



Southern Coalition
for Social Justice

Empowering the people and communities who change the world



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The background of the slide features a dark, out-of-focus image of police lights, with prominent blue and red circular bokeh effects scattered across the frame.

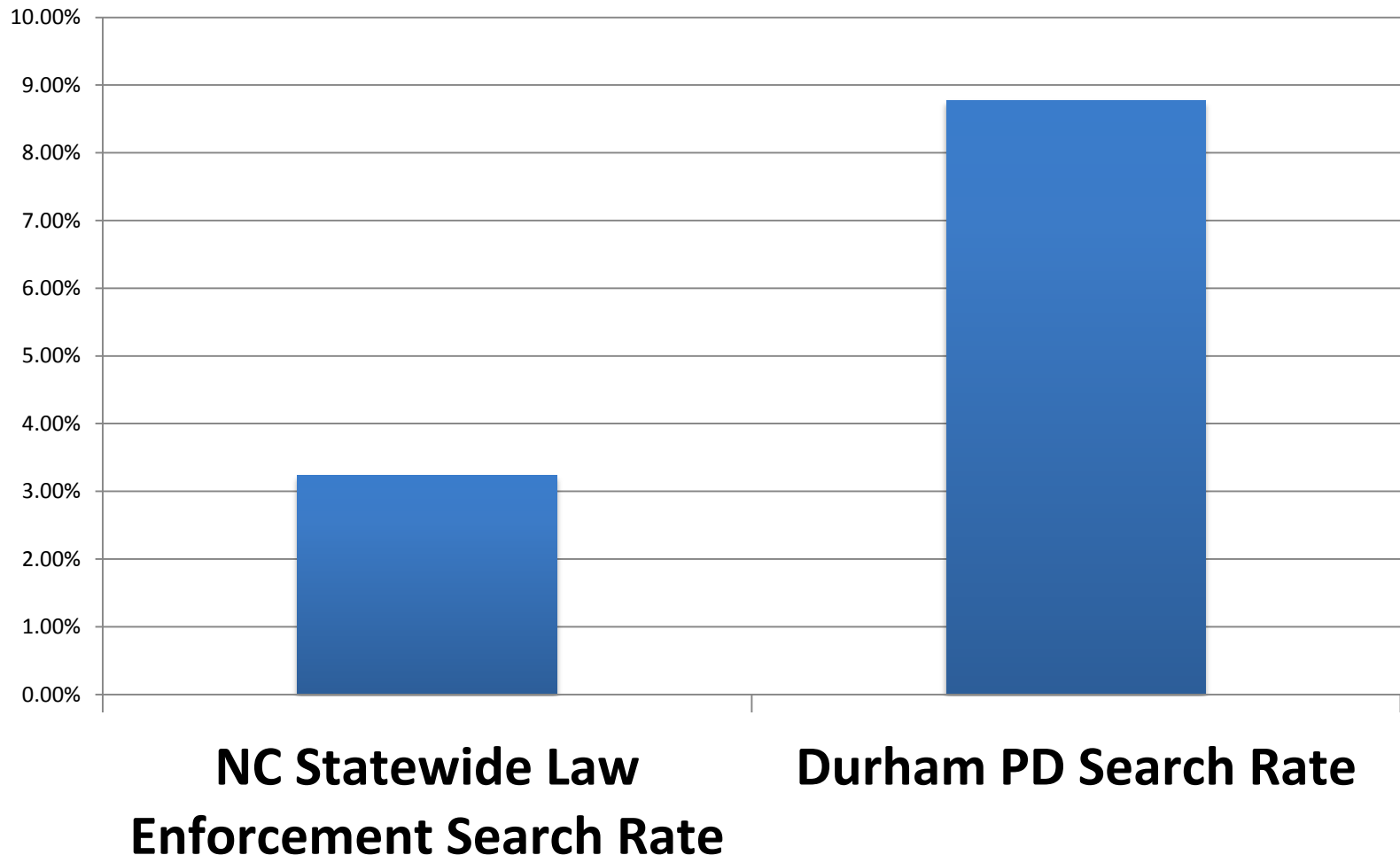
RACIAL PROFILING

Law enforcement's use of an individual's race or ethnicity as a factor in deciding whether to engage in an enforcement action (e.g., make a traffic stop, conduct a search, or make an arrest).

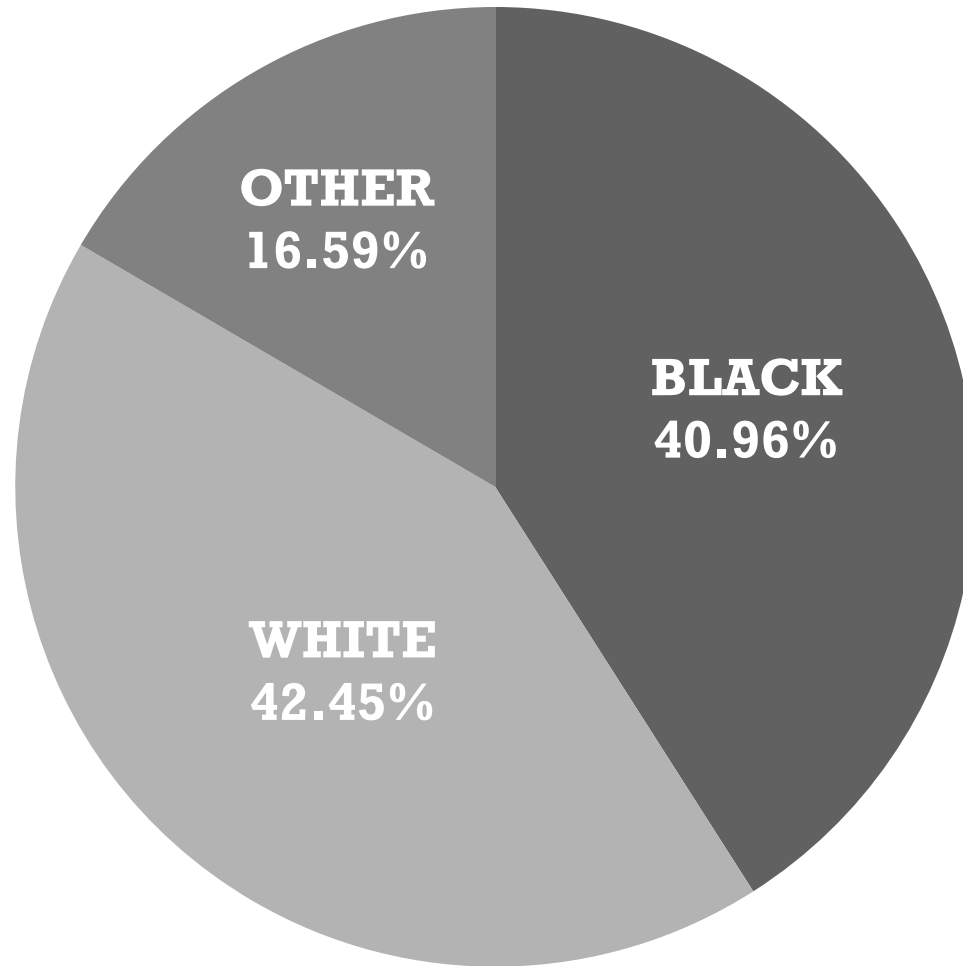
Why FADE and Southern Coalition have alleged “racial profiling”

- Comprehensive statistical evidence, collected pursuant to N.C.G.S. § 114-10.01, the mechanism the General Assembly created in 1999 to track and identify profiling practices, indicates Durham has a significant problem, one more pronounced than just about anywhere else in North Carolina with respect to African-American motorists.
- Lived experiences of Durham community members.
- Highly racialized and discriminatory enforcement of drug laws against African-Americans.

