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Racial Profiling: Should it be legislated?

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ABSTRACT

The purpose of this research project is not to argue whether racial profiling is wrong, it is. Traffic stops or citizen stops based entirely on race are wrong and it can not be stated more simply than that. The focus of this project is whether or not the issue of racial profiling should be handled by an individual agency on an administrative level, or legislated by either the states and/or federal government.

Included in this project is a review of literature. That section cites various articles on the subject of not only racial profiling from a law enforcement standpoint, but people profiling people in general. There are also citations referencing several programs on both the state and federal level that were at first deemed successful, but later criticized as racial profiling.

Race based traffic stops do occur. They are wrong, and they should be eliminated. It is the submission of this project however, that it should be governed by administrative policy and not by legislation. Many departments have voluntarily begun to collect data on the stops of their officers, and this author believes that this is a good thing. There are concerns, which will be discussed about the ramifications of legislation and its potential negative impact on law enforcement. A survey was conducted for this project and an overwhelming majority of law enforcement supervisors and administrators polled believe that administrative policy is a better alternative to legislation.

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Introduction

The purpose of this research paper is to discuss the issue of racial profiling and examine whether racial profiling should be legislated or governed by individual department policy. In June of 1999, President Clinton issued an executive order mandating Federal Law Enforcement agencies to collect data on the race, ethnicity and gender of all persons stopped. This order was titled Fairness in Law Enforcement: Collection of Data, (Garland Police Department, 2000). As a result of this order, law enforcement agencies across the country began to develop their own policies to collect data to determine if their agencies were guilty of racial profiling. Individual department policies will be examined in more detail later in this paper.

Since the beginning of time, people have had preconceived dispositions about one another. "In the public arena, issues of race continue to command center stage" (Russell, 1999). Law enforcement professionals are people therefore law enforcement professionals may have prejudices. Prejudice comes in various forms, race, ethnicity, gender, religious preference or even sexual preference. The key for law enforcement is to ensure that if an individual possesses prejudices, that they are not brought to the workplace with them and that all persons are treated in an equitable and fair manner. Simply put, racial profiling is wrong. If a person is stopped merely because of that person's race, their civil rights are violated.

There is no doubt that for years people have been the subject of racial profiling. A doctor in Texas reported that he was stopped at least six different times on the same stretch of highway, three times by the same state trooper (Arrington, 2000). This type of altercation leaves a bad taste in the mouths of citizens and not just towards the individual officer, but also towards all of law enforcement. Agencies must proactively take action to prevent persons from being stopped without probable cause.

Prevention is the key and should be at the forefront of all law enforcement administrators programs. This can be achieved by first using better selection methods to attempt to screen out applicants that will bring their prejudices to the workplace. Complaints can also be monitored to see if certain officers are selectively enforcing the law on certain persons. A data collection system can also be implemented, which many departments have begun, to give the individual agency a picture of their employee's activities. Racial profiling legislation has the best intentions in mind, but also has many drawbacks. One common feeling among law enforcement is that officers will stop performing self initiated activity altogether resulting in fewer arrests and eventually causing crime rates to raise. "Statistics show Houston police wrote 20 percent fewer tickets in August and 30 percent fewer in September, compared with the same months last year (Associated Press, 1999). That is the focus of this research and it will now be examined in greater detail.

Review of Literature

First, let's define what a profile is. According to Webster's Dictionary (1997), a profile is "a drawing or view of something in outline or contour; a somewhat brief biographical sketch". Using that definition would explain that racial profiling is exactly that, based strictly on race. When an officer receives a call for service that describes a suspect as black male, or hispanic male and then stops a subject who fits the description, that is not racial profiling. Racial profiling occurs when a black person, or hispanic person or even a white person is stopped, in the absence of probable cause in hopes of finding drugs or some evidence of criminal activity due to how that person looks, their neighborhood or the type of vehicle that person is in.

