 80G.6: ICRC Notice

- 14 voting members; racially diverse; gender balanced: Governor appoints: 5 community groups; 2 community leaders; Attorney General; DPS; Police; Sheriff; ICRC; Public Defender; ILEA. 4 Legislators.
- Recognize and promote awareness of profiling; review data and analysis thereof; facilitate discussion of best practices to prevent profiling; advise DPS re data collection; publish annual report
- Develop notice for citizen complaint to ICRC
- Every person stopped must be given written notice of right to file complaint with ICRC.

# Data Collection

- Although more than half the states ban either racial profiling or pretextual stops or both, nearly 2/3 of the states do NOT require data collection on stops and searches;
- Questions
  - Is it necessary? “People know there’s racial profiling. Let’s focus on what to do about it.”
  - How will data be used? Will it be used?
  - Will data on traffic and other stops be useful? Will it make a difference?
  - Where data has been collected, has it effective in reducing racial profiling?
  - Is data collection too burdensome on law enforcement, of whom we have too few and there is already much to do?

# 80G.6 Data Collection

- Requires every LE Agency (LEA) to collect race, ethnicity data on every stop based on “observation and perception of officer” (including stops that don’t produce written citation or warning) AND data re discretionary actions taken AFTER the stop:
- Search of Person or Property (w/ or without consent), and basis for search
- Seizure of Property, Description, and basis for seizure
- Use of force – by and/or against officer

# Data Required To Be Collected

- a. The time, date, location, and duration of the stop.
- b. The reason for the stop.
- c. Whether a driver's license or vehicle registration check was run.
- d. Whether an oral or written warning was given or a citation issued.
- e. The offense the person was arrested for, if applicable.
- f. The following identifying characteristics of the person stopped, including perceived race, ethnicity, English language proficiency, sex, and approximate age. The identification of these characteristics shall **be based on the observation and perception of the officer** making the stop.  
The officer shall not be required to inquire about race, ethnicity, and English language proficiency of the person stopped. The identifying characteristics of a passenger in a motor vehicle shall also be reported if the stop involved both the passenger and a search reported under paragraph "g".
- g. The following actions taken by an officer during the stop:
  - (1) Whether the officer asked for consent to search the person or vehicle and whether consent was provided.
  - (2) Whether the officer searched the person or any property, and if a search was performed, the basis for the search;
  - (3) Whether the officer seized any property, and if so, a description of the property seized and the basis for seizing the property.
  - (4) Whether the officer used physical force or physical force was used against the officer.
- h. Other information which the officer or law enforcement agency consider appropriate.

# Data Collection Revisions Based on Barnum's Recommendations

The following actions taken by an officer during the stop:

- (1) Whether the driver was asked to step out of the car, and, if so, whether he or she did so.
- (2) Whether the driver was subjected to a Terry frisk or pat down of his or her person, and, if so, what was the basis for the frisk or pat down.
- (3) Whether the driver was handcuffed, and, if so, what was the basis for this restraint.
- (4) Whether the officer asked if there were drugs, a weapon, or cash in the vehicle.
- (5) Whether the officer asked for consent to search the person or vehicle, and, if so, whether consent was provided.
- (6) Whether the officer searched the person or any property, and if a search was performed, the basis for the search.
- (7) Whether the officer seized any property, and, if so, a description of the property seized and the basis for seizing the property.
- (8) Whether the officer used physical force or physical force was used against the officer.
- i. The identifying characteristics of any passenger in a motor vehicle shall also be reported, including the applicability of information in paragraph "h" to each and every passenger in the vehicle.

# 80G.7 Annual LEA Data Collection and Data Analysis by CJPJ Division

- Uniform reporting required annually of each LEA on standard forms developed by DPS
- Each LEA's Report is publicly accessible on LEA website
- Division of Criminal & Juvenile Justice Planning of Dept. of Human Rights analyzes data and submits report to DPS, HR, and ICRC
- CJPJ Data Analysis Report is accessible on DPS, HR, and ICRC web pages
- Requires each LEA and Division to maintain data for 15 years

# 80G.9 When Officer Stop Data Will Be Provided

- Division will produce stop data on individual officers for internal discipline and ICRC investigations and for a complainant's use in litigating a charge of discrimination under the ICRA.
- Data and Division analysis of individual officers admissible in ICRC and Court proceedings.