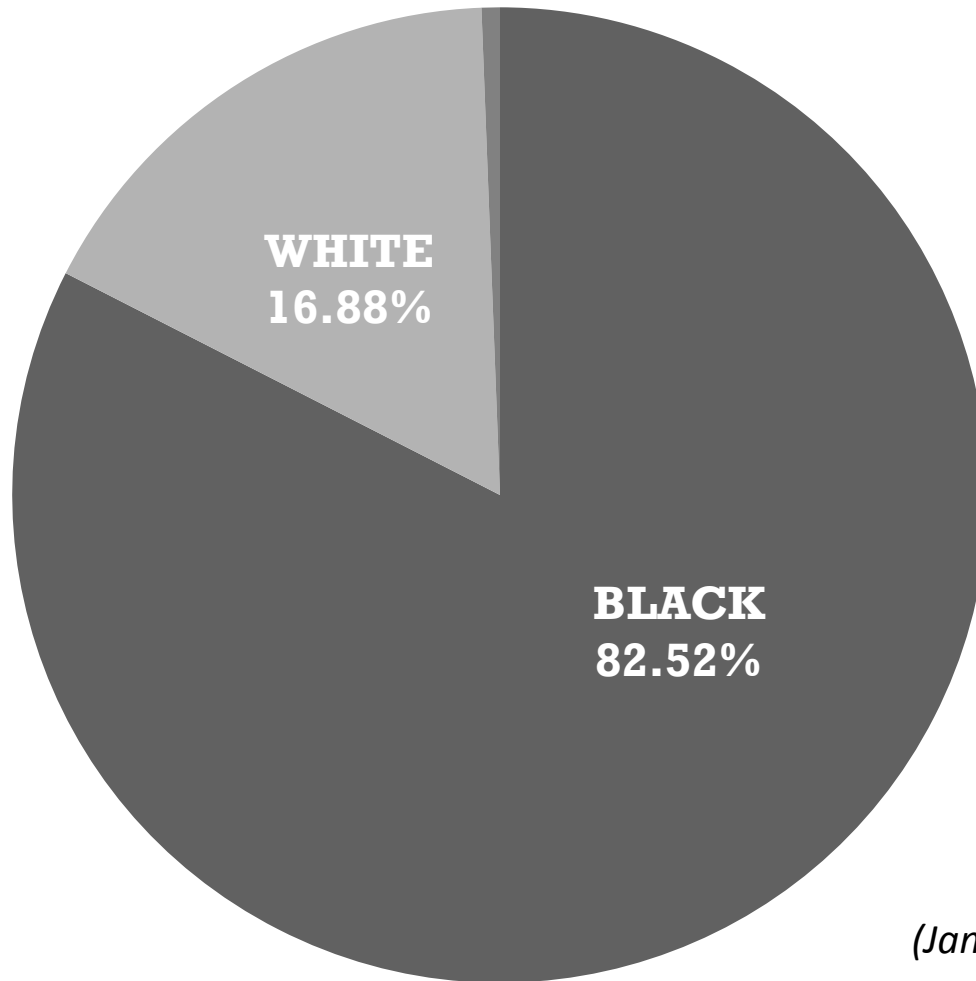
DPD searches motorists at a rate (8.77%) that far exceeds the statewide average search rate (3.24%).



Durham racial demographics (2010)



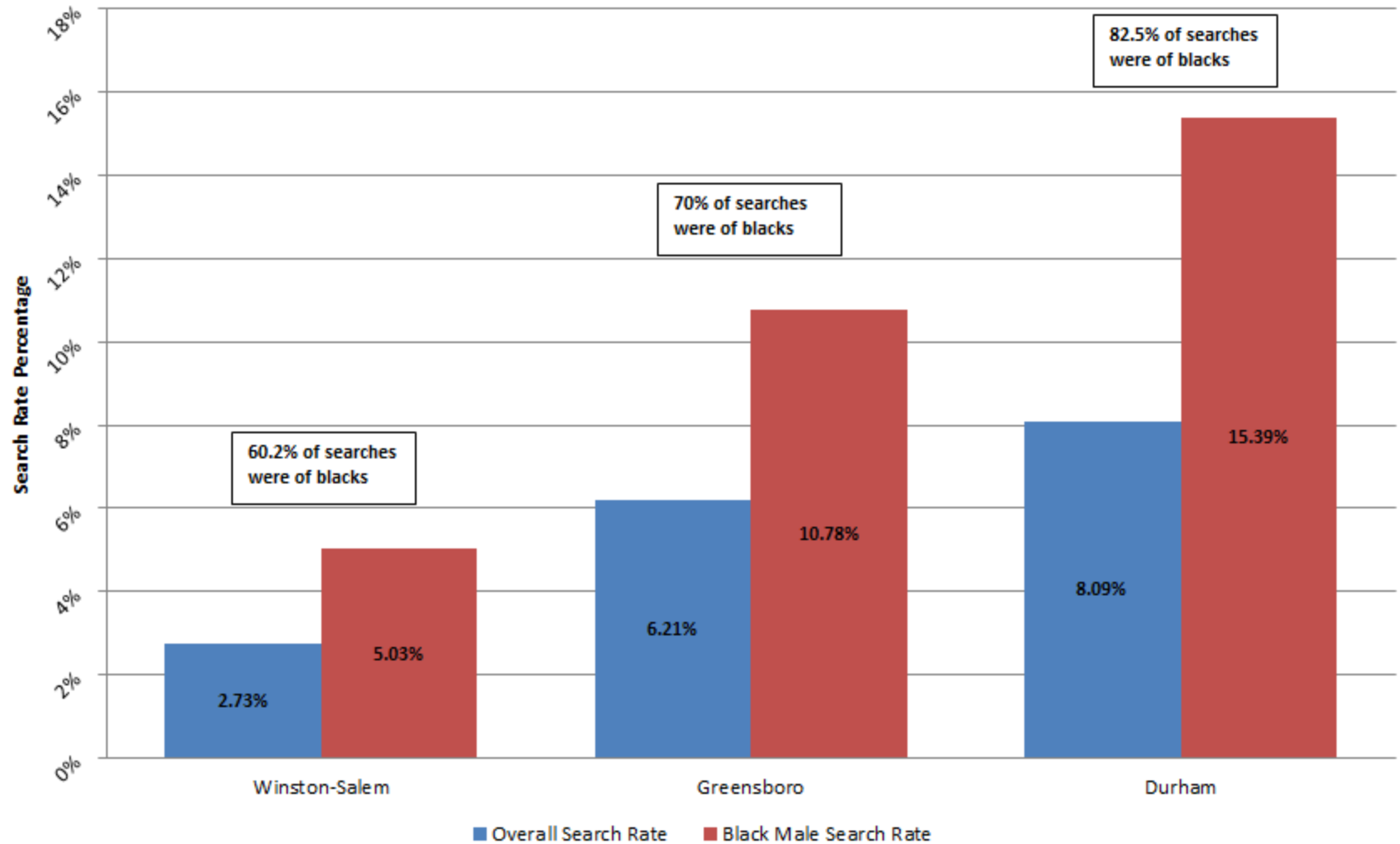
82.5% of motorists searched by DPD officers in 2013 were black.



