

## James V. Cook

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**From:** James V. Cook  
**Sent:** Friday, January 28, 2011 11:52 AM  
**To:** Michael P. Spellman Esq. (mspellman@sniffenlaw.com); Billy Hendrix (Billy.Hendrix@talgov.com); Ginger Barry (gbarry@broadandcassel.com)  
**Subject:** Denson v. COT, Patricia Warren report  
**Attachments:** DensonR Warren opinion.pdf

Here is the Patricia Warren rebuttal opinion on racial profiling in the Denson case. You already have her vitae. Let me know if we are lacking anything.

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A Civil Rights Practice

Patricia Y. Warren, PhD  
Racial Profiling Scholar  
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January 26, 2011

James V. Cook, Esq.  
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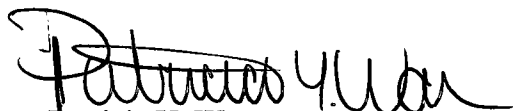
Per your request, I have reviewed the 2007-2009 annual reports issued by the Tallahassee Police Department (TPD), TPD's General Orders Manual (revised 8/30/2010), Expert witness report authored by Mr. Robert Pusins, Denson's Lawsuit Complaint, the Internal Affairs Report (I.I.09-12) and TPD's Incident Report (Case #00-09-006797) in order to evaluate the probability of TPD's engagement in racially biased policing. I have carefully evaluated the documentation and have issued my opinion in the statement below.

Although I have not served as an expert witness in court, I have published extensively on the topic and my work has appeared in some of the top journals in the field of criminology. In addition, I was a part of a team of scholars in North Carolina to assess racial profiling among the North Carolina Highway Patrol. In addition, I served as a consultant for the American Civil Liberties Union of North Carolina as well as the Impact Fund in order to identify the best strategies for studying racial profiling.

The opinions expressed in this report are the undersigned and I reserve the right to modify any and all opinions expressed in this report should new evidence or information become available.

Please note that my fee schedule is also enclosed with this document.

Sincerely,

  
Patricia Y. Warren

Patricia Y. Warren, PhD

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**RE: Denson v. City of Tallahassee**

Dear Attorney Cook:

Racial profiling, a term used to describe police organizations targeting or stopping an individual based primarily on race or ethnicity, rather than on individualized suspicion became politicized in the late 1990s when police departments came under scrutiny for disproportionately targeting minority drivers. As a result of the numerous complaints launched against law enforcement agencies across the US, many police jurisdictions began collecting data to assess the extent and nature of racially biased policing within their jurisdiction. The purposes of the data are to ensure that officers are not violating civil rights by stopping drivers because of their race and/or ethnicity.

In an effort to assess their enforcement practices, The Tallahassee Police Department (TPD) has examined their enforcement data and I have reviewed their annual reports from 2007 – 2009. TPD has also secured a police expert, Mr. Robert Pusins in order to assess if actions of their department are consistent with the operating procedures as outlined in TPD's operating manual. In Mr. Pusins' report he notes that in his professional opinion TPD does not "permit racial profiling or disparate treatment of African Americans." He further argues that in the Tallahassee Police Department's (TPD) Standard Operating Procedures Manual, the department specifically prohibits any enforcement action on the basis of race, gender, sexual orientation, religion, creed or national origin. While, their procedural manual may formally prohibit racially biased policing, further investigation is warranted because based upon the annual reports produced by TPD, there are significant racial differences in stops and searches and I have highlighted these pronounced disparities below.

First, in the 2009 annual report, stops of African American drivers increased from 7,961 in 2007 to 10,439 in 2009. The department suggests that the increased number of stops in 2009 results from higher police enforcement in areas with higher rates of crime and incivilities. If the increased enforcement is not driven by a racialized process then the

higher number of stops should also yield higher rates of arrest and citations among African American drivers because they are more frequently violating the law, which is what precipitated the increased number of stops. The point here is that racially biased policing is an inefficient way to enforce the law because individuals will be stopped at a rate that is not proportional to their rate of offending. There is no evidence from Mr. Pusins' report that he examined these issues or any enforcement data produced by TPD before concluding that racial profiling is not a problem for this policing organization. Moreover, Pusins acknowledges reviewing a list of documents in preparation for his report however none of the documents include the Tallahassee Police Department's stop and search data. This severely impairs his ability to fully assess the scope of TPD's policing practices, especially as it relates to racially biased policing.

