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Racial Profiling: Issues & Solutions

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AN ISSUE NATIONAL IN SCOPE

No one paying attention should argue that race relations is one of the most important issues and challenges in today's policing environment. Hardly a day goes by without a new media story announcing polls or anecdotes alleging police officers somewhere across the country are using race as the sole variable for taking law enforcement action. In response, many, if not all, state legislatures have debated or are contemplating legislation that would ban "racial profiling," mandate data collection, require police officer training, make funds available for video cameras in police cars, and other measures. A number of states, among them North Carolina, New Jersey, Maryland, Colorado, Nebraska, and Minnesota, have already passed racial profiling legislation.

United States Representative John Conyers, Detroit, and U.S. Senator Russ Feingold, Wisconsin, have introduced federal legislation. Their bill, titled "The End Racial Profiling Act of 2001," if passed, would:

- Ban racial profiling by the police;
- Require police agencies that receive federal funds to collect data to determine the extent to which the agencies engage in racial profiling;

- Establish procedures for receiving, investigating and responding to racial profiling complaints;
- Establish disciplinary measures for officers determined to be engaged in profiling based on data and other evidence;
- Fund grants to law enforcement agencies to keep track of racial profiling; and
- Train and sensitize officers and buy monitoring equipment such as video cameras.

ACTIVITY IN MICHIGAN

Mandating collection of traffic stop data from all police officers and agencies was thought to be the one point that could prevent any bill from becoming law. In recent months, the Michigan Association of Chiefs of Police (MACP) has been working with Representative Samuel "Buzz" Thomas of Detroit, Attorney General of Michigan Jennifer Granholm, the NAACP of Michigan, the ACLU of Michigan, representatives from the Michigan Department of Civil Rights, and others toward compromises on racial profiling legislation. Among the compromise positions were:

- Defining and prohibiting the act of racial profiling;



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- Requiring academy and in-service training of all law enforcement officers in the areas of racial sensitivity;
- Prescribing penalties and remedies for those who violate the law;
- Providing matching grants to police agencies to purchase video cameras if the agencies voluntarily collect traffic stop data.

During the 2001 MACP Legislative Conference, both Attorney General Granholm and Representative Thomas pledged their intent to continue working with MACP and other professional law enforcement organizations. There was a clear intent to work together by seeking compromises to create racial profiling legislation with a good chance of passing. However, shortly after that conference, Representative Thomas introduced HB 4927 that has been assigned to the House Committee on Civil Law and the Judiciary. If enacted as introduced, HB 4927 would:

- Require data collection on forms created by and submitted to the Michigan Department of Civil Rights;
- Require the investigation of racial profiling complaints by law enforcement agencies;
- Allow law enforcement agencies to assign officers who received a substantial number of racial profiling complaints to racial sensitivity training;
- Allow civil actions for appropriate injunctive relief or damages.
- Require the legislature to appropriate sufficient funds to implement the bill. However, the grant program would require a 50% match from the local unit of government for buying video cameras, diversity training, and data collection expenses.

RACIAL PROFILING – KEY CONCEPTS

There are many definitions of racial profiling. Michigan’s House Bill 4927 defines racial profiling as “the detention or other disparate treatment of an individual on the basis of the racial or ethnic status of that individual.” Kary Moss, Executive Director of the ACLU of Michigan, has used the term

“driving while black,” and defines racial profiling as an action that occurs “when police officers use a minor traffic offense—or none at all—as a pretext for stopping, searching, and sometimes arresting motorists because of their race.”¹ A recent United States Department of Justice publication has defined racial profiling as “any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual who has been identified as being, or having been, engaged in criminal activity.”²

In spite of such definitions, “racial profiling,” or “driving while black” remains nebulous and difficult to define. Consider, for example, the following paragraph:

But what, exactly, is “it”? One doesn’t diminish the gravity of racial profiling by noting that there is no accepted understanding of what the term means. It is not in criminology texts. It seems to have been popularized in the early ‘90s by activists and reporters in New Jersey, not cops. Before we can tell police what they are doing wrong, we must figure it out for ourselves.³

The Police Executive Research Forum (PERF) recently published the results of a lengthy analytical study of contemporary perspectives on racial profiling. In that study, the authors recommend changing the term “racial profiling” to “racially biased policing.” According to the PERF authors, “racially biased policing” “occurs when law enforcement inappropriately considers race or ethnicity in deciding with whom and how to intervene in an enforcement capacity.”