(January – November 2013)

The percentage of black motorists in the overall searched population has steadily increased in each of the past 5 years, from 77% in 2009, to 78% in 2010, to 80% in 2011 and 2012, to 82.5% in 2013.

Overall Search Rate vs. Black Male Search Rate



2013 data

- Despite accounting for just 17.4% of the city population—and even less of the driving population—black males accounted for 65.5% of the searched population in 2013.

- Over the last 50 months, Durham Police have searched almost the same number of black women as white men (1380 v. 1400), despite highly differential offending patterns between men and women. In 2013, DPD searched more black women than it did white men (337 v. 256).

Stop and search data from other North Carolina jurisdictions—some with less pronounced racial disparities than Durham—have invited federal scrutiny and even DOJ-initiated lawsuits over racial profiling in recent years.

**Alamance County Sheriff's Office
Fayetteville Police Department**

In 2012, following a review of the Fayetteville Police Department's stop and search data, the **U.S. Department of Justice Civil Rights Division** notified that department that its **"practices risk[ed] running afoul of the 14th Amendment's protections against discriminatory policing."**



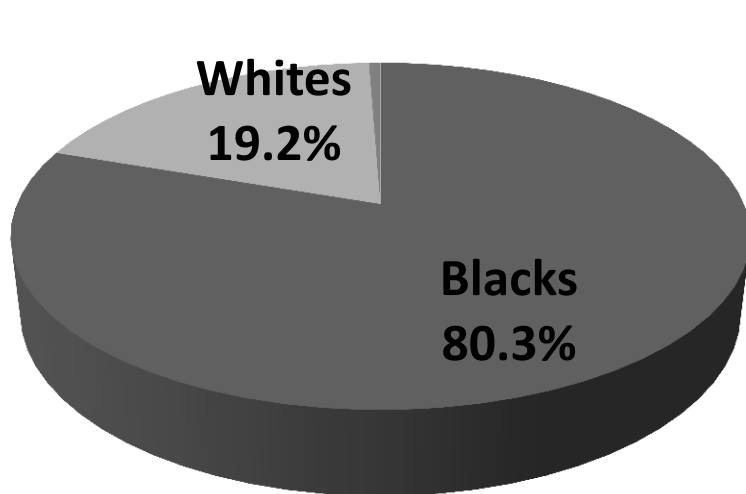
U.S. Department of Justice
Civil Rights Division
SPECIAL LITIGATION SECTION

See Letter from Jonathan M. Smith, Chief, Special Litigation Section, U.S. Dep't of Justice, Civil Rights Division, to Patricia Corey Bradley, Atty., Fayetteville PD, January 30, 2012.

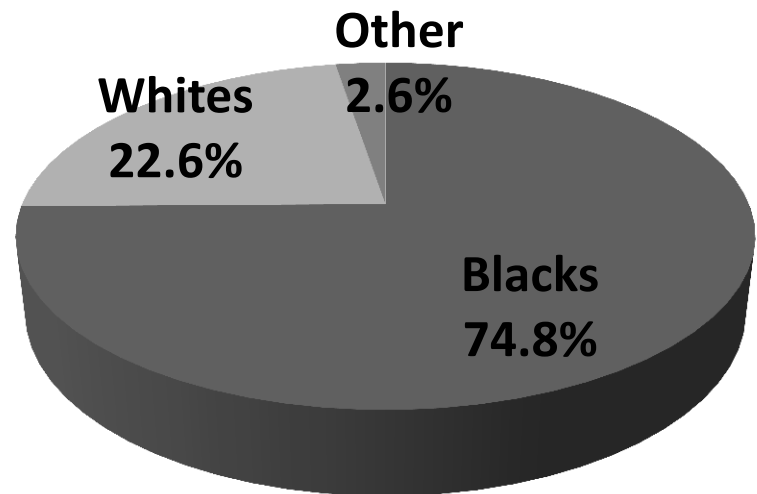
How does Durham PD's stop-and-search data compare to that of Fayetteville PD—a department whose policing patterns brought about federal scrutiny?



Although Fayetteville has a significantly larger black population than Durham (49.76% v. 40.96%), blacks represent a larger percentage of the searched population in Durham than in Fayetteville.



*Durham PD
searches — last
50 months*



*Fayetteville PD
searches — last
50 months*

- Under Chief Lopez, the number of searches have increased dramatically.