Moreover, African American drivers are approximately two times as likely to be subjected to a consent search compared to White drivers. These odds are most pronounced for Black males because they are subjected to a consent search approximately two to four times the rate of White males. These numbers are particularly surprising given the fact there is no evidence presented in TPD's annual reports from 2007-2009 that Black males are offending at higher rates. I am emphasizing the relevance of consent searches because they are discretionary searches that result from police suspicion that the individual is engaged in illegal activity. Prior research assessing racial profiling has identified consent searches as the type of search most likely to exhibit racial bias (see Perisco and Todd 2008; Smith et al. 2003; Harris 2002). These searches are very different than probable cause searches because probable cause searches require the officer to have reasonable belief that the individual is more likely than not engaged in criminal activity which justifies the search.

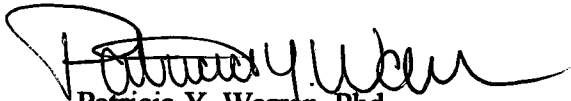
It is important to note here that the annual reports produced by TPD do not present any information about the probability of finding contraband. Since African Americans are at least two times as likely as Whites to be subjected to a consent search, then the probability of seizing contraband should be approximately equivalent. Otherwise, it potentially suggests that the officers are using some other non-legal mechanism (i.e., race, gender) for deciding whom to subject to a consent search. The department has failed to present these data therefore further investigation is warranted.

Although written warnings are not discussed in TPD's annual reports they are important toward understanding the practice of racial profiling because they can be used as a pretextual stop in order to investigate if the individual is involved in criminal activity. In the North Carolina Highway Traffic Study (Smith et al. 2003) the authors found more pronounced racial disparity in written warnings than in citations. The authors dually note that while it may be evidence of more lenient treatment it can also be evidence that the officers are stopping vehicles and giving them warnings as a pretext to looking for signs of contraband or other illegal activity.

After careful evaluations of TPD's annual report as well as the report produced by their expert witness, I must conclude that it is probable that the officers of the Tallahassee Police Department are engaging in racial profiling. In order to more fully understand and

substantiate claims of bias a more thorough and complicit investigation is strongly encouraged. This can be accomplished by a systematic evaluation of all of TPD's enforcement actions. This includes stops, written warnings, citations, searches and use of force. Without systematically examining these enforcement data, conclusive statements cannot be made about the department's adherence to their own operating procedures. Although Mr. Pusins report suggests that the practices of TPD officers are consistent with the policies outlined in their General Orders, this claim cannot be fully substantiated without more systemic analysis of the enforcement practices of TPD.

Sincerely,



Patricia Y. Warren, Phd

## References

- Persico, Nicola and Petra Todd. 2008. The Hit Rates for Racial Bias in Motor Vehicle Searches. *Justice Quarterly*, 25(1): 37-53.
- Harris, David. 2002. *Profiles in Injustice: Why Racial Profiling Cannot Work*. New York: New Press.
- Smith, William R., Donald Tomaskovic-Devey, Matthew Zingraff, H. Marcinda Mason, Patricia Y. Warren, Cynthia Pfaff Wright, Harvey McMurray, and C. Robert Felon. 2003. *The North Carolina Highway Traffic Study. Final Report to the National Institute of Justice*. Washington, DC: U.S. Department of Justice.