The issue of racial profiling is not a new one. The Drug Enforcement Administration (DEA) starting using profiles in the early 1970's. An agent created a profile of drug couriers based on common characteristics of likely violators (Kurlander, 2000). The Florida Highway Patrol issued guidelines for troopers on "The Common Characteristics of Drug Couriers" in 1985 (Kurlander, 2000). In 1998, former Attorney General Janet Reno applauded Immigration and Naturalization Service (INS) agents for Operation Seek and Keep. This operation stopped a ring that had taken in over \$220 million and smuggled in 12,000 people, mostly from South Asia (AP, 2000). All of these programs were at first applauded as successful attempts by law enforcement at curtailing crime, but later criticized as racial profiling. The DEA received negative attention because a disproportionate number of hispanics were being stopped in airports. The Florida Highway Patrol's efforts on their interstates were also criticized because a disproportionate number of blacks were stopped. The INS was criticized because their operation was conducted by targeting Pakistani and Indian run businesses. All of these operations seem successful on their faces, but were they weighed against the cost of violating civil rights?

Research shows that sometimes there is a fine line between good police work, and violating civil rights. According to the International Association of Chiefs of Police (IACP) it is the duty of law enforcement to educate the public on the differences. "It takes an educational effort to explain what is going on" (Strandberg, 1999). For years, law enforcement officers have found the elements of major crimes after detaining persons for minor offenses, such as traffic violations. The New York City Transit Police adopted a zero-tolerance program for minor offenses in an attempt to reduce crime overall. "Within two years of the policy's adoption, the number of felonies in the subway declined by more than 30% (Toby, 1999).

According to this research, racial profiling is not limited to law enforcement or necessarily criminal matters. A female journalist in an article defending law enforcement submits that there are many types of profiling, not just racial. She wrote of a traffic stop made on her where, at least in her mind, she was not doing anything wrong. She believed the male officer stopped her because "I was a female with long blond hair wearing a fox coat and driving a silver sports car" (Labbe, 2001). Now on first reading this passage, it does not present a pretty picture of law enforcement either. But Labbe further explains that to label all cops as "hound dogs" is just as unfair as labeling all cops as racists. A black journalist also wrote an article telling a story about how he was stopped in Washington D.C. by the police for unjust reasons. Naturally he described his anger and resentment towards the police and how he felt his civil rights had been violated. He then wrote how he had to admit that he had been guilty of the same. He drove a cab in New York City in the early 1970's and how many times he would pass up on young black men trying to flag him down. Neither that author nor this one condones that type of activity, but he simply stated that the whole concept of racial profiling comes down to perceptions. He summed that ideology up well "and whether the fear stems from real experience

or media-driven perceptions, people -- police and civilian, white and black -- play the odds all the time when it comes to how they view and respond to young black men" (Holmes, 1999). That particular journalist's article had a more narrow scope, that of the profiling of young black men, than the topic of racial profiling as a whole which covers all races. It is interesting, however, that research shows that profiling is not limited to law enforcement. Other journalists have written that people of all races are guilty of profiling at one time or another "the difficult truth is that we all have been guilty of racial profiling at one time or another" (Schram, 1999). Schram further states that although it is very wrong, people make assumptions about one another all the time. "Most of us can see that this public, official stereotyping by police is hideously unfair. But the truth is that most of us now and then make private, unofficial assumptions that are also hideously unfair (Schram, 1999)."

As was mentioned earlier, various law enforcement agencies across the country have initiated their own methods to curtail racial profiling in lieu of legislation. Part of the reason for this is law enforcement's commitment to doing the right thing and not wanting employees out there displaying obvious biases. Another reason is simply the media. "The mass media has generated more heat than light with its extensive but often misguided coverage of racial profiling. It is believed by many that the media reports were rarely balanced. They almost never report law enforcement efforts to prevent racial profiling or the facts that expose the often supported claims raised by profiteers and others who use this issue to advance their political agendas" (Johnson, Margolis, Watts, 2000). Unfortunately those political agendas from outside forces often govern what we in law enforcement do. That is not always a negative thing, such as the case of law enforcement agencies attempting to police themselves against racial profiling.