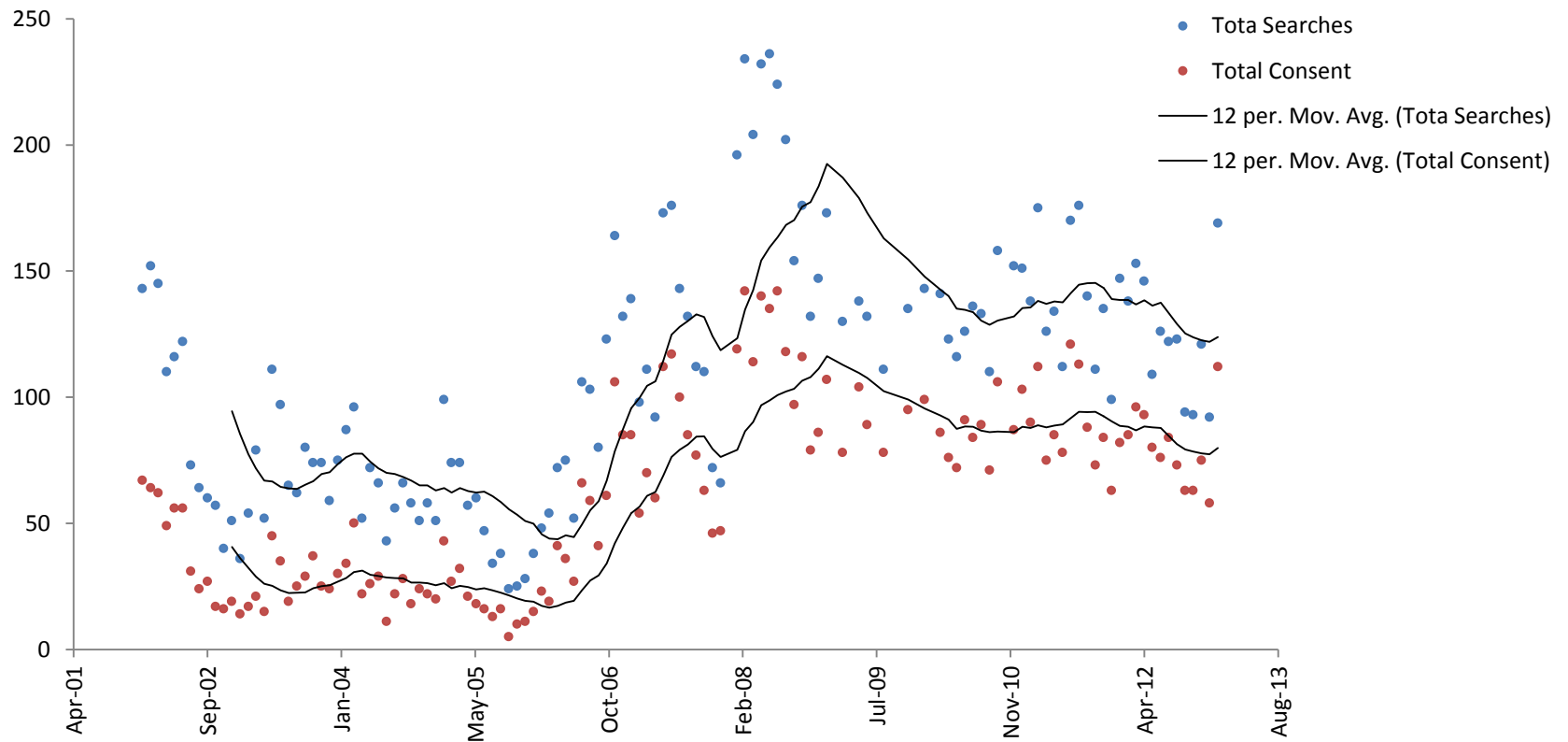
- The majority of searches—nearly 2/3—conducted by DPD officers are reported as “consent searches,” where officers purportedly secured a motorist’s permission to search.

- Black motorists are overwhelmingly the population asked for *consent* to search.

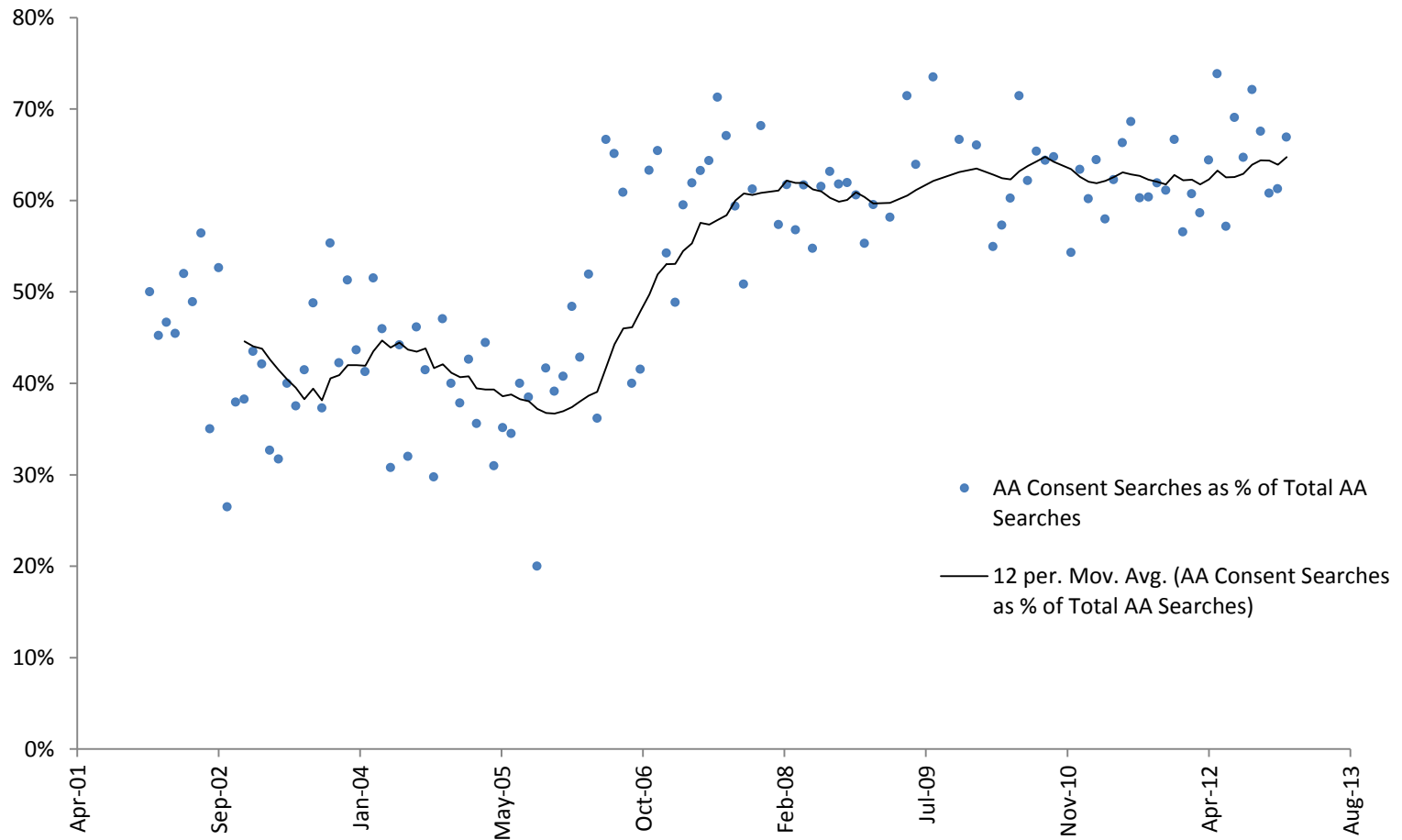
- Black motorists are more than 100% more likely to be consent searched than white motorists.

Although a marked increase in search and consent search rates coincided with the launch of Operation Bull's Eye under former Chief Chalmers, the practice of conducting high-volume searches has been effectively institutionalized under Chief Lopez.