## SCHOLARLY PUBLICATIONS

- 2010 Like, Toya and Patricia Y. Warren. (Forthcoming) "Routine Activities and Female Victimization: Race and Ethnicity at Its Intersection." *Violence and Victims*.
- 2010 Warren, Patricia. Ted Chiricos, William Bales. (Forthcoming) "The Imprisonment Penalty for Young Black and Hispanic Males: A Crime-Specific Analysis." *Journal of Research in Crime and Delinquency*.
- 2010 Warren, Patricia. (Forthcoming) "Inequality by Design: The Connection between Race, Crime, Victimization and Social Policy." *Criminology and Public Policy*.
- 2010 Warren, Patricia. (Forthcoming) "The Continuing Significance of Race: An Analysis of Trust across Two Levels of Policing." *Social Science Quarterly*. {December 2010 publication date}
- 2009 Warren, Patricia and Donald Tomaskovic-Devey. (2009). "Racial Profiling and Searches: Did the Politics of Racial Profiling Change Officer Behavior?" *Criminology and Public Policy*, 2:343-370.
- 2009 Warren, Patricia and Amy Farrell. "The Environmental Context of Racial Profiling." *The Annals of the American Academy of Political and Social Science*, 623(1):52-63.
- 2009 Tomaskovic-Devey, Donald and Patricia Y. Warren. 2009. "Racial Profiling: Generating and Containing Racial Bias." *Context*, 8(2), 34-39.
- 2008 Patricia Y. Warren. "Perceptions of Police Disrespect During Vehicle Stops: A Race-Based Analysis." *Crime and Delinquency*. {Printed Online first May 9, 2008}
- 2006 Patricia Y. Warren, Donald, Tomaskovic-Devey, William R. Smith, Matthew Zingraff, Marcinda Mason. "Driving While Black: Bias Processes and Racial Disparity in Stops." *Criminology*, 44(3), 709-736.

*Reprinted* in Rice, Stephen K. and Michael D. White (Eds). *Race, Ethnicity and Policing: New and Essential Readings*. Forthcoming (March 2010). New York University Press.

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**FEE SCHEDULE**

Case Review/Documentation Review	\$125/hour
Court Deposition and Testimony	\$350 retainer + \$350/hour (2 hour minimum) or any part of an hour. Payments are due the day of court/deposition unless other arrangements have been made.

Should this case require court testimony a retainer in the amount of \$350 is required prior to any additional work beginning.

I do not charge for normal telephone conversations.

I charge a minimum of 2 examination hours on any case that proceeds to court.

Sincerely,

Patricia Y. Warren  
TIN 240-41-0548



## CURRICULUM VITAE

### Patricia Yvonne Warren

College of Criminology and Criminal Justice  
The Florida State University  
634 West Call Street  
Tallahassee, Florida 32306  
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### EDUCATION

- 2005 Ph.D., North Carolina State University, Department of Sociology and Anthropology, Raleigh, North Carolina.
- 1999 M.S., North Carolina Central University, Criminal Justice Department  
Durham, North Carolina
- 1994 B.S., North Carolina Central University, Criminal Justice Department, Durham, North Carolina

### DOCTORAL DISSERTATION

'Race, Class and Trust: Perceptions of the Police in North Carolina.'

Chair: Professor Donald Tomaskovic-Devey. Committee Members: Dr. Matthew Zingraff, Dr. William Smith and Dr. Melvin Thomas.

### PROFESSIONAL EXPERIENCE

- 2006-Present Assistant Professor, College of Criminology and Criminal Justice, Florida State University
- 2005–2006 Assistant Professor, Department of Sociology, University Massachusetts-Amherst
- 2004-2005 Research Associate, Research Triangle Institute, Research Triangle Park, North Carolina