# 80G.8 Training & 80G.9 Requires Intervention; Anti-Retaliation

- Requires Training of every LE officer “at least every other year” related to profiling, prevention of profiling, data collection, and reporting of data
- Requires that LE officers “prevent, report, and respond to profiling by a fellow officer”
- Retaliation for opposing profiling or for testifying or participating in an investigation or hearing is prohibited
- Such retaliation is basis for discipline, including termination

# 80G.10 ICRC Enforcement & §16 DOT to Collect Drivers' License Race Data

- Enforcement through ICRC, but ICRA statutory remedies not exclusive
- Profiling is a discriminatory practice under ICRA (§15)
- §16 Double check: Race & Ethnicity Info – Dept. Of Transportation to request/explain as people apply for Driver's License or Non-Operator's ID Card (or renewal)– will digitally supplement TRACSs report of officer's perception of race of driver
- DOT will encrypt and maintain privacy of file data.

# NAACP: Pretext Stop Limits Based on Washington Court Rule 37

- Because the following reasons or perceptions have historically been associated with racial profiling, each is **presumptively invalid** when offered by an officer as justification for a traffic stop: (i) the smell of marijuana; (ii) the person stopped is in a perceived high-crime neighborhood or lives in a perceived high-crime neighborhood; (iii) the person stopped is in a neighborhood where few people of his color or ethnicity reside; (iv) the person stopped was staring, or failing to make eye contact, exhibited a problematic attitude, body language, or demeanor, or provided unintelligent or confused answers; (v) the person stopped is not a native English speaker; (vi) the person stopped has had prior contact with law enforcement officers; (vii) the person stopped has a close relationship with people who have been stopped, arrested, or convicted of a crime; (viii) the person stopped was undocumented or unable to produce papers; (ix) the person was stopped for an equipment violation that did not put the driver in imminent risk of injury or jeopardize public safety.
- Equipment violations ordinarily should be resolved by officer advising dispatch of the violation with instructions that a warning or citation should be issued and sent through U.S. Mail to owner of vehicle.

## Amendment to Des Moines Ch. 86 “Unbiased Policing” Ordinance

- The Ch. 86-Ordinance is an anti-racial profiling law but it is so much more.
- It is an Unbiased Policing law that mandates bias-free performance in every aspect of policing and police services by DMPD officers and civilian employees.
- It bars discrimination by DMPD officers and employees, not only on race and ethnicity but also on every personal characteristic listed in the Human Rights Ordinance, in every aspect of law enforcement and police services.

# 86-43 Definitions

- Biased policing is broadly defined as “**differential treatment** in the performance of law enforcement or delivery of police services towards a person” when race, color, ethnicity, religion, national origin, sexual orientation or any of the personal characteristics barred in the Des Moines Human Rights code “was **a motivating factor** in the action taken.”
- “Police Services” is broadly defined as “actions and activities that contribute to the overall well-being of the public . . . [and] include but are not limited to: crime prevention and investigation, preventive patrol, traffic control, traffic accidents [etc].”

# 86-43 Racial Profiling & 86-44 Biased Policing Prohibitions

- Racial profiling is a “form of biased policing where a **motivating factor** of the action taken is based on an individual’s race, color, ethnicity” in stops of vehicles, pedestrians, and bicycles
- Prohibits “biased policing” and “racial profiling” “in enforcement of the law and the delivery of police services by any employee.”
- Prohibits “**discriminatory** pretextual stops.”
- Mandates fair and impartial treatment for all.
- Prohibits derogatory, belittling, defamatory, or contemptuous language.

