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Racial Bias in a Criminal Justice Environment:
From First Contact Through the Courts

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Abstract

The introduction of an organized police force in the United States began in 1783 in Charleston, South Carolina. The purpose of the police was to segregate African American slaves from the white citizenry as well as the "white" areas of the city. This subsequently would also have to be the start of "racial profiling" in the United States by police officers.

The question of whether racial profiling exists is not a new one. Many studies have been conducted with varied findings. Recent court cases alleging racial profiling have been heard by the local, state, and federal courts as well as the Supreme Court. The rulings handed down have been varied as well. The United States Supreme Court recently decided in *Whren vs. United States* that earlier Supreme Court decisions "foreclose any argument that the constitutional reasonableness of traffic stops depends on .the actual motivations of the individual officers involved.

The *Whren* decision makes it clear that, in the Court's eyes, traffic stops motivated by the racial prejudices of individual officers do not violate the Fourth Amendment's search and seizure guarantees, at least when there are other reasons for the stop.

Police officers have much discretion and ample opportunity for the exercise of racial and other types of prejudice.

Racial profiling by the police could be the result of an express department policy, for example, a department memorandum that identifies a racial group as part of its drug courier profile. It could also be the result of an informal, implied policy in which race is

relied upon to determine whether stops are made. Racial profiling may also be the result of an individual officer's practices, based on stereotypes and prior experiences.

We are all biased and prejudiced and have certain preferences in some shape or form. All of these practices are a learned behavior, no one is born with a bias, prejudice, or stereotypical attitude.

It was learned through conducting interviews with thirty inmates of the Walls unit located in Huntsville, Texas that overall, the belief of racial profiling is nothing more than a perception or misunderstanding by the person stopped, that the stop was race based.

It is interesting to note that the majority (70%) of the inmates interviewed stated that they had experienced prejudice within the Criminal Justice system, saying that due to a lack of financial support or poverty they could not afford competent and thorough counsel and therefore were found guilty or received harsher sentences.

It was learned through conducting interviews of thirty police officers from the "Metroplex" area of Fort Worth-Dallas, Texas that racial profiling or bias does not occur by officers conducting their business on a daily basis. Overall the feeling was that persons commonly accuse officers of affecting a stop on them or their vehicles of racial bias simply as a "copout" and that the persons stopped generally raised the racial inference to cloud the issue or gain sympathy from others.

In light of all of the research and interviews conducted during this study, it is therefore concluded that the allegation of racial profiling or bias on the part of a member of the criminal justice profession is nothing more than a perception or myth on the part of the recipient as was originally hypothesized.

Table of Contents

Abstract

Introduction 1

Review of Literature 2

Methodology 7

Findings 8

Conclusions 10

References 13

Appendices

Introduction

The title of this paper is Racial Bias in a Criminal Justice Environment: From First Contact Through the Courts. During the course of this paper the reader will be introduced to the alleged problem of racial bias by persons employed in all aspects of the Criminal Justice field. The reader will also gain insight into the belief of driving while black "DWB". (Harris, D. 1999). The allegation here is that African Americans are targeted and stopped or detained by police officers because they are black. The reader will also be given the perceptions of thirty people currently incarcerated in the Texas Department of Corrections prison system regarding their experiences with racial bias from their initial contact with police officers to their trial and ultimately sentencing. As well as the perceptions of thirty police officers from the Metroplex area of Fort Worth Dallas, Texas.

Information for this research will be obtained by conducting interviews of the inmates at the Walls Unit in Huntsville, Texas. As well as the interviewing of thirty police officers from the Metroplex area of Fort Worth-Dallas, Texas. Further research will be obtained from legal journal articles and other publications.

The research question that will guide this study is: Does the race or ethnic background of an individual impact the way a police officer or other member of the criminal justice system handles that individual?

It is hypothesized that the findings of the research will indicate that racial bias by members of the criminal justice system and alleged acts of profiling by police officers is nothing more than a perception on the part of the "victim".