### PUBLICATION(S)

#### Articles

- 2010 Like, Toya and **Patricia Y. Warren**. (*Forthcoming*) "Routine Activities and Female Victimization: Race and Ethnicity at Its Intersection." *Violence and Victims*.
- 2010 **Warren, Patricia**. Ted Chiricos, William Bales. (*Forthcoming*) "The Imprisonment Penalty for Young Black and Hispanic Males: A Crime-Specific Analysis." *Journal of Research in Crime and Delinquency*.
- 2010 **Warren, Patricia**. (*Forthcoming*) "Inequality by Design: The Connection between Race, Crime, Victimization and Social Policy." *Criminology and Public Policy*.
- 2010 **Warren, Patricia**. (*Forthcoming*) "The Continuing Significance of Race: An Analysis of Trust across Two Levels of Policing." *Social Science Quarterly*.  
{December 2010 publication date}

- 2009 **Warren, Patricia** and Donald Tomaskovic-Devey. (2009). "Racial Profiling and Searches: Did the Politics of Racial Profiling Change Officer Behavior?" *Criminology and Public Policy*, 2:343-370.
- 2009 **Warren, Patricia** and Amy Farrell. "The Environmental Context of Racial Profiling." *The Annals of the American Academy of Political and Social Science*, 623(1):52-63.
- 2009 Tomaskovic-Devey, Donald and **Patricia Y. Warren**. 2009. "Racial Profiling: Generating and Containing Racial Bias." *Context*, 8(2), 34-39.
- 2008 **Patricia Y. Warren**. "Perceptions of Police Disrespect During Vehicle Stops: A Race-Based Analysis." *Crime and Delinquency*. {Printed Online first May 9, 2008}
- 2006 **Patricia Y. Warren**, Donald, Tomaskovic-Devey, William R. Smith, Matthew Zingraff, Marcinda Mason. "Driving While Black: Bias Processes and Racial Disparity in Stops." *Criminology*, 44(3), 709-736.

*Reprinted* in Rice, Stephen K. and Michael D. White (Eds). *Race, Ethnicity and Policing: New and Essential Readings*. Forthcoming (March 2010). New York University Press.

#### **Encyclopedia Entries/Book Reviews**

- 2009 Patricia Y. Warren. "Book Review of Race and Policing in America: Conflict and Reform by Ronald Weitzer and Steven Tuch. *Social Forces* 87(2), 1141-1143.
- 2009 Bacon, Sarah and Patricia Y. Warren. (*Forthcoming*) "Total Institutions and Their Impact on Identity Construction." In Parillo, Vincent (ed.) Sage Encyclopedia of Social Problems.
- 2008 **Patricia Y. Warren** and Thomas Calhoun. "Racial Profiling." In Schaefer, Richard T. Encyclopedia of Race, Ethnicity, and Society. Los Angeles, CA: Sage Publications. Vol 1, pages 1111-1113.

#### **Papers Under Review**

- 2010 Cochran, Joshua and **Patricia Y. Warren**. "The Salience of Race in Understanding Procedural and Distributive Justice."\*\*<sup>1</sup>

#### **Paper(s) In Progress**

- 2010 **Warren, Patricia Y.**, Eric Stewart and Donald Tomaskovic-Devey, and Marc Gertz. "White's Preferences for Segregation: An Analysis of the Racial Typification of Crime."
- 2010 **Warren, Patricia Y.**, Josh Cochran and Ryan Shields. "Racial Threat and Female Offenders: An Analysis of Sentencing Departures."\*\*<sup>2</sup>

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<sup>1</sup> \*\* denotes collaboration with a student.

<sup>2</sup> \*\* denotes collaboration with a student(s).

**PRESENTATION(S)**

- 2009 Warren, Patricia Y. Racial Disparity and Officer Race: In Analysis of Police Search Practices. American Society of Criminology Annual Meeting.
- 2008 Warren, Patricia Y. What Social Science Can Offer Re Proof of Systemic Discrimination. Open Society Institute Summit on Racial Profiling.
- 2007 Warren, Patricia Y., William Bales. Who Goes to Prison and Who Stays Out. American Society of Criminology Annual Meeting.
- 2007 Warren, Patricia Y. Racial Profiling: Myths, Challenges and Future Directions. Orange County Public Defender Conference on Racial Profiling. Orlando, FL.
- 2006 Warren, Patricia Y. "Race, Identity and Perceptions of the Police: Is Race Enough?" American Society of Criminology.
- 2004 Zingraff, Matthew, Patricia Y. Warren. 'Racial Disparity in North Carolina Highway Patrol Searches: The North Carolina Highway Traffic Study', Northeastern University Conference on Confronting Racial Profiling in the 21<sup>st</sup> Century: New Challenges and Implications for Racial Justice.