The Akron Ohio Police Department has begun to record the race of every driver on traffic stops. There was some opposition from inside the department but also a large amount of support as well. A representative of the Black Law Enforcement Officers Association applauds the decision "I think it's a positive move by the city, it's a proactive stance. Gathering data hurts nobody" (Dutton, Warsmith, 2001). Akron is not alone, Houston, Texas; San Diego, California and Arlington, Texas just to name a few have developed their own data collection methods to monitor their activities. In a more unusual move, the Cincinnati Ohio city council passed an ordinance in March of 2001 outlawing the practice of racial profiling. This was met with much resistance by the police administration and the officers association. "Police Chief Thomas Streicher called the law unnecessary and insulting. The police union president Keith Fangman also had doubts about the law" (Council, 2001). All of these examples of profiling and attempts to curtail it show how diverse this issue is, and how important it is to law enforcement. Law enforcement administrators and legislators must look at this topic with much scrutiny and not make rash decisions in order to deal with it effectively.

Methodology

As mentioned in the Akron Ohio example there are objections even to departments taking the initiative to collect the data. But the objective and hypothesis of this document is to argue that administrative policy is a better alternative to legislation. Even legislation on a local level can cause quite a controversy. A survey was sent to law enforcement administrators and supervisors asking them how they felt the issue of racial profiling should be dealt with. The survey was a written instrument, and the questions were in a very simple format. The questions were as follows:

1. Do you think racial profiling is a problem in your area?
2. Do you think racial profiling is a topic that needs to be immediately addressed by your departments Chief Executive Officer and command staff?
3. Do you think that racial profiling can be curtailed by an administrative (department) policy?
4. Do you think racial profiling should be curtailed by legislation?
5. Would you rather have racial profiling curtailed by an administrative policy, or legislation?

The first four questions were simply a yes or no answer. The last question asked the respondents to make a choice of either administrative or legislation. Representatives from twenty-eight different agencies in various parts of Texas responded to the survey. The next section will look at the answers to each question individually and compare the results.

Findings

The first question asked was simply if the respondents thought that racial profiling was a problem in their area. Figure 1 shows a percentage of those that answered yes versus no.

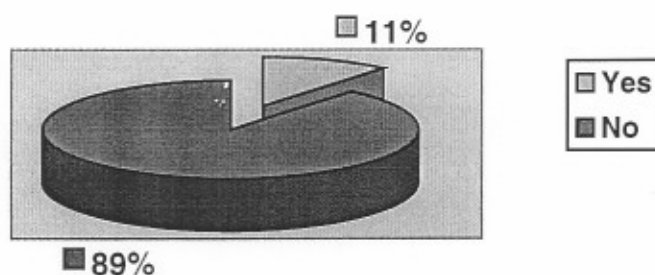


Figure 1. Is racial profiling a problem in your area?

The overwhelming majority of the respondents answered they do not think that racial profiling is a problem in their area. Eighty-nine percent believe that their officers are not guilty of racial profiling. Eleven percent answered yes to the question and believe that there is a problem in their area.

The second question asked was if they thought racial profiling needed to be immediately addressed by their department's higher echelon. Figure 2 again shows a percentage of yes versus no:

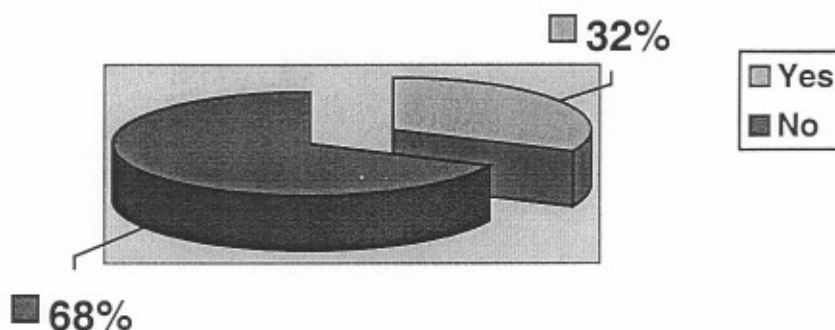


Figure 2. Does racial profiling need to be addressed by your Chief?

