A ANALYSIS OF RACIAL PROFILING AND THE CONSEQUENCES OF PROFILING BASED UPON RACE

EASTERN MICHIGAN UNIVERSITY SCHOOL OF POLICE STAFF AND COMMAND

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ABSTRACT

This research paper will define racial profiling, give the historical origins of racial profiling, and list the consequences of racial profiling. Racial profiling is a national problem that has reached public attention. Racial profiling has always existed but it was just labeled as racism. The term racial profiling was created over the past decade.

The purpose of this research paper is to provide the reader with reasons why racial profiling must be rejected as an acceptable form of profiling criminal behavior. Racial profiling makes the assumption that minorities are more likely to engage in criminal behavior. The courts have ruled that law enforcement agencies can use profiling to detect criminal behavior but race and ethnic origin can’t be used as the main basis of the profiling criminal behavior.

This paper research question is: whether racial profiling is legal as a way of profiling criminal activity? The research that was gathered on racial profiling was
collected from books, research papers, and a scenario that was given to the Flint Police Department.

The results of the research that was obtained provided evidence that law enforcement agencies should not tolerate racial profiling. Racial profiling must be rejected because it is illegal and there are civil penalties awarded to the victims of racial profiling. Racial profiling leads to a lack of trust among law enforcement and the community.

The recommendations for law enforcement agencies are to prohibit racial profiling. Law enforcement agencies can accomplish this mission by: training employees to be sensitive to different races of people, data collection analysis and disciplinary action for law enforcement officers who engage in racial profiling.
# TABLE OF CONTENTS

ABSTRACT .................................................................................................................................................. 2
TABLE OF CONTENTS ............................................................................................................................. 4
INTRODUCTION ........................................................................................................................................ 5
BACKGROUND AND SIGNIFICANCE ................................................................................................... 7
LITERATURE REVIEW .......................................................................................................................... 13
PROCEDURES .......................................................................................................................................... 18
RESULTS .................................................................................................................................................... 19
DISCUSSION .............................................................................................................................................. 20
RECOMMENDATIONS ........................................................................................................................... 26
REFERENCES ........................................................................................................................................... 34
INTRODUCTION

There are many challenges facing current administrators and future administrators of law enforcement agencies. An important problem facing law enforcement administrators is to address and solve the problem of racial profiling that many law enforcement officers use as a way of profiling criminal behavior.

Deborah Ramirez (2000) defined racial profiling as: “any police-initiated action that relies on the race, ethnicity or national origin of an individual rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity” (p.20).

Racial Profiling must be rejected as an acceptable way of profiling criminal behavior. Racial Profiling is illegal because it violates the rights of the people that are granted by the U.S. Constitution. Racial profiling has led to civil penalties and consent orders for many law enforcement agencies.
The U.S Constitution was written to protect the people from an abusive government. The U.S Constitution is a legal document that is the supreme law of the land. Jordan (1999) wrote that “the objective of the writers of the U.S. Constitution was to outline the structure of a new, strong central government after the years of weakness and chaos resulting from the preexisting Articles of Confederation which loosely bounded the colonies together” (p.27).

Racial profiling has received media attention, public scrutiny and has led to research on the cause of racial profiling, the effects of racial profiling and solutions to eliminate racial profiling. The purpose of this research paper to provide factual information that racial profiling must be rejected as an acceptable way of profiling criminal activity.
BACKGROUND AND SIGNIFICANCE

A profile according to Fredrickson and Siljander (2002) can be defined as “a short but descriptive biography describing the most outstanding characteristics of a subject” (p. 15). Profiling is a tactic that law enforcement officers use to detect criminal activity.

Racial profiling originated from criminal profiling. Mary Sell (2003) wrote: “Before you solve a problem you have to understand it”. Therefore, it is necessary to explain criminal profiling before explaining racial profiling.

Harris (2002) defines criminal profiling as “law enforcement personnel that use characteristics associated with either a particular crime or group of crime to develop a profile of someone likely to engage in illicit behavior” (p.16) If the profile characteristics match the criminal behavior then there is a belief that the person who matches the profile will engage in the predicted criminal behavior.