**GRANTS/AWARDS**

- 2010 Mcknight Junior Faculty Development Fellowship, (One year research fellowship)
- 2008 "Crime and Justice Summer Institute: Broadening Perspectives and Participation." Criminal Justice Research Center, Ohio State University and the National Science Foundation, July 7-25, 2008.
- 2007 Florida State University, First Year Assistant Professor Award (\$16,000)

**GRADUATE STUDENT COMMITTEES****Masters**

- Catie Clark: Area Paper Committee, Florida State University (Completed July, 2010)
- Brian McManus Area Paper Committee, Florida State University (Completed August, 2010)
- Cresean Hughes Master's Thesis Committee, Florida State University (In progress, 2010)

**ACADEMIC INTERESTS**

Race, Crime and Social Control  
 Racial Bias in Sentencing  
 Race and Class Inequalities  
 Racial Profiling

**COURSES TAUGHT**

Criminology (Undergraduate 2006-present)  
 Law, Society and Administration of Justice (Undergraduate Fall 2006- Spring 2007)  
 Race/Ethnicity, Crime & Social Control {Graduate (Fall 2007 and 2009) and Undergraduate (Fall 2008-present)}

**DIRECTED INDIVIDUAL STUDY****Undergraduate**

(Spring 2009) Cain-Davis, Tanae. *Race and Recidivism: The Importance of Re-entry.*

(Spring 2009) Johnson, Laquisha. *Understanding the Connection between Crime and Segregation in the United States.*

(Spring 2009) Martin, Claude. *An Examination of Race and Prosecutorial Discretion.*

(Fall 2007) Allen, Raleigh H. *Race and Gender: An Examination of Sentencing Disparity in the America Justice System.*

**Graduate**

(Spring 2010) Shields, Ryan. *Race and Violent Crimes: A Comparison Between Homicide and Suicide.*

(Spring 2010) Cochran, Joshua. *Race and Policing: Does Officer Race Influence Citizen's Perceptions of Police Encounters?*

(Spring 2008) Hogan, Karen. *Race and Cognition: Can It Help Us Understand Racially Biased Policing Practices?*

(Spring 2008) Hogan, Karen. *Race and Policing: Do Policing Racially Profile Minority Drivers in North Carolina?*

**SUPERVISED TEACHING**

(Fall 2007) Hogan, Karen

(Fall 2009) Ryan Shields

**SERVICE TO DISCIPLINE**

2010-present Editorial Advisory Board, *Criminology and Public Policy*

2010-2011 Minority Affairs Committee, American Society of Criminology

2010-2011 Member of Crime, Law and Deviance graduate Student Paper Award Committee, American Sociological Association

2007-present Member of Cox-Johnson-Frazier Award Selection Committee, American Sociological Association

2007-2009 Chair, Women of Color Scholarship Award Committee, Sociologists for Women in Society

**Manuscript Reviewer**

Criminology

Justice Quarterly

Crime and Delinquency

Journal of Quantitative Criminology

Criminology and Public Policy

Gender and Society

Journal of Criminal Justice

Social Problems

Police Quarterly

Women in Criminal Justice

**DEPARTMENTAL SERVICE**

2007-present, Theory Comprehensive Examination Committee

2007-present, Scholarship Committee

2009-present, Peer Merit Committee

2006-2008, Recruitment Committee

**PROFESSIONAL ASSOCIATION MEMBERSHIPS:**

American Society of Criminologists

American Sociological Association

Sociologists for Women in Society