Although the response to this question was not as one sided as the first, a majority still answered that they felt it did not need immediate attention. Sixty-eight percent felt that racial profiling did not need to be addressed by their department head versus thirty-two percent that felt it did need to be addressed. The drawback to this question was that it did not ask why the individual respondents thought it should or should not be addressed. The respondents could have answered yes because they believe racial profiling is a problem in their area. They could have also answered yes because they agree with this hypothesis that department executives need to take a proactive stance and prepare an administrative policy on racial profiling.

The third question asked was if the respondents believed that an administrative process could curtail racial profiling. Figure 3 again shows a percentage of those that answered yes versus that of no:

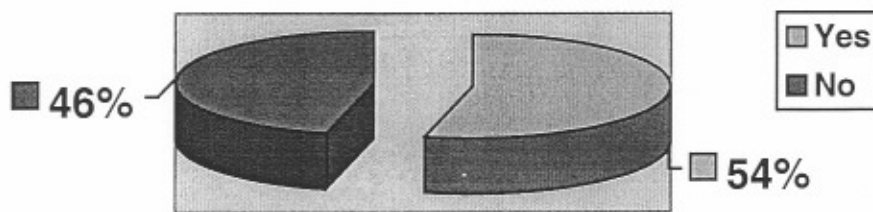


Figure 3. Can racial profiling be curtailed by administrative process?

The results to this question were even closer than the previous one. Only fifty-four percent answered that they believe their department can control the prohibition of racial profiling. Forty-six percent answered that they did not believe their department could control racial profiling. This data is somewhat contradictory to the answers to the next two questions.

The fourth question asked was did the respondents believe that there needs to be legislation to control racial profiling. Figure 4 shows the percentage that answered yes versus no:

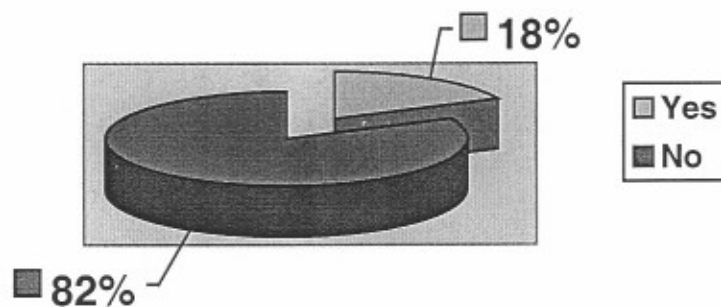


Figure 4. Should racial profiling be legislated?

Again an overwhelming majority of law enforcement administrators think that racial profiling legislation will be a bad thing. Eighty-two percent voted no, versus a small 18 percent that voted yes.

The fifth and final question asked was not a simple yes or no question. The last question asked had the respondents make a choice. They had to choose whether racial profiling should be curtailed by administrative policy or legislation. Figure 5 shows the percentage of administrative versus legislative:

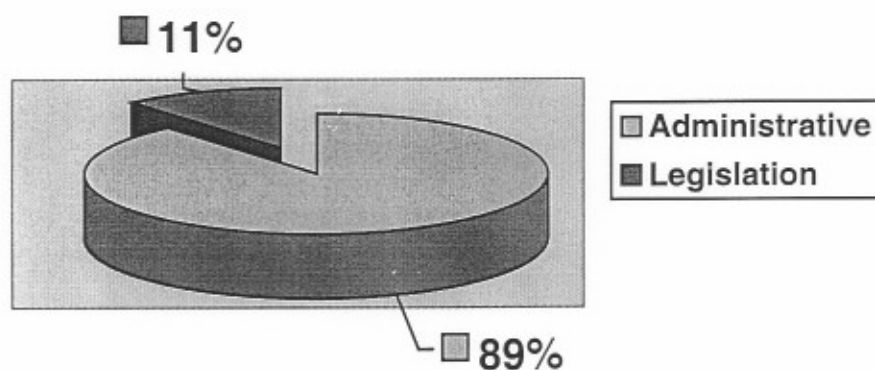


Figure 5. Administrative policy or legislation?