Criminal profiling has a historical origin that is related to the term modus operandi. Fredrickson and Siljander (2002) wrote “criminal profiling is possible because criminal tend to establish a modus operandi” (p. 18). Modus Operandi is a Latin Term which loosely
translates to method of operation. Fredrickson and Siljander (2002) stated that a M.O. “creates a profile reflecting a method of criminal behavior sufficiently distinctive that investigators are able to deduce that the same person or group committed two or more crimes” (p. 18). Profiling has assisted law enforcement agencies to profile the drug courier and serial killer.

Fredrickson and Siljander (2002) provided information that the M.O. system in the United States was created by August Vollmer who was Chief of the Berkeley, California police department. Chief Vollmer stated:

“From old investigators, long experienced in the investigation of crime, we have learned that nearly all professional criminals have their specialty and seldom depart there from. For example, the robber does not stop to commit burglary; the burglar believes that check passers are fools and take too many chances; while the check passer cannot understand why the robber risks life and liberty in a holdup when it is easier and less risky to obtain money by the use of wits and worthless check. Not only do they specialize in particular crimes, but within the ranks of specialists we find differences
in their mode of attack which are useful hints to careful investigators” (p. 18).

The legal issue of law enforcement profiling criminal activity came to the US Supreme Court in the 1989 case U.S. vs. Sokolow. The US Supreme Court ruled that profiles could be used as a basis to detain someone for investigation. Harris (2002) stated that in the Sokolow case law enforcement stopped Sokolow at the Honolulu airport because he fit a profile:

“(1) he paid for his ticket with a large amount of cash; (2) he traveled under a name different from the one under which his telephone was listed; (3) he made a round-trip to Miami, a so-called drug source city; (4) though the round trip took twenty hours, he stayed in Miami only forty eight hours; (5) he appeared nervous; (6) he did not check in any luggage” (p. 20).

People who engage in criminal activity on the streets usually display some type of indicator of a criminal behavior. Fredrickson and Siljander (2002) created some indicators that can be used to profile a criminal on the streets. These indicators are:

“usually nervous, appears to be casing a location, conceals an unknown object, is looking
around suspiciously, is wearing some type of disguise or clothing to obscure physical appearance, is at or near the scene of a crime, is conspicuously fleeing for an unknown reason, for some articulable reason fits the profile of a criminal, abandons property for no apparent reason, is carrying what could be construed to be a burglary tool such as a large screwdriver or pry bar” (p.34).

Harris (2002) defined racial profiling as a “government policy that treats African Americans, Hispanics, and other minority groups as criminal suspects on the assumption that doing so will increase the odds of catching criminals.”(p.11). According to Fredrickson and Siljander (2002) racial profiling can be defined as “a term that is generally understood to mean enforcement action on the part of police officers that is motivated more by racial bias than by any reasonable suspicion or probable cause that may exist under the circumstances” (p. 15).

The term driving while black was created because Blacks and other minorities are profiled racially on the highways, streets and shopping malls. Tracey Maclin a professor at Boston University School of Law said:
“The problem of driving while black can trace its historical roots to a time in early American society when court officials in cities like Philadelphia permitted constables and ordinary citizens the right to take up all black persons seen gadding abroad without their master’s permission. This means it transcends law enforcement and includes everyone people like store clerks, bank tellers, security guards, and even taxi drivers”.

Racial profiling is a racial bias that can be traced back to racism. Paul Kriese (2003) associate professor at Indiana University East said “Racism is here because it’s part of our structural history. Racial profiling origins can be traced back to slavery and Jim Crow laws which discriminated against minorities.

California, Connecticut, Massachusetts, Missouri, North Carolina, Oklahoma, Rhode Island, Tennessee, and Washington have created legislation prohibiting racial profiling.

It is not difficult to understand why many law enforcement agencies have not adopted policies to eliminate racial profiling. Feagin and McKinney wrote:
“Most white Americans and many other non-black Americans insist on denying the reality of anti-Black attitudes and discriminatory practices in the contemporary United States. One reason for this is that most whites’ lives are racially segregated, and thus they have few substantial or enduring contacts with black Americans. Many, if not most, whites never become close enough to their few black acquaintances to have candid and consequential discussions about the racism these acquaintances face. Whites may see, in their workplace or in the media, some African Americans discussing personal experiences with racism. However, most whites seem to view such discussions as black paranoia, playing the race card or blacks always complaining” (p. 10).

