

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

MEETING MINUTES

15th Meeting of the Racial and Identity Profiling Advisory (RIPA) Board

November 20, 2019, 10:00 a.m.

Elihu M. Harris State Bldg.
1515 Clay Street
Oakland CA 94612

The fifteenth meeting of the California Racial and Identity Profiling Advisory (RIPA) Board was held on Wednesday, November 20, 2019 at 10:00 A.M. in the Elihu M. Harris State Building, Auditorium.

Members Present: Sahar Durali, David Robinson, Andrea Guerrero, David Swing, Douglas Oden, Oscar Bobrow, LaWanda Hawkins, Warren Stanley, Steven Raphael, Tim Silard, Ed Medrano

Members Not Present: Micah Ali, Sandra Brown, Timothy Walker, J. Edgar Boyd, Damon Kurtz

California Department of Justice Staff Present: Nancy A. Beninati, Supervising Deputy Attorney General, Civil Rights Enforcement Section (CRES); Allison Elgart, CRES; Aisha Martin-Walton, CRES; Anna Rick, CRES; Christine Sun, Special Assistant to the Attorney General; Audra Opdyke, Assistant Chief, Bureau of California Justice Information Services (CJIS); Erin Choi, CJIS; Kevin Walker, CJIS; Trent Simmons, CJIS; Alison Steen, CJIS; Kimberly Newport-Hewitt, CJIS, and Kenneth Keating, CJIS

1. Call to Order and Welcoming Remarks

The meeting was called to order at 10:03 A.M. by Co-Chair Robinson.

Co-Chair Robinson welcomed the Board and the members of the public to the meeting. Board members introduced themselves and Ms. Beninati introduced new DOJ staff.

2. Approval of the September 26, 2019 Board Meeting Minutes

MOTION: A motion was made to approve the minutes by Member Bobrow. The motion was seconded by Member Oden.

APPROVAL: The minutes were approved with 11 members in attendance voting “yes”, there were no “no” votes.

3. Update from the Department of Justice

Ms. Elgart advised that copies of the draft January 2020 RIPA report were available for review and comment. She thanked the Board, the public, agencies and DOJ staff for their hard work in producing the report and stated she was looking forward to comments. Ms. Elgart indicated that the January 2020 report is the first year the stop data and analyses of the stop data will be included. She stated that the report includes content from all five subcommittees, including the Civilian Complaints, the Calls for Service, the POST Training and Recruitment, the State and Local Racial & Identity Profiling Policies and Accountability and the Stop Data Analysis subcommittees.

Ms. Beninati also thanked the public for its comments and advised that they have been provided to the Board. She updated the Board on three items from the September 26, 2019 meeting: (1) In response to the Board's request for experts to attend the November 20 meeting, Professor Lofstrom of the Public Policy Institute was in attendance, but the other experts were not available to attend; (2) Pursuant to a motion approved at the September 26, 2019 meeting to request a Legislative resolution of the conflict between State and Federal language relating to civilian complaints, Co-Chair Robinson drafted a letter to Assemblywoman Shirley Weber, which is provided in the Board member packets; and (3) The AG's Opinion Unit would not be able to provide an opinion requested by the Board on the conflict between the state statute and the federal case law regarding language on many civilian complaint forms because such request is not within the scope of items appropriate for such review per DOJ policy. Finally, Ms. Beninati advised that if the report does not need further review, then the Board members could vote on the report and allow any final changes to be made by the Co-Chairs and DOJ.

Ms. Choi gave an update on the status of the stop data collection. In addition to the eight Wave 1 agencies, seven Wave 2 agencies are now submitting data records. These agencies' records are due by April 1, 2020. Two Wave 3 agencies – Bakersfield Police Department and the Los Angeles Unified School District Police –will submit earlier than their April 1, 2021 due date. Ms. Choi also reported that DOJ staff met with law enforcement agencies for a “Lessons Learned” meeting. Some of the lessons learned included that DOJ should offer different training style options, shorter training sessions, include videos, and encourage early data record submissions. Ms. Choi indicated that some agencies have added additional data elements for their own analysis. Finally, Ms. Choi reported that DOJ is developing a POST certified data collection course.