Total Searches and Total Consent Searches (month by month)

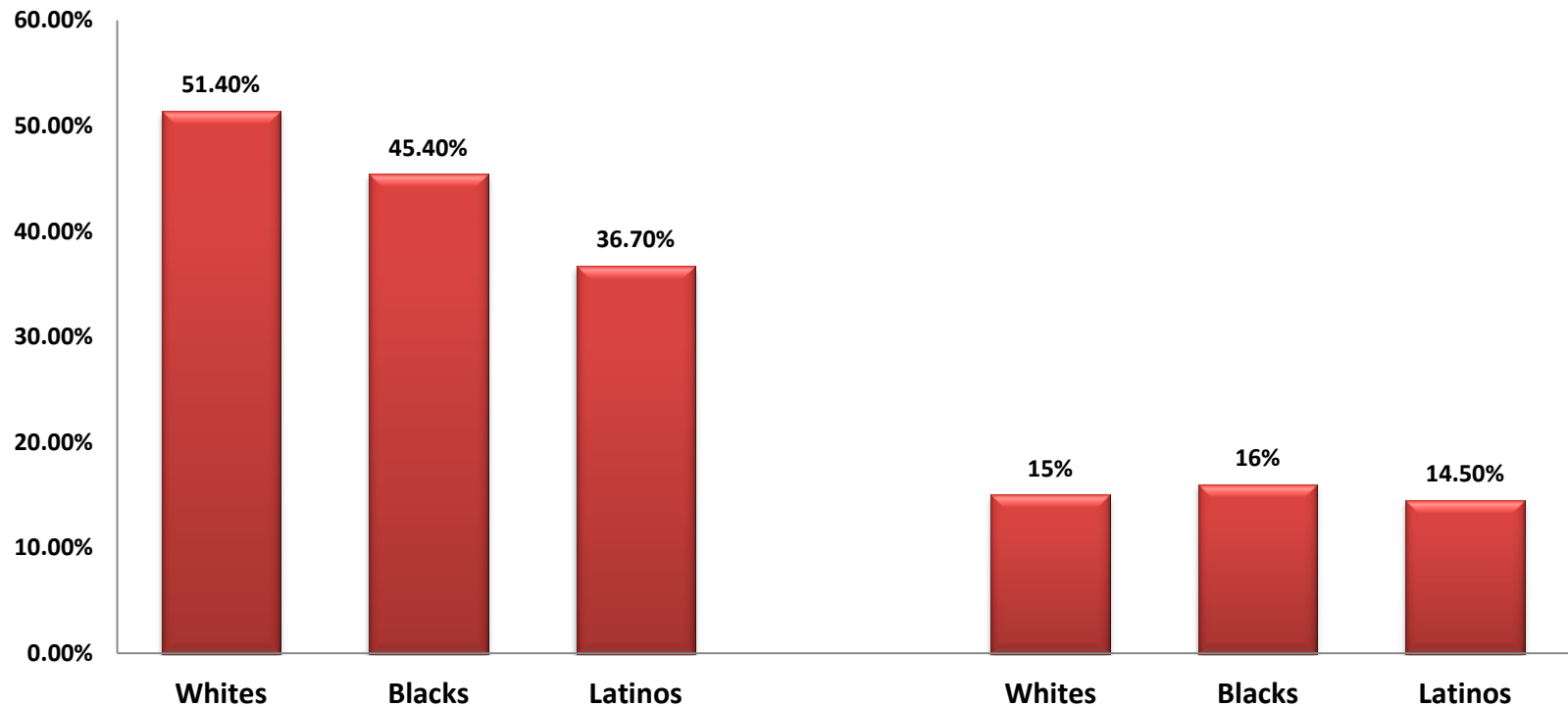


Consent Searches as a Percentage of Total Searches – Black Motorists Only (2001-2013)



Consent search = No probable cause to search; no reasonable suspicion of dangerousness.

In 2013, 80% of DPD vehicle contraband seizures were illegal drugs. However, there is no evidence that African-Americans use or carry illegal drugs at higher rate than whites, such as might justify the highly discriminatory manner in which consent searches have been administered.



Illicit drug use rates: Lifetime v. Last 12 months (2011 data)

More than 2/3 of DPD officer requests to conduct a consent search are reported as being in response to an individual's "suspicious" behavior.

Durham Police Department
Type of Search by Basis of Search
Tuesday, January 21, 2014
Report From 10/1/2009 through 11/30/2013

Type of Search	Erratic/Suspicious Behavior	Observation of Suspected Contraband	Other Official's Information	Suspicious Movement	Informant's Tip	Witness Observation	Total
Consent	2046	696	35	1432	860	62	5131
Probable Cause	456	998	14	391	242	31	2132
Protective Frisk	126	16	4	198	65	5	414
Search Incident to Arrest	80	31	2	196	43	9	361
Search Warrant	4	2	1	4	1	0	12
Total	2712	1743	56	2221	1211	107	8050

SCSJ-documented examples of “suspicious behavior” that has prompted DPD officers to conduct vehicle searches:

Being Black while . . .

- Driving a luxury vehicle
 - Mr. Keith Ragland*
- Driving in a “known drug area”
 - Mr. Reginald Woods*
- Driving in a vehicle with multiple young black males
 - Mr. George Black* 🔊
- Driving with out-of-state plates
 - Rev. Dominique Gilliard*

Because they don't find themselves called to court, it is very difficult for innocent, wrongfully-searched people to vindicate their **right to be free of unreasonable and discriminatory searches.**

Filing a civil suit over an illegal search isn't practical for the vast majority of people who are stopped for no reason and searched on the side of the road because an officer deemed their presence in a neighborhood "suspicious."

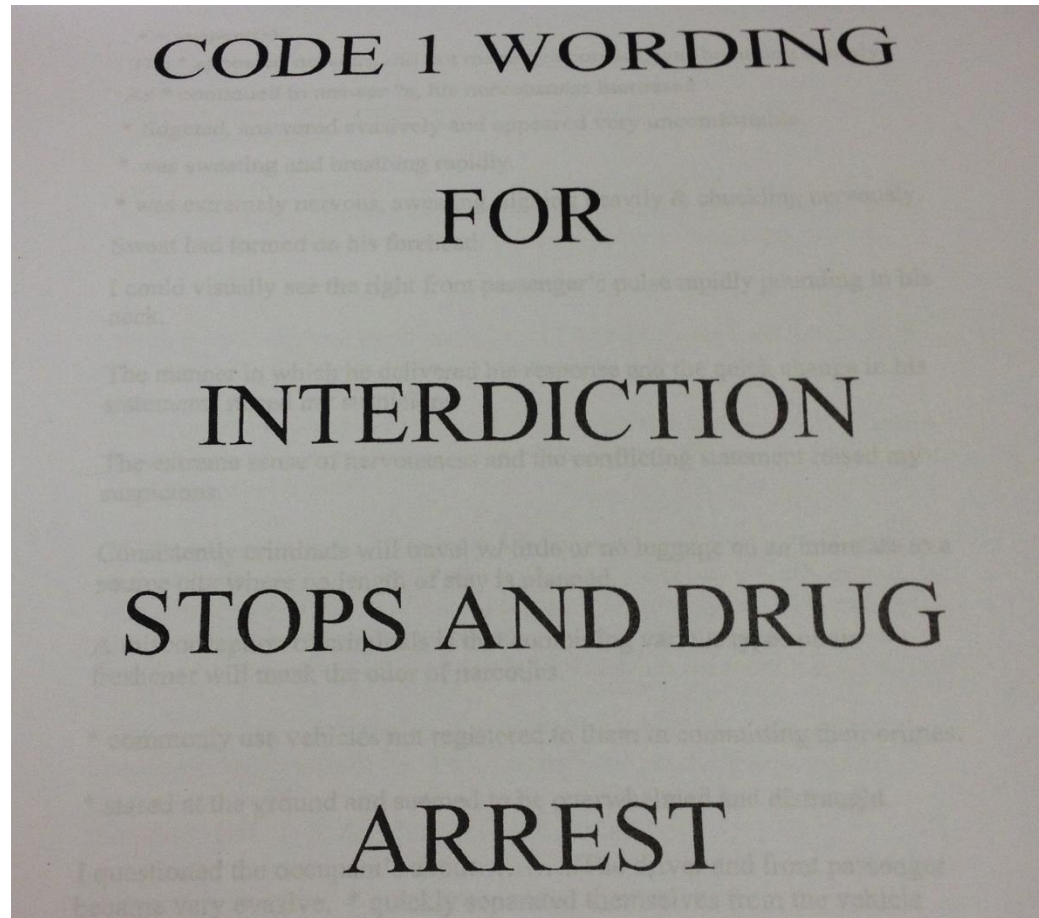
But the courts are clear: These practices are illegal.