Racial bias can occur within the same race or within different races. There exist minority law enforcement officers who display distrust and fear toward minorities.

O’Reilly (2002) introduced three subcategories of concerns of police misconduct that relate to racial profiling. The three subcategories of concern O’Reilly list are the areas in which minorities typically experience when
they are the victims of racial profiling. O’Reilly (2002) stated that the three subcategories of concern are:

1. Traffic stops are apparently the most recent controversy, but are relatively the least offensive police tactic;
2. Vehicle search practices at the time of traffic stops are viewed as insensitive to drivers’ feelings, intrusive and offensive; and
3. Force or threats of force in the examination and questioning of drivers and passengers is the most vigorously criticized aspect of the whole topic” (p. 48).

LITERATURE REVIEW

Racial profiling is illegal. Title 18, U.S.C., Section 242 states:

“it is a crime for any person acting under color of law statute, ordinance, regulation or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or
immunities secured or protected by the Constitution and laws of the United States. This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment for citizens on account of such person being an alien or by reason of his/her race”.

The color of law doctrine simply means that the person who is performing a law enforcement duty received his or her power from a governmental agency. Penalties of violating Title 18, U.S.C., Section 242 range from a fine to imprisonment.

The Fourth Amendment of the United States Constitution protects the people from unreasonable searches and seizures. The fourth amendment states:

“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation, and
particularly describing the place to be searched, and the persons to be seized” (p. 46).

Traffic Stops are considered to be a seizure of a person and considered appropriate for the purpose of investigating a traffic violation. A law enforcement officer that conducts a traffic stop without cause and based solely upon the race of the driver is a violation of the fourth amendment.

The Fourteenth Amendment to the U.S. Constitution provides that the government must grant the people with due process. Due Process can be defined as fairness. Fairness under the due process doctrine means that the people have the right to be treated fairly by the government.

The fourteenth amendment states:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (p.49).

A law enforcement agency or state that decides to create a law or policy that endorses the use of racial
profiling violates the rights of the people under the fourteenth amendment.

Racial Profiling destroys the community’s relationship with law enforcement. Over the past decade a new approach in law enforcement has been developed. This new approach in law enforcement has been labeled community oriented policing. O’Reilly (2002) defines community policing as “the concept of assigning designated police officers to be a liaison to leaders within designated neighborhoods, and equipping the better trained officers with the extra time or resources to reach out for assistance to building departments, welfare offices, fire inspectors, etc” (p.209).

O’Reilly (2002) stated that “traffic stops which are conducted solely on race causes African-Americans or Hispanics to distrust the police. Without trust, the people in the community will not cooperate or participate to halt crime” (p. 210).

Racial profiling hurts society as a whole and it is illegal. Racial profiling has lead to various litigation cases. Section 1983 of the Civil Rights Act allows “recovery of the damages suffered as a result of the unconstitutional search or seizure”. The problem with section 1983 of the Civil Rights act is that the plaintiff
must prove that an injury or damage was caused by an unlawful custom.

Racial profiling litigation cases are often difficult for the plaintiff to prove. O’Reilly (2002) lists the elements of section 1983 case which have been described by a plaintiff’s lawyer who concentrates in suing police agencies for misconduct of racial profiling. These elements O’Reilly (2002) lists are:

“1. The police department or the specific investigative unit had a practice/custom of certain actions;

2. This practice or custom had a constitutional dimension that was causing harm, tortuous and not just harassment;

3. Municipal officials over time knew or should have known of the illegal practices, and failed to correct the police;

4. Plaintiffs can prove a nexus between the municipal failure to act to correct a deviant custom and practice, and deprivations of the constitutional rights of those affected;

5. The mental state of the city leader can be said to be one of deliberate indifference to
constitutional harms, a state of thinking that is like intent;
6. Plaintiffs need evidence from which to show that the municipality or county had notice of the illegal actions” (p. 39).