The implications of this research will serve as a catalyst to aid police departments in making adjustments to their training curriculum specifically in the areas of cultural and racial diversity. It will also allow departments to create a model policy in effective ways to deal with the allegations of bias and profiling complaints. These findings will likely effect all professionals in the criminal justice field.

Review of Literature

The introduction of an organized police force in the United States began in 1783 in Charleston, South Carolina. The purpose of the police was to segregate African American slaves from the white citizenry as well as the "white" areas of the city (Olsen-Raymer, 2000). This subsequently would also have to be the start of "racial profiling" in the United States by police officers. Since that time the police have become a professionalized organization, utilizing training programs, professional standards, and education requirements.

The question of whether racial profiling exists is not a new one. Many studies have been conducted with varied findings. Recent court cases alleging racial profiling have been heard by the local, state, and federal courts as well as the Supreme Court. The rulings handed down have been varied as well. The United States Supreme Court recently decided in *Whren vs. United States*, involving a Fourth Amendment challenge to possible racial profiling in routine traffic stops. The Whren Court held that earlier Supreme Court decisions "foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved." (*Whren vs. United States* 116 S. Ct. 1769, 1772-1773, 1996). The Whren decision makes it clear that, in the Court's eyes, traffic stops motivated by the racial prejudices of individual officers do not

violate the Fourth Amendment's search and seizure guarantees, at least when there are other reasons for the stop.

Under the Fourth Amendment and its State Constitutional counterpart, a police officer may not order a person to halt or remain in a particular place, often referred to as a Terry stop or "investigative detention", (See *Terry vs. Ohio*) unless the officer has reasonable, articulable suspicion to believe that an offense has been or is being committed. This legal standard applies to stops of pedestrians as well as to motor vehicles.

The investigative detention serves a limited purpose: it is brief, on-the-scene investigation that allows the officer to confirm or dispel the original suspicion of unlawful activity that justified the stop. If a police officer takes too long in conducting this investigation, the encounter escalates into an "arrest," which would require that the officer be aware of facts constituting "probable cause" to believe that a crime, a non motor vehicle offense, or a driving under the influence offense has been or is being committed. (Johnson,S.L. 1983)

The "reasonable, articulable suspicion" standard used to justify a "Terry" stop is lower than the "probable cause" standard used to justify a custodial arrest, but still is more than a mere hunch or suspicion. Rather, "reasonable, articulable suspicion" means quite literally, a suspicion of unlawful activity that is based on objective reasons that the officer can articulate. In determining the existence of reasonable suspicion and/or probable cause, an officer may rely on all of his senses and all of the relevant information known to him the so-called "totality of the circumstances" including reasonable

inferences and deductions that can be drawn based on the officer's training and experience. (Johnson,S.L. 1983)

By far the most common reason for initiating a stop is an observed motor vehicle violation, such as speeding or weaving. With these requirements in mind, consider the following: Does racial profiling by police occur?

Forty- seven years ago police officers stopped Malcolm X because he was a black man in a white neighborhood. A revolution in civil rights later, police still view race as an important factor in the decision to detain a suspect (Johnson, S.L.1983).

A large number of African American males report that they have been stopped and questioned by police officers when they were in an "all white" area. This perception of racial prejudice (e.g., "you stopped me just because I am black") by the police causes resentment among African American's and at times leads to angry confrontations and sometimes violence. (Wilbanks, W. 1987)

A sampling of "high profile" African American's alleging that they have been stopped includes Wesley Snipes, Will Smith, Lavar Burton, Marcus Allen, Edwin Moses, Christopher Darden, O.J. Simpson and Johnny Cochran to name a few. In his pre Simpson days, Cochran worked hand in hand with police officers as an Assistant District Attorney in Los Angeles, prosecuting criminals. On one occasion Cochran was driving down Sunset Boulevard on a Saturday afternoon with his two children when he was pulled over. Looking in his mirror Cochran got a frightening shock: "the police were out of their cars with their guns out". The officers thought Cochran was driving a stolen car, and with no legal basis they began to search it. But instead of finding evidence, they found Cochran's badge, identifying him as an Assistant District Attorney. Cochran went

on to say "when they saw my badge, they ran for cover". Although he was angry his children were terrified. Cochran's daughter asked her dad, "Daddy, I thought you were with the police" Cochran then had to explain why this had happened. (Harris, D. 1999)