“[We] note our concern about the inclination of the Government toward using whatever facts are present, no matter how innocent, as indicia of suspicious activity. . . . [A]n officer . . . must do more than simply label a behavior as ‘suspicious’ to make it so. . . . [W]e are deeply troubled by the way in which the Government attempts to spin . . . largely mundane acts into a web of deception.”



**U.S. v. Foster, 634 F.3d 243,
248-49 (4th Cir. 2011).**

DPD has instructed officers how to write reports in order to retroactively justify borderline stops



* = suspect(s)

The * appeared nervous, did not make eye contact, was breathing heavily.

As * continued to answer ?s, his nervousness increased.

* fidgeted, answered evasively and appeared very uncomfortable.

* was sweating and breathing rapidly.

* was extremely nervous, sweating, sighing heavily & chuckling nervously.

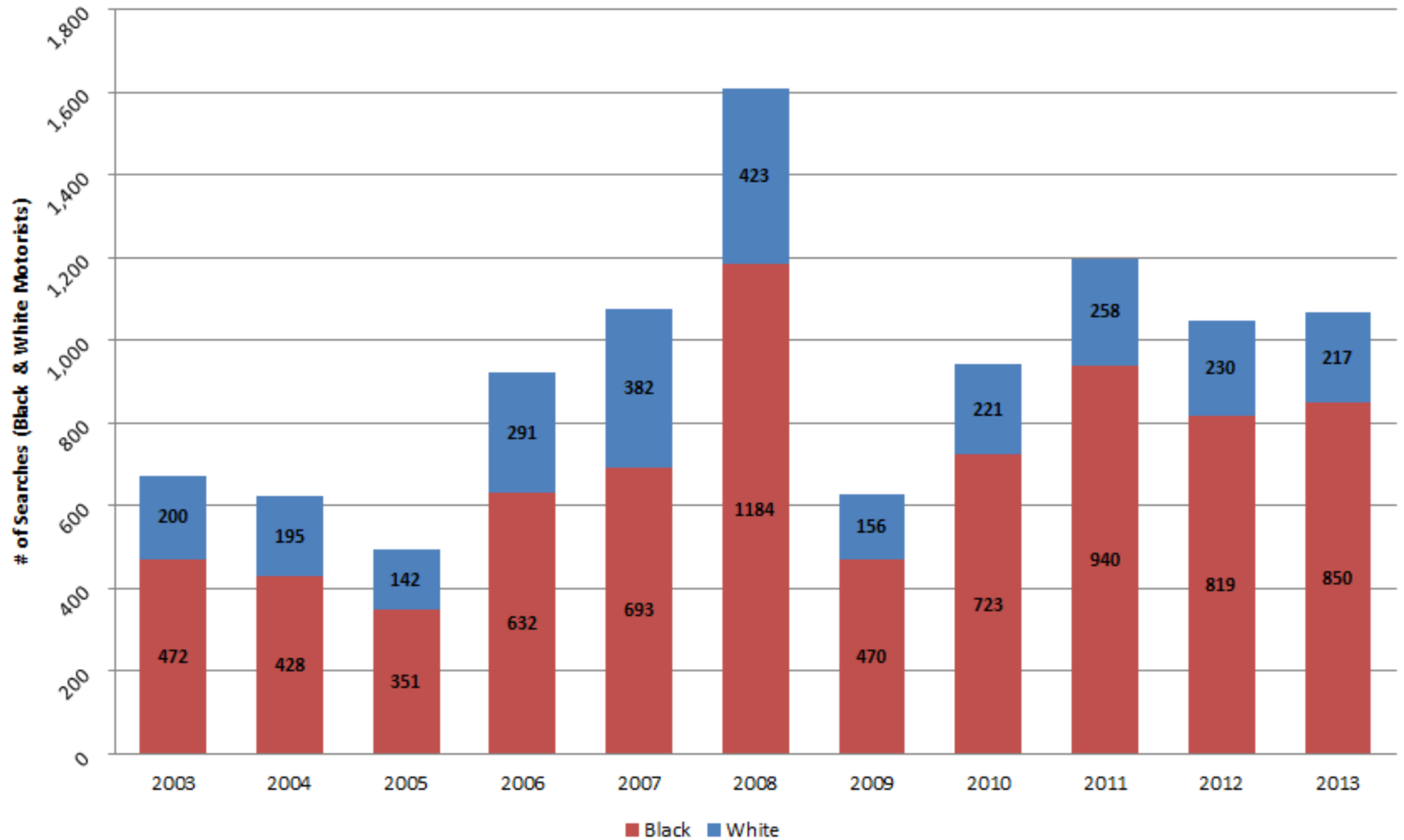
Sweat had formed on his forehead.

I could visually see the right front passenger's pulse rapidly pounding in his neck.

The manner in which he delivered his response and the quick change in his statements raised my suspicions.

