

July 15, 2020

To the Commission on Law Enforcement Accountability, Community and Transparency,

We know we have a racial bias problem in the criminal justice system in New Hampshire. The Department of Corrections lists a Black population of 7%, when the census bureau tells us the Black population in New Hampshire is 1.8%. That disparity in the end result is caused by bias in every step that leads to that end.

Yet, it is easy to say that we're doing a good job in New Hampshire. We don't have any of the high-profile incidents that has brought the public's attention to racial bias in policing.

But when we pat ourselves on the back, we are relying on anecdotal evidence. Yet people of color who have expressed feeling racially profiled are often made to feel that their anecdotal experience is not sufficient to act upon.

I write to advocate that we mandate better record-keeping and data collection so that we can assess our progress and determine what change needs to happen based on the facts.

Last year, I made a Right-to-Know request of the New Hampshire State Police to request information regarding the racial make-up of those affected by motor vehicle stops. I was told that the information about stops that do not result in any charges is not tracked. The information I was given about the race of drivers ticketed or criminally charged was kept in a way that would make data collection very difficult. Race is apparently not tracked with a drop-down menu but filled in by hand by the trooper. This resulted in over 25 different entries that appeared to capture individuals who were white or Caucasian and at least 5 that appeared to capture individuals who were Black or African-American.

I also asked for information about the race of those individuals who were searched and for information about whether those searches were deemed unconstitutional by a judge. I was told this information is not tracked.

In my work as a public defender, I was able to get a glimpse of what this kind of data collection misses. In one case I worked on, the State argued that something found in a car pursuant to an illegal search would have been “inevitably discovered” by the officer through legitimate means. Because this called into question what the officer typically did in this type of stop, the judge ordered that I be given seven months of reports written by the officer describing motor vehicle stops that resulted in a charge related to marijuana.

I was given reports about 20 motor vehicle stops, documenting interactions with 34 people. Of those 34 people, the officer frisked 4.

For those not familiar with frisking, it is allowed when the officer has reasonable articulable suspicion the person is armed and presently dangerous. It involves the officer putting his hands all over the individual in order to determine whether the person is armed.

The officer only frisked the one person who told the officer he was armed and the only Black and Hispanic people the officer encountered (3). For those who have not been frisked, it is invasive and humiliating.

I’m sure this officer would say that he is not racist. But from this small data-set, it is clear that he views brown people as being more of a threat. That view, even if held unconsciously, has real-world consequences for the people of color he interacts with. To be searched in this way, knowing there is no legitimate reason to believe you are armed and presently dangerous, degrades your trust that law enforcement is there to help you.

New Hampshire State Police does not require an officer to record the race of people stopped if no charges are brought. This includes stops that result in frisks or other searches that did not turn up any contraband. Thus, we have no way of knowing the extent of racial disparity in the very first encounter people have with the criminal justice system.

Respect for human dignity should require officers to document when they lay hands on another human being and their justification for doing so.

I propose that law enforcement officers be required to document:

- the race of all people they encounter in a motor vehicle stop or any other encounter where the person is not at all times free to leave;
- every time a frisk or any other search is conducted and the rationale for the search.

In addition, police agencies do not currently have a good way to know whether a judge has ruled that an officer has acted unconstitutionally in a criminal case or whether there is reason to believe the officer acted unconstitutionally (such as when a prosecutor drops a charge based on an assessment of the legality of a search). Police agencies may also not be informed when a prosecutor or judge believes an officer has been untruthful.

I propose that prosecuting agencies be required to inform the relevant law enforcement agency:

- each time a motion to suppress is granted;
- each time a charge is dropped based on a questionable search, seizure, or interrogation;
- each time a prosecutor has reason to believe an officer has been untruthful in the scope of their policework;
- each time a judge makes a ruling that calls an officer's credibility into doubt.

These measures would give us a more accurate picture of the extent of racial bias in policing in New Hampshire and would give law enforcement supervisors more information to address problem officers. Given the burden placed on communities of color by disparate treatment in the criminal justice system, these proposals represent only a modest burden to achieve needed information. Thank you for considering these proposals. If you need any more information, please do not hesitate to contact me.

Sincerely,

/s/ Stephanie Hausman

Stephanie Hausman