Kevin Walker gave updates to the Stop Data Analysis section of the January 2020 RIPA report. Mr. Walker stated that the report provides analyses of data on the stops, reasons for stops, search rates, and search hit rates from the eight Wave 1 agencies between July 1, 2018 and December 31, 2018, which is over 1.7 million reports for over 1.8 million individuals. The largest three reporting agencies were CHP, LAPD, and the Los Angeles County Sheriff's Department. Mr. Walker reminded everyone that the stop data collected was based on officer perception and not how the individual self identifies.

Highlighted Analysis Approaches

Several analyses were conducted of the pre- and post-stop data, including: (1) The 2017 American Community Survey (ACS) data was used to compare pre-stop data to residential population data in the jurisdictions of the eight agencies; (2) The CHP Statewide Integrated Records System (SWITRS) data was used to compare pre-stop data to no-fault vehicle collision data; (3) The Veil of Darkness (VOD) methodology was used to compare stops at a time of day (approximately 5:00pm – 9:30pm) that is dark during part of the year and light during the other part of the year to determine if these changes in the time of day had any impact on an officer's decision to make a stop; (4) A yield rate analysis was used for post-stop data to determine the rate at which officers searched individuals by race, ethnicity, and identity group compared to the rate at which contraband was found and the amount of discretion the officer had in deciding to conduct the search; (5) DOJ also examined enforcement rates or how often individuals stopped received a citation or were arrested. Mr. Walker noted that there is no one perfect benchmark, methodology, or analysis for examining law enforcement stop data and all five approaches highlighted here have their limitations. Mr. Walker advised the Board that agency level totals are in the Appendix and a variety of tables for identity groups not in the main report are available in a Technical Report.

Summary of Largest Group Impact

Decision to Stop:

The primary reason for a stop was a traffic violation. Approximately 85% of traffic stops were of individuals perceived to be White and Hispanic. The second most common reason for a stop was reasonable suspicion of criminal activity. Individuals perceived to be Black were the largest group stopped at 19.5%. The third most common reason for a stop was consensual encounters. Individuals perceived to be Native Americans were the largest group stopped at 3.2%.

Decision to Search:

Regarding post stop outcomes, 9.9% of all stops resulted in a search. Black, Hispanic, Native American and Multiracial individuals who were stopped experienced higher degrees of searches by law enforcement. While individuals perceived to be Black, Hispanic, Native American and Multiracial were determined to have less contraband than those individuals perceived as White, these four groups were arrested more frequently.

4. Public Comment:

Eva Bitran, ACLU Southern California, urged the Board to disaggregate the CHP data and local agency data. She expressed concern about the VOD methodology. She made a reference to a November 5, 2019 letter to the Board in which the ACLU suggested that searches based on “officer safety/safety to others” and “suspected weapons” be included in “higher discretion” searches because the officer is, in many cases making a highly subjective determination that is susceptible to the influence of racial bias. Also, Eva asserted that it is an omission to leave out reasonable suspicion stops of vehicles, especially when DOJ's data shows significant disparate impact against one group, Black individuals. Copies of the November 5, 2019 ACLU letter with these and other recommendations was shared with the Board, DOJ, and the public.

Michele Wittig, Santa Monica Coalition of Police Reform, requested that the report tell the reader what the outcomes mean, not just what the statistical outcomes are. The report should tell the reader the implication of each result.

5. Board Discussion of 2020 Draft RIPA Report

Much of the Board discussion centered around concerns with the Veil of Darkness (VOD) methodology, and the impact of CHP traffic data, SWITRS, and civilian complaints.

Member Raphael reminded the Board that the report is a road map for local agencies who will do their own analyses. The report should identify empirical strategies and tests and the current draft does that. He sees report as a “how to” guide. Hit rate analysis and the VOD were mentioned in last year’s report, and therefore inclusion of the VOD in this report is consistent with that plan.