It is evident that the view, by white citizens and police, that blacks in white areas are seen as "suspicious" is widespread. The controversy as to who should be viewed as suspicious and the subsequent action taken by police once a "suspicious" person is identified are matters that the public needs to determine through discussion. However, these matters are usually left to patrol officers with little training, guidance, or policies from the department because this is potentially politically explosive issue that a police chief "wouldn't touch with a ten foot pole". Police officers have much discretion and ample opportunity for the exercise of racial and other types of prejudice. It seems that if the idea of racial prejudice or bias is ignored then the problem of the "suspicious" person will go away. However, the problem simply goes "underground" i.e. it is delegated to the patrol officers. (Wilbanks, W. 1987)

Who is "suspicious"? This question becomes less complicated if the police are seeking a suspect for a particular crime or incident. If the police are looking for a burglary suspect that is described as a Hispanic male in his 30's about 5'7" and 150 lbs. no one would deny the police the right to stop and question a Hispanic male fitting that description. But if the police are told that there have been a number of reports of Hispanic males robbing white males, should the police view all Hispanic males as suspicious?

As a probability there is no doubt that a Hispanic male seen in a white area has a greater probability of being a robber than anyone else. For example, suppose that only 20 black males are seen driving through a white area any given day while 10,000 white

males are seen in the same area during the same time frame. Also suppose that black males commit 8 out of 10 robberies during a month in this area. The robbery rate would be 2 per 10,000 white males or 1 in 5,000 while the rate for black males would be 4,000 per 10,000 or 1 in 2.5. Therefore the probability of black males driving through the area being robbers would be 2,000 times that of white males. (Wilbanks, W. 1987)

Having identified who is "suspicious" we need to determine how to treat those viewed as suspicious. To illustrate this problem think of yourself walking down a dark street late at night with no one around. Suddenly you hear someone quickly walking up behind you and you become fearful. You turn around and look and observe that the "follower" is a teenage girl. Wouldn't your fear decrease? Or wouldn't your fear be less than if you saw a 20-30 year old male? Or would your level of fear be different if you turned and saw an elderly white female rather than a young black male? We all operate on stereotypes on who is likely to be more dangerous.

If you were in this situation how would you react? If you were more fearful of the black male would it be appropriate to turn and shout, "get away from me" even before discovering the intent of the "follower"? if you had a gun would it be appropriate to turn and threaten the "follower"? Or should you just attempt to run? What action should be taken?

Racial profiling by the police could be the result of an express department policy, for example, a department memorandum that identifies a racial group as part of its drug courier profile. It could also be the result of an informal, implied policy in which race is relied upon to determine whether stops are made. Racial profiling may also be the result of an individual officer's practices, based on stereotypes and prior experiences. We are

all biased and prejudiced and have certain preferences in some shape or form. All of these practices are a learned behavior, no one is born with a bias, prejudice, or stereotypical attitude. (Burnett, A.L. Sr. 1994)

Methodology

The research question that guides this study is: Does the race or ethnic background of an individual impact the way a police officer or other member of the criminal justice system handles that individual?

It is hypothesized that the findings of this research will indicate that racial bias by members of the criminal justice system and alleged acts of profiling by police officers is nothing more than a perception on the part of the "victim".

Information for this research paper was obtained by conducting interviews with thirty inmates of the Walls Unit in Huntsville, Texas. The author also interviewed thirty police officers from the Metroplex area of Fort Worth-Dallas, Texas. Copies of the surveys can be found in the appendix section of this research paper. Further research was obtained from legal journal articles and other publications.