PROCEDURES

The research for this project was obtained from books, articles, and research papers on racial profiling. The primary source of information was obtained from the Eastern Michigan University Hale Library.

A scenario was provided to ten white police officers and ten black police officers that are employed with the Flint Police Department. The scenario was provided to the Flint police officers between the dates of July 21st and July 31st 2003.

The scenario that was created demonstrates that some law enforcement officers of the same race and of different races have a racial bias against minorities. The scenario that was provided to the Flint police officers was:

You receive a radio call to investigate gun shots that were fired in the area of 326 Geneva. Upon
arrival to the area you see a black male pursuing a white male on foot. What police actions do you take?

The ten black police officers and the ten white police officers all had a similar response. The participants of the scenario all stated that they would investigate the black male immediately who was chasing the white male. On the back page of the scenario the scenario revealed to the twenty Flint police officers that the black male pursuing the white male was an off duty police officer who observe the white male shooting a gun in the air.

RESULTS

The result of this research paper provided is that racial profiling must be prohibited by law enforcement agencies. This paper provided the legal reasons why racial profiling must be rejected as a legitimate way to profile criminal behavior.

The scenario of the black man pursuing the white man demonstrates that law enforcement officers are human beings and are capable of having a racial bias. The result of this research paper demonstrates that law enforcement agencies must prohibit racial profiling.
The results of this research on racial profiling provided information that many law enforcement agencies are reactive and not proactive to solving the problem of racial profiling. Many law enforcement agencies did not adopt anti-racial profiling policies until the judicial process placed a consent order on agencies found to have engaged in racial profiling.

The writer of this research paper is employed with the University of Michigan-Flint Department of Public Safety. The University of Michigan-Flint currently does not have any policies to deter officers from engaging in racial profiling.

**DISCUSSION**

The justice system in the United States is based upon the premise that justice is fair and equal to everyone regardless of race, age, sex or national origin. William Penn stated that:

“Justice is justly represented blind, because she sees no difference in the parties concerned. She has but one scale and weight, for rich and poor, great and small. Her sentence is not guided by the person
but the cause...Impartiality is the life of justice, as that is of government”.

Law enforcement agencies must ensure that justice is enforced equally. Law enforcement agencies must prohibit racial profiling. Law Enforcement agencies must take the necessary steps to ensure that its customers are treated in a fair and just manner in compliance with the United States Constitution.

The research that was obtained in this paper provides an actual case that a law enforcement agencies was found to be liable for racial profiling policies.

The American Civil Liberties Union brought a case against the New Jersey State Police. The ACLU won $775,000 for the victims of racial profiling by the New Jersey State Police. The ACLU brought the lawsuits on the behalf of 12 motorists who were targeted for traffic stops based upon the color of their skin.

According to Meeks (2000) in January of 1996:

“Maher, an Egyptian American woman, and her co-worker Morka, a Nigerian national, who at the time headed the International Human Rights Law Group’s work on Africa, were driving along the New Jersey Turnpike, when they were pulled over to the side of the highway by the New Jersey
State police. During the traffic stop one of the officers began to choke Morka and slam him repeatedly against his steering wheel. The officer assaulted Maher by holding a gun to her head, twisting her arm behind her back, and throwing her against the car. Maher and Morka attempted to file a formal complaint with the New Jersey State Police. The New Jersey State Police were uncooperative when Maher and Morka attempted to file a complaint. Maher and Morka were first denied the proper forms to file a complaint, and later the police failed to conduct an investigation of their complaint” (p. 34).

The Maryland State Police developed aggressive policies which they were apprehending a large number of individuals engaged in illegal narcotic activity. The problem arose because the Maryland State Police was using racial profiling to apprehend individuals engaged in illegal narcotic activity.

O’Reilly (2002) stated that the Maryland State Police “had the distinct misfortune to be the first department in the nation for which a racial profiling complaint led to a consent degree” (p. 80).
Consent orders are often implemented by the Justice Department Civil Rights Division when a law enforcement agency is shown to have racial profiling policies. O’Reilly (2002) wrote:

“Racial profiling consent orders costs can be substantial to the taxpayers. A racial profiling consent order imposes a set of remedies that are a multiple challenge to the statistics, training, and operational capabilities of even the best managed police departments. The decree terms can be overwhelming to the department that is less than fully professional in its degree of executive competence and its quality of training” (p. 132).