Member Bobrow expressed concerns about the VOD and urged the Board to delete it. He felt it was not discussed during the drafting of regulations and was not included in the legislation. He stated that the Board should be collecting data about who is being stopped. Also, the VOD limitations listed in the report should consider patrol car spot lights. Regarding the reference to ambient light, stops are made in conditions where officers are trained to be able to see, so to suggest that VOD either excuses or doesn’t excuse certain behavior or is important to the data that has been collected is wrong and this methodology should be taken out.

Co-Chair Robinson likes the VOD and feels it gives the Board another piece of the puzzle. There are so many different data sets that can have different variables. He stated that charts should not be taken out because they could be useful to some agencies. He clarified that patrol lights actually come on after the stop. Co-Chair Robinson supports giving agencies as many analyses as possible.

Member Guerrero had a concern that ambient light limitations are not considered. Member Guerrero also expressed concern with the wide variances of traffic stops by Wave 1 agencies versus searches for probable cause. For example, CHP makes 57.7% of all stops and 67% of all traffic stops. In San Diego, for example, there were more stops based on reasonable suspicion than on traffic. Her concerns with the VOD outweighed the benefits. The Board never affirmatively agreed to include the VOD. While recognizing that there is no perfect analysis, the VOD is too problematic. Looking at the cost and meaning, the VOD does not stand up to the test.

Member Stanley stated two concerns. He has made numerous CHP traffic stops and when following a vehicle, he has no idea who is behind the wheel because of the headrests or it is an SUV. He simply knows the car is speeding, or made an unsafe lane change or movement, or has an expired registration. In most instances whether it is daytime or nighttime, the officer does not know who is behind the wheel until the car stops and the officer approaches the stopped vehicle.

Regarding SWITRS data, there are several law enforcement agencies in California that do not investigate collisions where there is only property damage. Therefore, that data does not get entered into the system. Also, when they do investigate vehicle collisions, they do not determine

who is at fault so if DOJ is using an analysis that only considers parties who are not at fault, then it is eliminating the other party and in doing so it is eliminating an important portion of the data.

Member Medrano echoed Member Stanley's concerns and said the number of agencies not investigating collision property damage is increasing. There is no empirical study available to show that this data is going to be helpful to law enforcement agencies. Looking at VOD data and SWITRS data, we need to consider whether they are valuable or not and if either should be included in the report.

Member Oden looked at the VOD as a tool that can be used, and since this is the first report with data, he would like to keep it in and see over time if there are statistical differences between stops at night versus the day. He is not ready to throw it out. He viewed the VOD as a work in progress. He wanted to see how it is used as more agencies come on board and with more time to see what the results really mean. He expressed that the big picture is to ascertain whether there are stops based on perceived race or identity. If the VOD proves untrustworthy, then the Board can eliminate it when more data is reported and analyzed.

Member Guerrero reiterated that the VOD does not stand up to the integrity test and the traffic stop data is skewed, because 67% of the data comes from CHP and the CHP Commissioner explained that the VOD is not very meaningful in the context of their traffic stops. The Board is giving it outsized influence in the report. For example, the report gives the residential data one page of analysis, the collision data one page of analysis, and the VOD five pages of analysis, and within that analysis there is contradictory information. Member Guerrero said the VOD methodology was never agreed to and thinks the Board should leave it out of the report and err on the side of caution until there is more research about how to use it in a more meaningful way.

Member Bobrow asked DOJ where in the regulations or in the statute does it say that officers should look at the time of day the stop was made. Member Bobrow stated that the VOD does not help, it is contradictory and it is not consistent with the Board's mission. He agreed with other comments about the level of weight given in the report in light of the expressed problems with the analysis and recommended that the VOD be taken out of the report. He then called for a vote.

Member Swing stated that it was his understanding that the regulations and statute are silent on any type of methodology. The VOD should be included in the report because it only considers the first six months of data from eight agencies. The Board has talked about it for over a year. There is not a perfect analysis, and there are many factors that influence an officer's actions outside of the realm of population data. Member Swing thought all the methodologies presented should remain in the report to help evaluate a path forward for future years.