# 86-44 Biased Service Calls and DMPD Standard Operating Manual On Line

- Prohibits law enforcement action based on private citizen “calls for service” that DMPD employees “know or reasonably should know” are motivated by bias. **Officers must not be instrument of bias.** *E.g., Central Park incident.*
- **One Exception** to Bias-Free Mandate: “Employees shall not consider” any of the prohibited personal characteristics “*except when such characteristics are part of a specific subject description-based identification.*” Data collection will be second exception once it begins.
- DMPD Standard Operating Procedure Manual is required be posted on line and made available to the public for review at the police station.

# 86-45 Obligation to Report/Intervene in Biased Policing & Protection against Retaliation

- "where use of force occurs, officers have a duty to intervene to prevent or stop the use of unreasonable force by another officer when it is safe and a reasonable opportunity exists."
- Police officer putting his knee and weight on George Floyd for 8 minutes and 46 seconds a perfect example.
- Employees who report biased policing are protected against discrimination or retaliation for having reported or for "testifying, assisting or participating in any investigation, proceeding or hearing."



# 86-45 Supervisors' Oversight to Ensure Bias-Free Environment; Citizen Complaint Options with OPS & ICRC

- “Supervisors shall ensure the working environment is free of bias and free of racial profiling.”
- This “oversight responsibility . . . include[s] periodic inspection of body and in-car audio/video, traffic stop data,” taking action when biased policing has occurred, and ensuring no retaliation for reporting violations.
- Accountability is essential. Supervisors play key role.
- Individuals can file complaints of biased policing or racial profiling with either the Iowa Civil Rights Commission (ICRC) or the Police Department’s Office of Professional Standards (OPS), or both.

## 86-45 Role of DSM Human Rights Commission: Public Education plus Assistance in Drafting and Filing Complaint with Iowa Civil Rights Comm'n

- OPS provides internal accountability and discipline; the ICRC provides a complainant with remedies
- DMPD Employee Discipline: “Racial profiling and biased policing are violations of this Ordinance.” Such violations by DMPD employees can “serv[e] as cause for discipline up to and including termination from employment.”
- The Ordinance provides that the Des Moines Human Rights Commission “shall educate the public about the complaint process” available under the Iowa Civil Rights Act; and
- For those who wish to seek remedies under the ICRA, which includes damages, the Commission is to conduct intake and assist individuals in drafting & filing their complaint.

## §2: Preservation of Defenses & Rights and DMPD Employee Discipline

- The Ordinance does not make any change to the law governing the City's liability for biased policing and racial profiling, which will still be governed by existing state and federal law, so the Ordinance preserves all defenses.
- Individuals retain all of their state and federal constitutional and statutory rights to pursue claims for damages.
- Individuals seeking monetary remedies can bring their claims through existing remedies available through the ICRC or, obtaining a right-to-sue letter, by direct action in state or federal court.

# 86-47 Annual Training

- Like SF2280, the Ordinance requires training.
- “At least annually all sworn officers shall receive and participate in training and guidance in regard to unbiased policing and prohibited racial profiling while conducting law enforcement activities and police services;
- Training “shall include de-escalation, cultural diversity, cultural competency , and implicit bias,” and may include training on other “topics suitable for preventing incidents of biased policing and racial profiling,” such as police-citizen interaction and conducting motor vehicle stops.

# Community Policing Policy and Practices Review Committee (CPPPRC)

- 9-member Committee, appointed by city council and mayor, with 3 community members, 1 youth member age 16 to 24, 2 members of the human rights commission, 1 police officer, and 1 member each from the housing appeals board and community development.
- The CPPPRC has a systemic policy and practices focus. It is not a civilian review board.
- It does not investigate or adjudicate individual cases alleging officer misconduct.

# CPPPRC Purposes & Responsibilities

- Review law enforcement data for existing and potential disparities;
- Review law enforcement practices and policies related to the delivery of unbiased policing and code enforcement; and
- Make recommendations to the City Manager and the City Council.

# Next Steps: Consultant's Role

- Resolution 40B approved hiring of a Consultant to Research Best Practices in data collection and reporting, analysis, and public accessibility of the data, and development of performance metrics for officers and staff
- Research Best Practices on limitations of pretextual stops, including feasibility and anticipated effects of such limitations on police;
- Research on transparency and accessibility of the stop data collected.