Racial Profiling consent orders often require the use of implementing a data collection system. Data collection systems are a systematic process of a law enforcement agency tracking the age, gender, race or ethnicity, and the reason for the traffic stop.

There are numerous challenges that arise when law enforcement agencies attempt to study the demographics of its stops. The San Jose Police Department created a data collection system that addresses the challenge of gathering information on the demographics of traffic stops.
The Department of Justice (2000) listed some of the problems that face law enforcement agencies when attempting to gather information on the demographics of its stops. These problems include:

1. “How can officers determine the race or ethnicity of the citizens they stop in the least confrontational manner without increasing the intrusiveness of the stop?

2. What budgetary, time, and paperwork burdens will data collection impose on police departments?

3. Will data collection procedures result in police disengagement by leading police officers to scale down the number of legitimate stops and searches they conduct?

4. How can departments ensure the accuracy of data collection procedures and be certain that reporting requirements are not circumvented by officers who fail to file required reports or who report erroneous information?”
The San Jose Police Department implemented a data collection system that is based on letter codes. A document prepared by Northwestern University (2000) stated that the San Jose Police Department traffic-stop data collection system is designed to collect and relay information verbally (via police radio) or by typing the information into the mobile data terminal”.

Northwestern University (2000) explained that San Jose Police Department clears a call by stating:

“10-98 D-David, V-Victor, W-William, A-Adam. D-David means the reason for the stop was a vehicle code violation; W-William means the race of the individual driver was White; and A-Adam means the driver was an adult. This information can be relayed to the dispatcher via radio or the mobile data terminal”.

The San Jose Police Department uses the term 10-98 to designate the officer or officer’s unit number. The letter V is based upon the following scenarios:

“V-Victor. A violation of the California vehicle code. P-Paul. A California penal code violation, an officer might have observed a person committing a criminal violation (picking up a known prostitute). M-Mary. A Municipal code
violation. B-Boy. A notice or an all-points bulletin was broadcast on police radio channels, or a description of the suspect car was issued in report or bulletin by a police organization in the area.

The San Jose Police Department uses the following codes to indicate race and ethnicity:

“A= Asian American, B= African American, H= Hispanic, I= Native American, O= Other, P= Pacific Islander, S= Middle Eastern/East Indian, W= White”. Racial Profiling asserts the premise that law enforcement performing increased stops on minorities will prevent crime. Studies have shown that racial profiling is not only illegal but, it also is an ineffective method of performing law enforcement.

RECOMMENDATIONS

Racism will never be eliminated in the United States. Therefore, it is necessary for law enforcement agencies to adopt programs to prohibit racial profiling. The National Organization of Black Law Enforcement Executives (2001) outlined ways in which police organizations can adopt policies to eliminate racial profiling. These ways include: “mission statement, recruitment and hiring, training,
assignment rotation, promotion, discipline/accountability, community relations, and leadership,” (p. 10).

Police Agencies have mission statements which list the basic tasks in which the police agency attempts to accomplish. The problem is that most law enforcement officers are not aware of their agencies mission statement.

The National Organization of Black Law Enforcement Executives wrote:

“The mission statement should identify the following: Who are our customers? What service(s) do we provide? How do we provide them? The vision statement should also identify the future goals of the agency. The value statement should identify how to treat our customers and our employees, and serve as the organizational “Bill of Rights,” which should never be violated. In short the mission-vision-value statement must become one of the most important documents in the agency...every officer should be able to cite and explain them. The mission statement must focus on service, not crime reduction” (p. 10).

Law enforcement agencies should post the duties and requirements of the position that they are hiring for. Agencies should also explain to prospective candidates the
positive and negatives aspects of the position that they are hiring for.