**Excerpt from report-writing manual prepared
for Durham Police H.E.A.T. team**

Durham PD Searches Not Resulting in Found Contraband



**The 2013 dataset was missing data for May and December; lines represent projection based on January–April and June–November data.*

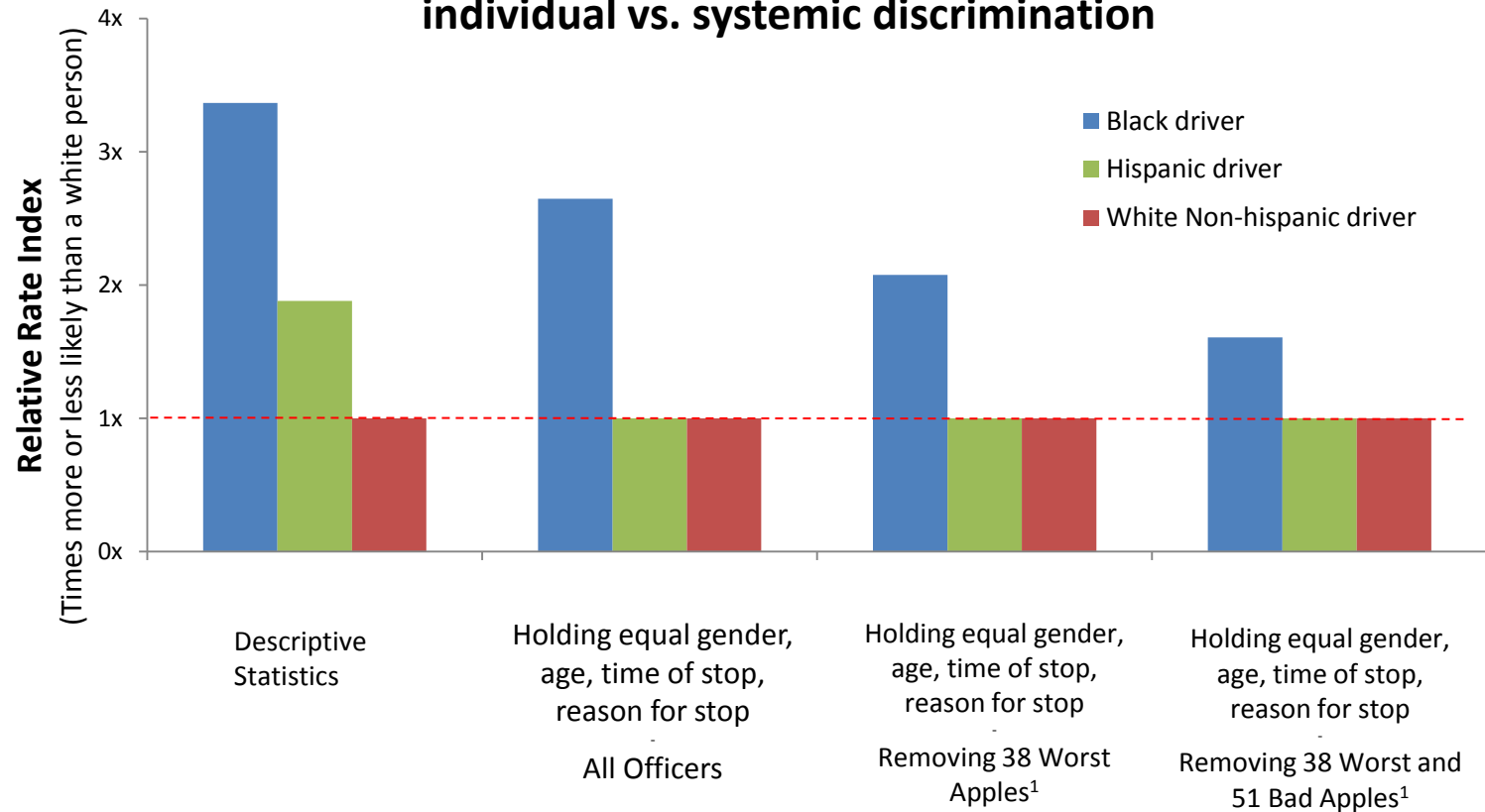
**Durham PD does not dispute the stop-and-search numbers we have presented to HRC,
only the conclusions we have drawn.**

“While we cannot deny the various numerical disparities, we respectfully submit that . . . the overall data, absent more in depth statistical analysis is inconclusive as best.”

--DPD rebuttal to FADE's October
17, 2013 letter to the HRC

Descriptive and multivariate analysis confirm that DPD is much more likely to search black motorists, even after controlling for other factors and removing 89 “Bad Apple” officers from the analysis

Likelihood of DPD conducting a search on a traffic stop 2010 - 2012, by race, with 4 controls, and removing ‘bad apples’ to test for individual vs. systemic discrimination



Notes:

1 - Worst apples are officer who stops blacks at a rate 10% higher than whites or vice versa, ‘bad apples’ stop one race at a rate of 5% higher than the other

2 – See appendix for complete logit regression output

In other words . . .

- We have taken seriously DPD's concerns about the data and have **statistically controlled for age of driver, gender of driver, time of stop, and reason for stop.**
- Even after controlling for these factors, **significant and large racial disparities persist** with respect to officers' decision to search.

A black motorist in Durham is still 165% more likely to be searched pursuant to a motor vehicle stop than a white motorist, even after one accounts for the reason for the stop, the time of the stop, and the age and gender of the driver. (dataset: 2010-2012)



***Even if* Durham PD were to fire the top third of officers responsible for generating the largest racial search disparities, a black motorist would still remain 61% more likely to be searched pursuant to a traffic stop than a white motorist.**

This is a systemic and institutional problem.

Race remains a statistically significant factor in whether or not a Durham motorist is searched, even after one accounts for when and why the stop occurred.

Why are officers conducting so many vehicle searches?

- Vehicle searches are an extremely inefficient way of interdicting weapons and combating violent crime.
- Many, if not most, homicide suspects do not own a vehicle.
- Through the first four months of 2013, officers seized just *nine* weapons in 606 searches—a weapons hit rate of less than 1.5%.
- If weapons seizures can't explain why officers search black motorists at such a high rate, it begs the question if officers are instead searching for **drugs**.

What DPD has said:

- “We don’t place any particular emphasis on drug arrest numbers”
 - DPD’s “FADE Coalition Response” (p. 13)
- “[T]he department doesn’t specifically engage in marijuana enforcement.”
 - DPD’s “FADE Coalition Response” (p. 10)
- “[W]e don’t pursue marijuana arrests”
 - DPD’s “FADE Coalition Response” (p. 13)

Despite its statements to the contrary before HRC, DPD's own documents reveal that it continues to engage in low-level targeted marijuana enforcement and that these efforts occur, overwhelmingly, in the city's black neighborhoods.

Request and Expenditure Fund Report

OCA#: 10-22452 Voucher#: 286 Informant #: 864

Requester

Officer Requesting Funds: D Welch

Date of Request: 7/22/10 Amount of Request: \$ 85.00

Reason for Request: Controlled Buy

Officer Signature: [Signature] Employee# 2756

Authorized By: [Signature]

Suspect: Paula

Total Amount Received-----\$ 85.00

Actual Expenditure:

Cost of Contraband -----(description)-----\$ 10.00

marijuana in the soil

Confidential Source Fee: -----\$ 75.00

Approved request for funds to make an undercover \$10 marijuana buy

DPD has received hundreds of thousands of dollars in federal grant money to engage in targeted drug enforcement efforts, including that aimed at low-level marijuana use.

BJA Justice Assistance Grant Program
Performance Measures by Activity

Activity: State/Local Initiatives

Performance Indicator	OP/OC	DS/SI	Description
Expected change in arrests		Both	This indicator will be paired with the counts of arrests to determine whether the changes in counts reported were in the expected direction or not. This measure is needed because while task force activities may result in lower counts of crimes reported, the targeted intervention may result in higher numbers of arrests.