DATA COLLECTION – SOLUTION OR SCOURGE?

Many civil rights advocates, academics, and some police officials believe that data collection is the best way to determine whether or not police agencies and individual police officers use race to profile citizens, particularly African-Americans, Latinos, and other minorities. As with the very difficult attempts to define racial profiling, there is no clear consensus on data collection. Many confusing and confounding questions exist on this complex issue. What data

should be collected? Who collects the data? How is it collected? What are the costs of data collection? Who interprets the data? How should it be interpreted? What are the variables that define interpretation? How much does it cost to collect and interpret data? Who pays those costs? What, if anything, does data collection have to do with solutions?

Ramirez, et al, argue that one of the reasons for collecting traffic stop data is “in the long run the systematic collection of statistics and information regarding law enforcement activities support community policing by building trust and respect for the police in the community.” They add that “the only way to move the discussion about racial profiling from rhetoric and accusation to a more rational dialogue about appropriate enforcement strategies is to collect the information that will allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem.”⁴

PERF’s recent report recommends that “police executives, in collaboration with citizen leaders should review the pros and cons of data collection and decide—in light of the agency’s political, social, organizational, and financial situation—either to initiate data collection or to allocate available resources to other responses to racially biased policing and the perceptions thereof.”⁵

Both the International Association of Chiefs of Police (IACP) and the Michigan Association of Chiefs of Police have adopted positions opposing mandatory data collection. The 1999 IACP *Forum on Professional Traffic Stops* concludes that there was “little expressed at the Forum to support federally mandated and controlled data collection.”⁶

Many police executives who argue against data collection say we need look no farther than the media to explain why data collection can be more harmful than good. The media, they argue, tells only a small, albeit sensational, part of the story. As a result, data will be misconstrued, misinterpreted and sensationalized, perhaps harming police officers or police agencies without ever focusing on solutions. One such example is a recent *Detroit Free Press*

study of driving and ticketing patterns in Harper Woods, Michigan. As evidence that profiling exists in at least one community, the *Detroit Free Press* concluded that African-American drivers received 42% of traffic tickets even though they comprised only 32% of the drivers in Harper Woods.⁷

Does the Harper Woods Police Department discriminate and target minorities for traffic enforcement? Absent something other than raw data that suggests a disproportionate representation of minorities in Harper Woods’ traffic stops, I would argue not and offer that plausible reasons explain what appears to others as racially motivated activity. Some civil rights advocates would say that such explanations are clear illustrations of racist behavior.

More to the point, even statistics experts and some data collection proponents provide arguments against data collection. Some of their comments include:

- There is a lot of debate, but no consensus as to what the data means. People on our side [proponents of data collection], the academic side, we haven’t figured out a way to measure it [racial profiling]. Lawsuits where people have been successful and prevailed have been against agencies primarily assigned to highway enforcement. In those circumstances, it is much easier to measure who is out there, what they look like, and what they are doing. The issue is much different for municipal policing.⁸
- Close analysis of these [racial profiling] studies show that the presence of harassment is either not supported scientifically or is only one of several conclusions. One major flaw in many of these studies is the use of racial population distributions as a comparison measure to the distribution of traffic stops by race. If one race is found to have traffic stops at a percentage that is greater than that race appears in the population, then one cannot conclude that harassment is either present or not present. Without knowing the racial distribution of people on the road, one cannot make claims about traffic-stop harassment as many of these studies do.