Co-Chair Durali said that the Wave 1 agencies are mostly in urban areas and regardless of who they can see, the police congregate in some areas which demographically have people of color. Therefore, she thinks the VOD methodology is flawed and skewed. Also arrest rates are based on population. So using population for stop rates is consistent with evaluations of other criminal justice data. She agreed that the VOD should be taken out of the report.

MOTION: Member Silard made a motion that the VOD data be removed from the report and it be referred to the Stop Data Analysis subcommittee to see if the methodology can be approved. Member Bobrow seconded the motion.

DISCUSSION:

Member Swing stated he is a Co-Chair on the Stop Data Analysis subcommittee and the VOD methodology has been discussed. He further stated that officers are required to input the date and time of a stop, so why collect this data if it is not going to be analyzed?

Member Silard clarified that his motion does not state that the Board is never going to look at the VOD data. He suggested that the subcommittee look into the problems raised. Also, as a member of the subcommittee, he did not recall the level of problems raised by Board members and the public. He was not prepared to vote to keep it out forever, however he agreed that there is cause to pause and maybe there should be an interim report.

Member Raphael felt the analysis takes five pages because the VOD methodology is complex and subtle. Other methodologies are more straightforward. It is research based and while he did not have a negative reaction, two tests do give conflicting findings. He agreed that what might be needed is an interim report that is methodologically focused.

Member Oden stated that page 24 indicates the limitations of the VOD methodology. Perhaps the additional limitations and points raised by Board members should be included in the report to give the reader a reason for not putting too much weight on it.

Member Medrano was concerned that if the VOD is not included people will ask what is the Board comparing the data to. Also, including it gives the Board the opportunity to consider different approaches. Although the results may be inconclusive at this time, it may be different when there is more data.

Co-Chair Robinson reminded the Board that in the original data sets officers were asked to report date and time information. He believed it would be a disservice not to include an analysis that focuses on time. He agreed that the VOD limitations on page 24 could be expanded.

Member Guerrero pointed out to the Board that the analysis of time is in the appendix so the Board has met its obligation to evaluate the data collected about time. She felt there are too many questions about the VOD to include it. She would, however, be open to a supplemental review of the VOD, but it should be omitted from this report.

Member Bobrow called for the vote.

Member Raphael expressed concern that the VOD has been mentioned in past reports, so it should not be removed entirely.

Ms. Beninati answered Board member questions about the origin of the VOD. She clarified that the regulations do not require any specific methodology. The statute does prescribe components that must be included in the report which can be found in the appendix. The VOD was discussed

in subcommittees and then through discussions by the Board as a possible methodology. In last year's report it was mentioned again as a possible methodology with pros and cons. Yield rates were also discussed.

Member Silard accepted a friendly amendment from Member Raphael and made the following motion in three parts.

MOTION: A motion was made by Board Member Silard to; (1) not include the VOD methodology in the January 2020 report; (2) to include a reference and a comment that the VOD analysis is ongoing and the methodology is being examined and; (3) that the VOD be referred to the Stop Data Analysis subcommittee or another subcommittee so the concerns of other Board members could be addressed.

A ROLL CALL VOTE WAS TAKEN:

Member Raphael: aye; Member Bobrow: aye; Member Silard: aye; Co-Chair Robinson: no; Co-Chair Durali: aye; Member Oden: no; Member Guerrero: aye; Member Hawkins: no; Member Stanley: no; Member Swing: no; and Member Medrano: abstain.

FAILED: The motion did not carry, with five members in attendance voting "yes", five members voting "no", and one member abstaining.

Member Durali requested that the VOD section be restructured to put qualifiers at the beginning of the section and the limitations expanded to include Board member concerns. All agreed.

Member's Silard and Medrano asked about the question of disaggregating CHP data in the report. Member Guerrero agrees it should be for this year.

Co-Chair Robinson asked Commission Stanley's advice about the SWITRS methodology. It was agreed by the Board that because the VOD will be in the report, then the SWITRS data should also remain in the report.

Co-Chair Durali asked Board members if their disagreements can be included in VOD section and factors to consider be included in the SWITRS section. All agreed. Board Member Swing agreed that the VOD be referred to the Stop Data Analysis subcommittee for further review.