The author conducted a survey of thirty inmates of the Walls unit in Huntsville, Texas. The demographic makeup of the group was 10 Anglo-American (white) males, 10 Hispanic males, and 10 African-American males. The survey was mainly concentrated on the law enforcement aspects of racial bias. However, there were several questions asked about pretrial motions, hearings, bond arraignments, convictions, and sentencing phases of the court proceedings involving the inmates.

The author then conducted a survey of thirty law enforcement professionals of the same racial groups. The focus of the survey dealt strictly with their personal opinions,

history, and observations. All questions centered on racial profiling by police officers and whether the interviewee had participated, witnessed, or been subjected to racial profiling at any time in their lifetime.

Findings

It was learned through conducting interviews with thirty inmates of the Walls unit located in Huntsville, Texas that overall, the belief of racial profiling is nothing more than a perception or misunderstanding by the person stopped, that the stop was race based.

There were only three instances of any type of racial bias incident mentioned by the thirty inmates interviewed (10%). Two of the three pertained mainly to the court process. Leaving only one instance of racial bias, which was reportedly by a police officer. The racial makeup of the three who stated cases of racial bias was two White males and one Hispanic male. None of the ten African Americans alleged any instance of racial bias or profiling.

Of the two court cases one inmate a white male, stated that he "felt" that he was singled out by the prosecutor, judge, and jury concerning his involvement in a case where he was accused of possessing .07 grams of crack cocaine. The white male inmate said that "the prosecutor, judge and jury was all white and I feel like they kinda (sic) held me to a higher standard because I was white and they thought that only Blacks, Mexicans, and other minorities were crackheads". The inmate went on to say that he believed that he also received a harsher sentence than a minority would have if they had the same criminal history (in this case he received 45 years).

The other case involved a Hispanic male who had been convicted of capital murder in an incident stemming from a robbery, kidnapping, sexual assault, and the death of a White female. The inmate was convicted in 1970 and is serving a life sentence. Although the inmate adamantly denies committing the crime he said that he has exhausted all appeals and will "just live with it". This inmate said that he felt that his race played a part in his conviction because he was poor and obtained the services of a public defender. The inmate said that the public defender was an African American and deeply disliked Hispanics.

The one inmate who indicated that he had in fact experienced racial profiling or bias by the police was a White male convicted of murder in the 1983 stabbing death of a "friend". The inmate said that in an unrelated case he had been stopped by the police for being a "White man in a Black man's neighborhood". The inmate said that he was in the neighborhood to purchase drugs which is also the reason the police officers told him that they stopped him for saying, "no White man comes to this neighborhood to sightsee or shop at this hour of the day, the only reason a White guy would be here is to buy drugs."

It is interesting to note that the majority (70%) of the inmates interviewed stated that they had experienced prejudice within the Criminal Justice system, saying that due to a lack of financial support or poverty they could not afford competent and thorough council and therefore were found guilty or received harsher sentences.

It was learned through conducting interviews of thirty police officers from the "Metroplex" area of Fort Worth-Dallas, Texas that racial profiling or bias does not occur by officers conducting their business on a daily basis. Overall the feeling was that persons commonly accuse officers of affecting a stop on them or their vehicles of racial

bias simply as a "copout" and that the persons stopped generally raised the racial inference to cloud the issue or gain sympathy from others.

All of the officers interviewed said that in the course of their careers ranging from 3 to 19 years, they had not exercised racial bias or prejudice toward any person they had an occasion to contact. The officers interviewed said that they had only stopped people for a legal, valid, and legitimate reasons i.e. traffic violation, fit description of suspect etc.

None of the police officers interviewed indicated that they had ever experienced racial bias by a police officer toward them either prior to or after becoming a police officer. The officers interviewed were from the Fort Worth, Arlington, Westworth, River Oaks, and Haltom City, Texas Police Departments.