If one wants to look at the effects of enforcement of a certain traffic law on police harassment, one must compare three racial distributions: presence on the road, rate of law violations, and police action for violation of the law (stops or citations).⁹

- ...Most of the racial profiling legislation across the country is based on utter garbage. I can't find an operational definition of racial profiling. If you can't operationalize it, why do it? If you do collect data, do it for one year. Have it analyzed for general findings and then move on. Use it as a management tool, handle it as a standard review and move on. Move on to long-term activity, such as training. Train everybody anyway, rather than focusing on individuals. San Diego's lesson was that it was more fruitful to train everyone rather than focusing on finding the bad apples. We need to develop a census of the driving population; use of demographic population data is unacceptable.¹⁰
- In dismissing plaintiffs' actions against the Illinois State Police and numerous officials, the United States Court of Appeals for the Seventh Circuit said:

"The crux of the matter lies in the population benchmarks. As already noted, the plaintiffs compared the numbers derived from the Valkyrie field reports with the representation of whites, African-Americans, and Hispanics ostensibly in the Illinois population and on Illinois roads.

We find that these population benchmarks can not provide an adequate backdrop for assessing the racial composition of drivers faced by Valkyrie officers, and thus can not indicate whether Valkyrie officers disproportionately stop, detain, and search Hispanics and African-Americans.

The first benchmark used by the plaintiffs was the 1990 Census. It is widely acknowledged that the Census fails to count everyone, and that the undercount is greatest in certain subgroups of the population, particularly Hispanics and African-Americans. Even if it were accurate, however, the Census data can tell us very little about the numbers of Hispanics and African-Americans

driving on Illinois interstate highways, which is crucial to determining the population of motorists encountered by Valkyrie officers."¹¹

While the debate on mandatory data collection rages, perhaps some of the most important and best data on police-citizen interactions may be overlooked or ignored. Since 1996, the U.S. Department of Justice, Bureau of Justice Statistics (BJS) has routinely surveyed a nationally representative sample of citizens on their police-citizen interactions. The most recent survey (1999) of more than 96,000 citizens age 16 or older provides reliable and clear data. Some of the important findings include:

- 21% of all U.S. residents had a contact with police.
- 19% of the contacts were to report a crime.
- Less than 1% of contacts involved police use of force.
- 52% of all contacts were in traffic stops.
- 12% of black drivers were stopped.
- 10% of white drivers were stopped.
- 9% of Hispanic drivers were stopped.
- **84% of the drivers surveyed considered the stop legitimate** (emphasis added).¹²

Whether the concept of racially motivated policing is accepted as real or is perceived, everyone should recognize it is a problem in need of solutions. One important question is, what are the best solutions? Moreover, unless all or a majority of police officers engage in illegal profiling, should solutions be imposed on all police officers? Many police chiefs, myself included, believe that mandatory data collection is not an answer. For all the reasons already noted, data collection is likely to do nothing toward finding solutions. Moreover, if 84% of those stopped by the police believe the traffic stop was legitimate, is spending millions of dollars collecting and analyzing data a prudent expenditure of scarce resources?

ACT NOW

Debate in the Michigan legislation on the Conyers and Feingold bills as well as debates on other legislation around the country will certainly

continue. In the coming year, more states are likely to enact racial profiling legislation and more will certainly require police agencies to collect data. Academics, the media, statisticians, the courts, and others will struggle with various interpretations of data. The United States Department of Justice will likely file even more lawsuits alleging a “pattern and practice” of racial disparity alleging that police departments and their employees discriminate on the basis of race.

Municipalities and their police chiefs would be wise to make it known that their philosophy of fighting crime includes protecting the civil rights of all citizens. Chiefs should carefully examine their policies and practices to assure that their agencies’ actions do not deprive citizens of their rights. Agencies should scrutinize their hiring practices and revise them as necessary. They should consider using psychological testing to screen out candidates with inappropriate psychological characteristics.