After the vote to keep the VOD methodology in the January 2020 report, Board members summarized several of their concerns into action item requests.

Board members recommended that the report be restructured in some areas and the Executive Summary include simple graphs and charts with interesting conclusions. It should be written at a grade level easy for the public to understand. Also, the recommendations from throughout the report should also be included in the Executive Summary for law enforcement, the Legislature, and the community.

Member Bobrow requested that a chart be added comparing search data to residential data.

Ms. Beninati asked Member Raphael if he would work with the DOJ staff to create the chart and Member Raphael agreed.

Member Guerrero recommended that because profiling is illegal, it should be stated in the Civilian Complaints section of the report. The limitations on the complaint process and systems should be at the beginning of the section to make sure it is clear that the state has a long way to go. RIPA creates an opportunity to fix the complaint process. The conclusion of the report should also state that the data has been collected, and progress has been made with some policies. However, the data reveals that profiling of Black Californians is significant. It is a major finding in this report and should be highlighted.

Member Silard suggested language be added in the civilian complaint section to highlight differences in complaints alleged and filed with each agency.

Member Bobrow recommended edits to the draft letter to the Legislature regarding civilian complaints. Co-Chair Robinson suggested that the Board act on Member Bobrow's proposed language along with his own edits at the December 9 Board meeting. All agreed.

6. Public Comment

Eva Bitran, ACLU Southern California, said she is looking forward to the CHP data being disaggregated. She suggested that the Board pull out data visualization for the VOD. She reiterated the call for disaggregation of individual agencies where possible, especially because more agencies will be added and some agencies have not agreed to analyze their own data. She hoped the Board will take the suggestions from the ACLU's letter.

Katie Mathews, Disability Rights California, expressed disappointment that the VOD remains in report. She said it might be helpful to put it in bullet points and to pull out the CHP data. She suggested that the limitations of the VOD be highlighted in the section. In the future, she would like more data on the intersectionality of racial and identity groups. Also, she stated the importance of getting the Technical Report out to the public.

Michele Wittig, Santa Monica Coalition for Police Reform, suggested that the legal context in California is not helpful to citizens who file complaints. There are restrictions on what citizens are told. A promising policy is public safety mediation. It has been adopted by the LAPD in collaboration with a group of mediators. The problem is public mediation is offered instead of a legal investigation. One should not have to choose. She recommended that mediation be a component to the civilian complaint process but not an alternative to an investigation.

Board members requested a process to respond to public comments and recommendations in the subcommittee or Board meetings. Ms. Beninati agreed. Board members suggested that the Board meeting agenda should include a standing item to allow them to respond to public comments. All agreed.

Ms. Beninati advised that DOJ will work with the Board and subcommittee chairs to include any comments and drafts between now and the next time the draft goes out. DOJ will try to get redrafts to the Board by December 5th or 6th.

Member Bobrow made a motion to include the November 5, 2019 ACLU letter in the January 2020 report. Co-Chair Robinson suggested the Board wait, since not all Board members have seen the letter. Member Silard suggested Board Co-Chairs work with DOJ on the VOD language and on incorporating the ACLU and other suggestions.

7. APPROVAL OF NEXT STEPS

Co-Chair Robinson indicated that the Board Co-Chairs will work with DOJ on addressing those items raised at the meeting, including the letter to Dr. Weber, rearranging sections in the report, and moving data charts.

Ms. Beninati thanked everyone for the discussion and debate. She emphasized the need to have a quorum for the December 9th meeting. She reminded everyone that the public is invited to attend any location where there is a Board member. Ms. Beninati read the meeting locations. She also announced that Reverend Ben McBride, who was an original member of the RIPA Board, resigned from the Board on November 16, 2019 because he cannot make any of the remaining meetings this year due to his travel schedule. He served as a past Co-Chair of the Board and was the current Chair of the POST Training and Recruitment subcommittee. DOJ is actively looking for a replacement.

Co-Chair Robinson adjourned the meeting at 2:05pm.