While conducting the research for this article it was learned that the population of the State of Texas is approximately 20 million people. This consists of approximately 12 million Whites, 5.5 million Hispanics, and 2.5 million Blacks. (U.S. Census Bureau 1998) The overall makeup of the Texas Department of Corrections prison system consists of approximately 37,794 Whites, 34,439 Hispanics, and 59,448 Blacks. This equates to an astounding 44.9% Black prison population (Texas Dept. of Criminal Justice 1998).

Conclusions

The purpose of this study was to determine: Does the race or ethnic background of an individual impact the way a police officer or other member of the criminal justice system handles that individual?

The hypothesis was that the findings of this research will indicate that racial bias by members of the criminal justice system and alleged acts of profiling by police officers is nothing more than a perception on the part of the "victim".

In light of all of the research and interviews conducted during this study, it is therefore concluded that the allegation of racial profiling or bias on the part of a member of the criminal justice profession is nothing more than a perception or myth on the part of the recipient as was originally hypothesized.

Of course there are several different viewpoints concerning these allegations and the subsequent findings of this research. It is quite possible that the sample groups were not large enough to get adequate data or that the problem simply may not exist in this area.

The allegations of racial profiling are widespread and a large number of research projects have been conducted in the eastern portion of the United States namely New Jersey and Michigan. Which may imply that the «problem" is more widespread or prevalent in those areas.

Data on this «problem" is not easy to come by. This is in part, because the “problem" has only recently been recognized. It may also be because records concerning police conduct are non-existent and that there is a large portion of discretion placed on the officer as to why he chooses to stop or not stop an individual.

In 1997, Representative John Conyers of Michigan introduced H.R. 118, the Traffic Stops Statistics Act, which would require the Department of Justice to collect and analyze data on all traffic stops by police officers in the United States. The act would require officers to collect and report data including the race of the driver, whether a search was conducted and legal justification for the search. However, the bill failed.

Racial prejudice is in my opinion, the process by which people assign positive beliefs to them and their race and negative thoughts or beliefs to those of other races. My

position is that both the Black and White views concerning racial bias, prejudice, and profiling by members of the criminal justice system are those of uneducated individuals who understand very little of what criminal justice professionals do in their vocation. If only people would take the time and initiative to learn more about the criminal justice system and the law enforcement profession comprehensively. Those people who "cry" racism would understand exactly what police officers do and why.

In closing the author would like to state that although some readers may think he is racist or covering for the "system" this could not be further from the truth. The author set out to prove the hypothesis wrong and failed to do so. Although the author has not ever participated in any racial profiling, bias, or prejudice incident he has heard of these incidents happening to people in his inner circle.

It is recommended that all police administrators develop and implement a written policy or procedure as well as a block of training to enable officer to make sound, solid, and reasonable decisions given the power, authority, and judgment issues allotted to their officers.

The author would like to thank all of the participants of the interviews conducted including the inmates of the Walls unit, Huntsville, Texas as well as the officers of the Westworth Police Department, River Oaks Police Department, Fort Worth Police Department, Arlington Police Department, and Haltom City Police Departments.

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Inmate Racial Bias Profiling Survey

1. What is your race?
2. Have you ever been stopped or detained by Police Officers? Yes No
3. Do you feel race played a part in that contact? Yes No (If no go to #5)
4. Describe how your race was an issue:
5. Prior to sentencing do you feel your race played a role in any hearings, pretrial offers etc.. Yes No (If no go to #7)
6. How did your race become an issue:
7. Were you convicted by a judge or jury? Or did you plea? Yes No Plea
8. If you were convicted did your race have a role Yes No
9. Upon sentencing do you feel your race played a role in the length of the sentence?
Yes No
10. If yes, How?
11. Are you guilty of the crime for which you have been convicted? Yes No
12. What crime(s) were you convicted of?
13. What County were you convicted in?
14. What is the length of your sentence?
15. What is your age?