In addition to discipline, chiefs should have at their disposal a good array of management intervention tools. One good tool is training at periodic intervals on topics such as non-discrimination; use of force, including non-force intervention when appropriate; search and seizure laws and practices. Other tools include early warning systems to identify and modify the behavior of problem employees. Quality field training programs premised on community policing can orient new officers in a value system based on respect and dignity for all citizens. Meaningful evaluation systems and instruments can provide feedback to employees and can help supervisors and managers identify when employees might benefit from additional training or to determine patterns of inappropriate behavior. Chiefs should also assure the agency has adopted and utilizes effective accountability systems, including fair processes for the receipt and investigation of citizen complaints. Employee assistance programs might be useful to help modify the behavior of employees whose fears or biases manifest in their

work and police-citizen relationships. Fit for duty evaluations can and should be used as legally appropriate.

THE HIDDEN TRUTH

Is racial profiling a problem? Certainly, it is. However, often lost in all the rhetoric is that most police officers do their jobs day in and day out by recognizing the value of diversity and by treating all citizens with dignity and respect. Lost in the news stories are the heroic deeds police officers perform protecting citizens against crime and criminal predators. Even Representative Samuel “Buzz” Thomas says, “99.9% of all police officers are everyday heroes.” Does the news media print or broadcast such statements? Generally not -- especially when all police officers are painted with the broad brush of racial profiling. I agree with Representative Thomas about our police officers being heroes. But when it comes to legislation, there is plenty of room for disagreement. When 84% of those individuals whom police have stopped believe that the stop was legitimate, one must question the use of scarce taxpayer resources to collect data. It would be far wiser and more prudent to invest in hiring, training, and in providing video cameras and other solutions. Collecting data offers nothing to finding solutions and attempts to paint all police officers with the broad brush of racism.

Do not hesitate to contact the Michigan Municipal League’s Risk Management Services at 734-669-6344 or Loss Control Services at 800-482-0626, for assistance with your risk reduction efforts.

While compliance with the loss prevention techniques suggested herein might reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our readers are encouraged to consult with their attorneys for specific legal advice.



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Chief Portis holds a Bachelor of Science in Criminal Justice as well as a Master of Arts in Political Science, both from the University of Nebraska. He is a member of the LEAF Committee and chairs the Michigan Association of Chiefs of Police Legislative Committee. In 1998, the NAACP of Jackson County honored Chief Portis with its President's Award.

¹ Destination Justice, *Michigan Bar Journal*, January 2001, p. 37.

² Ramirez, Deborah; McDevitt, Jack; Farrell, Amy; *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lesson Learned*, U.S. Department of Justice, November 2000.

³ What's Race Got to Do With It? *Time*, John Cloud, July 2001.

⁴ Ramirez, Deborah, et al., p. 13.

⁵ , Fridell, Lorie, et al., p. 120.

⁶ The International Association of Chiefs of Police, *Recommendations from the First IACP Forum on Professional Traffic Stops*, April 1999.

⁷ Arellano, Amber, When Race Adds Up in Traffic, *the Detroit Free Press*, June 1, 2000.

⁸ Walker, Samuel, Ph.D., University of Nebraska-Omaha, in comments at *The Performance and Accountability summit for Law Enforcement*, Washington, D.C., February 27, 2001.

⁹ Eby, David W.; Kostynius, Lidia P.; Molnar, Lisa J.; Joksch, Hans; and Vivoda, Jonathan M.; University of Michigan Transportation Research Institute (UMTRI), social and Behavioral Analysis Division to the Division of the Michigan Secretary of State, *The Effects of Standard Safety Belt Enforcement on Police Harassment: Work Plan*, March 2001.

¹⁰ Gant, L. Ph.D., University of Michigan, School of Social Work, comments made during a Leadership Steering Committee Meeting for the National Conference for Community and Justice, Advocates and Leaders for Police and Community Trust (ALPACT), June 8, 2001 at Chris Church Detroit.

¹¹ Chavez v. Illinois State Police Department, United States Court of Appeals, Seventh Circuit, 251 F.3d.612

¹² *Contacts between Police and the Public Findings from the 1999 National Survey*. Bureau of Justice Statistics, United States Department of Justice, February 2001.