Again the answer to this question was mostly one-sided. Eighty-nine percent of law enforcement executives believe that racial profiling should be curtailed by an administrative policy. A miniscule eleven percent believed that it needs to be curtailed by legislation. As mentioned previously, there were some inconsistencies between questions three, four and five. While only a small majority (fifty-four percent) believed that racial profiling could be curtailed by administrative policy, eighty-nine percent voted that it should be handled administratively. Eighty-two percent then voted that it should not be legislated. One could deduce from the

discrepancy of these numbers that while some law enforcement executives may not have enormous confidence in the ability of their administration to prohibit racial profiling through policy, they vehemently oppose legislation. The data from this survey definitely shows, therefore, that law enforcement executives do not believe in legislation for racial profiling.

Discussion/Conclusions

Should racial profiling be handled through legislation or through an administrative policy? The purpose of this research was to examine the very current, volatile, and important issue of racial profiling to law enforcement. As mentioned in the introduction, it is the goal of this research paper to argue that racial profiling should be handled by an administrative policy in lieu of legislation, on any level. A policy should be adopted by all agencies to ensure the protection of civil rights of all citizens who come in contact with the employees of the agency. The agency must also convince its employees that a policy is not a negative thing, but a positive thing. "Administrators can defuse potential controversy with officers by assuring them that the objective of the agency is the protection of individual rights for all citizens" (Carrick, 2000). Officers must be made aware that a system put in place is for the protection of the officers as much as it is for the citizens. If the officers and consequently the agency are doing their job the right way, they have nothing to hide by tracking the data of their citizen contacts.

From the law enforcement point of view, the research shows that law enforcement officials are overwhelmingly opposed to legislation. While sixty-eight percent of law enforcement believes racial profiling needs to be addressed by their agency, eighty-two percent believe legislation is not the answer. When asked to choose between legislation and administrative policy, eighty-two percent believe that administrative policy is the right answer. Agencies must have policies in place that prohibit racial profiling as well as discrimination in general. "The law enforcement response to racial profiling, termed professional police traffic stops, can ensure that officers base their behavior on sound legal reasoning, safety for officers and citizens, and the accepted standards of modern policing. The reason for the stop and any enforcement action of the officer must be legally and morally defensible" (Carrick, 2000).

While there are drawbacks to administrative policy, such as the reduction of activity mentioned from the Houston Texas police department the drawbacks to legislation are far greater. There is much support however, for legislation outside the law enforcement circle such as the American Civil Liberties Union, "ACLU believes a multifaceted effort is required to address the problem" (Harris, 1999). The media has also brought a very one-sided viewpoint on this topic "Clearly then, news media are not presenting things as they are – but rather as racial fears project them to be. And a racialized policy agenda is being served up and served" (Muharrar, 1998).

The main drawback to legislation is that the officers will be forced to swallow a new method of operating from outside their agencies. An internal policy set up by the officers individual agency notwithstanding some initial dissention will be much easier for the officers to adopt. A transition that is easier for the officers to adopt will be much easier on their department's administration as well. This will ultimately be reflected back on to the community making the cooperation between the agency and the community that much stronger. The IACP's stance of educating the public mentioned earlier is paramount to achieving this goal. This goal can and should be reached to erase prejudice from law enforcement's activities.

Legislation is not the answer. As mentioned in the introduction, the answer is better selection methods, complaint monitoring of individual officers and possibly even data collection systems.

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