The National Organization of Black Law Enforcement Executives wrote:

“Law enforcement agencies across the nation have initiated accelerated hiring programs, which in many cases, equates to the accelerated hiring of unqualified candidates. Administrators must avoid the temptation to recruit and hire candidates with clear warning signals in their backgrounds, and closely evaluate candidates with no experience in dealing with diverse communities or candidates without any work or life experience. It is better to have staff shortages than hire the wrong officer(s). Administrators must recognize the true value of diversity in an organization” (p. 12).

States have requirements for individuals to become law enforcement officers. States generally have a governing body which is in charge of certifying individuals to become law enforcement officers. The governing body in charge of certifying law enforcement officers requires some type of training for law enforcement individuals.
In regards to training The National Organization of Black Law Enforcement stated:

“Many police academies devote more than a third of the curriculum to the use of force. This sounds reasonable, especially considering the impact of the inappropriate use of force on the agency and community. The training, however, is often focused on how to use force instead of why to use force” (p. 12).

Many law enforcement agencies across the United States have numerous divisions where law enforcement officers can be assigned to work. These divisions typically include a patrol division, narcotic division, traffic division, and detective division. The patrol division is a division where law enforcement officers wear a police uniform and respond to radio calls. A problem arises when law enforcement officers are assigned to one particular division for an extended period of time.

The National Organization of Black Law Enforcement Officers wrote:

“Too much of a good thing can be bad. This can also apply to officer assignments. Vice,
narcotics street enforcement and gang units place officers in negative environments for extended periods of time. Officers spend the majority of their time interacting with a negative element of the community that represents less than ten percent of the population. Officers left in this environment may become involuntarily conditioned to judge an entire community based on their limited contact” (p. 14).

Law enforcement agencies promotion policies typically promote law enforcement officers by using an interview process and standardized tests. The problem with both of these selection processes is that they do not include tests to check for racial bias.

The National Organization of Black Law Enforcement Officers described the problem with police agencies that use a selection process that is composed totally of individuals within that particular agency. NOBLE wrote:

“Some agencies use assessment centers that select assessors from within the agency. This too may pose a problem. The candidates reputation or past interactions (positive and negative with supervisors and managers may taint the objectivity of the assessors and compromise the
integrity of the examination. If the agency lacks diversity at supervisory and command levels, it may also contribute to a perception that the process is biased against minorities. Whether true or not, promotions under this system may appear to be based on popularity or the good old boys system” (p. 15).

Many Police agencies have created police divisions titled internal affairs that investigate actions of police conduct. Internal Affairs divisions that prove that an officer has engaged in police misconduct the officer are usually disciplined for the inappropriate behavior. The discipline can range from a verbal reprimand, written reprimand, suspension, and termination. It is essential that police agencies discipline officers who violate citizen rights by engaging in racial profiling.

Communities are often led to believe by law enforcement agencies that to fight crime in high crime areas; law enforcement agencies must violate civil as well as constitutional right to accomplish this mission. Sir Robert Peel is known of the founder of law enforcement because he was the founder of the first law enforcement agency. Sir Robert Peel (1829) said “The police are the public and the public are the police”. This simply can be
translated to mean that crime reduction is a partnership between the public and the police.

The police chief or director of law enforcement agencies provides the leadership for the agency. The major responsibility of a leader is to communicate to his or her subordinates what behavior is appropriate and what behavior is inappropriate.

The National Organization of Black Law Enforcement Executives wrote:

“Administrators must have the courage to manage by principle-based leadership and serve as the driving force for change. Administrators cannot fear change—they must change fear. We must make the commitment to do the right thing—not necessarily the popular thing. The CEO of today must survive politically charged environments, strong labor unions and laws, and extremely demanding communities. The true challenge is not to get so focused on keeping your job that you forget to do your job. Crime reduction, and even community satisfaction, at the cost of violating the constitutional rights of one person is never acceptable” (p. 18).
It is essential that law enforcement supervisors communicate what behavior is appropriate and what behavior is inappropriate. The current and future leader in law enforcement must communicate to law enforcement officers that racial profiling is prohibited form of profiling criminal behavior.
REFERENCES


United States Constitution

Title 18, U.S.C., Section 242 Deprivation of Rights under Color of Law