Although crime rates vary from year to year, DPD nonetheless identified “higher numbers of arrests” as one of its grant “performance measures.”

DPD uses federal grant money to finance an “informant’s fund” used to pay people making low cost undercover drug buys.

Ethridge, Kisha

From: Burwell, Jesse
Sent: Monday, May 03, 2010 1:32 PM
To: Ethridge, Kisha
Cc: Chelette, Deborah; Bjurstrom, Jim
Subject: FW: 2010 JAG Local Solicitation

The Gang Prosecutor and SOD's Informant's fund are the projects to finance with this funding. Do you need anything else?

-----Original Message-----

From: Bjurstrom, Jim
Sent: Monday, May 03, 2010 1:18 PM
To: Russ, Lee; Mihaich, Steve; Burwell, Jesse; Clyburn, Loretta; Lopez, Jose; Allen, Delma
Cc: Chelette, Deborah; Ethridge, Kisha
Subject: Re: 2010 JAG Local Solicitation

I also agree.

Jim Bjurstrom

Deputy Chief
Durham Police Department

We only received the records we requested related to the full *scope* of these undercover drug buys yesterday.

SCSJ is working to quantify the amount of city money that is being used to engage in low-level marijuana buys, but the records are voluminous and it will take time.

Also likely contributing to the racial disparities in DPD's vehicle search rate is the department's use of so-called “**license checkpoints**” to deter and interdict illegal drugs in **predominantly black neighborhoods**.



“The general license checking stations that officers put together If you’ve got a known drug area, . . . that’s a good way to at least deter it—if you put it up in that area.”

--Deputy Chief Marsh
to HRC at third hearing
on racial profiling



*PJ Hairston was stopped at a DPD
“license” checkpoint on Holloway St.*

While the department may be correct that establishing **drug deterrence checkpoints** in certain neighborhoods may be an effective crime control strategy, the practice is **unconstitutional** and has proven racially discriminatory in effect.

“[A]lthough traffic regulation [is] a permissible primary purpose for suspicionless checkpoints, deterrence of drug activity and general drug enforcement [is] not.”

—Mills v. D.C., 571 F.3d 1304, 1312 (D.C. Cir. 2009), cited with approval in United States v. Henson, 351 F. App’x 818, 820 (4th Cir. 2009).

Racial Profiling by Durham PD – Quantifying the Problem

- Durham officers both stop and search black motorists at a rate much higher than the statewide averages.
- Between 2010-12, black motorists were more than three times as likely to be searched as white motorists.
- Even when controlling for time of and reason for stop, blacks were 165% more likely to be searched than whites.

This data likely *underestimates* the true scope of racial profiling in Durham . . .



- **Questionable searches are sometimes not reported to the SBI, as required by North Carolina General Statute § 114-10.01.**
- **Searches are sometimes reported as “consent searches” in circumstances where the searched party never gave consent to search.**
- **Vehicle registration data suggests African-Americans in Durham are underrepresented in the driving population when compared to the overall city population.**

***Durham PD
investigates
racial profiling
complaints as
standard Fourth
Amendment
violations.***



DURHAM POLICE DEPARTMENT
PROFESSIONAL STANDARDS DIVISION-INTERNAL AFFAIRS
505 WEST CHAPEL HILL STREET
DURHAM, NORTH CAROLINA 27701



March 20, 2013

Mr. Keith Ragland
500 Falls Point Dr. Apt. 302
Durham, N.C. 27713

Dear Mr. Ragland,

The Internal Affairs Unit of the Durham Police Department has completed the investigation of your complaint against the following employees, B.K. Frey, J.S. Harris, D.B. Welch, and M.D. Evans. Your complaint was thoroughly investigated and reviewed pursuant to procedures and is concluded as follows:

The allegation that Officers B.K. Frey, J.S. Harris, D.B. Welch, and M.D. Evans searched your vehicle without your consent, while parked at 826 Fayetteville Street on November 13, 2012, is concluded to be sustained. The term "sustained" is defined and used to classify an allegation/complaint that is found to be true.

Complainants not satisfied with the disposition of a Durham Police Department Internal Affairs investigation can request a hearing before the Civilian Police Review Board (see enclosed request form). The request must be made to the City Clerk's Office at 560-4166 within 14 days of receiving this letter. The Civilian Police Review Board may or may not elect to have a hearing after an initial review of the case.

Thank you for your cooperation during this process.

Sincerely,

Captain R.F. Pendergrass
Professional Standards Division

Mr. Reginald Woods
3837 Dunn Ave.
Durham, NC 27713

Dear Mr. Woods,

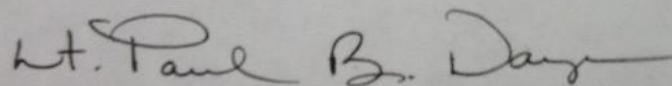
The Internal Affairs Unit of the Durham Police Department has completed the investigation of your complaint against the following employee, R. Garcia. Your complaint was thoroughly investigated and reviewed pursuant to procedures and is concluded as follows:

Officer R. Garcia's actions on July 22, 2008, during the incident involving Mr. Reginald Woods were found to be improper because of the lack of reasonable suspicion for the stop initially. Therefore, Mr. Wood's complaint that he was stopped without cause is concluded to be sustained. *The term "sustained" is defined and used to classify an allegation/complaint that is found to be true.*

Complainants not satisfied with the disposition of a Durham Police Department Internal Affairs investigation can request a hearing before the Civilian Police Review Board (see enclosed request form). The request must be made to the City Clerk's Office at 560-4166 within 14 days of receiving this letter. The Civilian Police Review Board may or may not elect to have a hearing after an initial review of the case.

Thank you for your cooperation during this process.

Sincerely,

A handwritten signature in black ink, reading "Lt. Paul B. Daye". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Lieutenant P. B. Daye
Professional Standards Division, Lieutenant

**Durham has a moral and legal obligation
to address these large racial disparities
in traffic and drug enforcement.**



**SCSJ asks the Durham Human Relations
Commission to endorse the FADE coalition
policy proposals.**

FADE Coalition Recommendations

- **Mandate written authorization for all consent searches**
- **Mandate racial equity training for Durham PD**
- **Make marijuana enforcement the department's lowest law enforcement priority**
- **Mandate periodic review of officer stop data**
- **Strengthen and expand scope of authority for the Durham Civilian Review Board**

Statistical Analysis (Credits)

- Multivariate analysis by Bayard Love, MPP/MBA, with the assistance of the UNC HPDP Biostatistical Support Unit, Duke Sanford School of Public Policy, and Courtney Boen, MPH, UNC Sociology and Carolina Population Center
- Special thanks also to Dr. Frank Baumgartner and Derek Epp, UNC-Chapel Hill Department of Political Science, and Chris Ketchie, Policy Analyst/Researcher, Southern Coalition for Social Justice.
- Any errors are attributable to Ian Mance alone.