

**The Bill Blackwood
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**The Gathering of Racial Profiling Statistics:
Useful or Wasteful?**

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ABSTRACT

Racial profiling, the treating of one person differently based solely upon the race of a person, is a relevant and weighty issue to law enforcement. Any bias policing based upon race has been a cause of dissention between minority groups and law enforcement agencies since the beginning of recorded policing. The International Association of Chiefs of Police (1992) wrote in the Law Enforcement Code of Ethics, "I (peace officer) will never act officiously or permit personal feelings, prejudices ...to influence my decisions" (para. 3). Racial profiling in any term or manner violates the heart of this Code of Ethics.

The position of this researcher is that statistics gathered from racial profiling mandates be kept only by law enforcement agencies and not shared with the public or any other organization unless based on a personal complaint by an alleged victim accusing an officer of racially profiling. Information gleaned from such racial profiling data has the propensity for being misunderstood and misused. Complaints of racial profiling must be based on a complaint that the injured party claims mistreatment by law enforcement personnel due to race or ethnicity. Therefore, the mandated gathering and reporting of racial profiling statistics to the state or any other organization should be discontinued. This researcher will use articles, periodicals, journals, and internet sites in gathering information. The vast amount of such information will need to be dissected for authoritative research and be separated from emotional opinion.

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	3
Counter Position	7
Conclusion	10
References	12

INTRODUCTION

Since the beginning of this nation, it has been scourged by discrimination due to one's religion, sex, or race. The battle to end the plague of discrimination has been long and hard fought and yet still continues to this day. Many battles have been won, and some have been lost, but the war still rages on. Many are the victims, and many are the suspects in the area of racial profiling. Both sides seem drawn along lines until each looks into the mirror and finds that the suspects are victims and the victims, suspect.

The hardest answer to come up with is the one to fit the question that is not defined and vague in the asking. This is true with racial profiling and the definition thereof. The definition of racial profiling and the use of this definition will outline whether or not law enforcement agencies actually use race as a determination for law enforcement action. Dictionary.com (n.d.) defines racial profiling in two ways: "The consideration of race when developing a profile of suspected criminals; by extension, a form of racism involving police focus on people of certain racial groups when seeking suspected criminals" (para. 2). The second definition states it is "A form of racism consisting of the (alleged) policy of policemen who stop and search vehicles driven by persons belonging to particular racial groups" (Dictionary.com, n.d., para. 3).

Racial profiling statistics gathered by law enforcement agencies began under the direction of the Texas State Legislature, 77th session, when it created Senate Bill 1074. The bill began the mandatory gathering of statistics gleaned from traffic and pedestrian stops made by law enforcement agencies starting on January 1, 2002. The bill, which was introduced to combat suspected racial profiling by law enforcement agencies, has

fallen short of being able to substantiate or predict any tendency of racial profiling. The bill became incorporated into the Texas Code of Criminal Procedure (*Texas Criminal and Traffic Law Manual, 2009-2010 Edition, 2009*) and is listed starting in 2.131 under Racial Profiling Prohibited, it states that a peace officer may not engage in racial profiling. However, a definition on racial profiling is not to be found in the Code of Criminal Procedure. In section 2.132, Law Enforcement Policy on Racial Profiling 2(b) states that every law enforcement agency will create a policy on racial profiling. The policy must include three areas of interest. The first area must define what constitutes racial profiling. The second area prohibits officers employed by the agency for using racial profiling and the third area identifies a system in place for an individual to file a complaint on any officer that may have engaged in racial profiling.

Herein lies a vast problem. What constitutes racial profiling does not have an agreed upon definition between the public, watchdog agencies, and law enforcement agencies. According to Hoover (2001), statistics gathered under the mandated racial profiling laws indicated that the law enforcement agencies data tends to show that the data is not always indicative of the cross section of population under the jurisdiction of that agency. The report went on to show that when the data is collected, it is not necessarily going to mirror the populace of how the community is made up or the population of minorities in the community. Since there is not an agreed upon definition, each could use the statistics gathered to bolster their position regarding racial profiling. According to Hoover (2001), "There is enormous potential for misinterpretation of data gathered under the requirements of SB1074. Agencies should not expect the

racial/ethnic composition of person with whom patrol officers have contact will match exactly the racial/ethnic composition of their jurisdictions” (p. 1).

Much of the statistics gathered are subject to officer interpretation and can also be answered truthfully in more than one way, making it hard to determine cause. These statistics are subjective and can be used by groups to cause a further rift in the boundary between law enforcement agencies and the community. Therefore, the gathering of the mandatory racial profiling statistics and the subsequent reporting of those statistics to the state or any other agency should be eliminated from law enforcement agency requirements.

POSITION

The gathering of statistics mandated by Texas legislatures has yet again been modified in the last legislature. The legislature has added a new section to the racial profiling law that requires law enforcement officers to capture statistics on whether or not they had prior knowledge of a person’s race prior to making a motor vehicle stop. The new mandate has changed the gathering of information from traffic violations to any motor vehicle stop. While the idea of expanding the reporting objectives to that of motor vehicle stops is understood, it has the same preponderance for error due to the wide range of reasons any such stop could be initiated. On face value, such a stop may be based on a law enforcement officer’s racial bias; this does not constitute that it is so. Law enforcement officers must also arrest those with active warrants. Officers routinely have knowledge of persons having such warrants and the race of such a person. Officers who make such stops for wanted subjects, who they have located in a motor vehicle, would indicate that the stop of the motor vehicle was to stop a person whose

race was already known to the officer. Officers also routinely inspect vehicles for registration violations, inspection violations, and seat belt violations by the operator. As an officer would visually inspect these areas for violations, the officer would most likely also be able to determine the operator's race. These types of stops would have no bearing in any way of racial profiling, yet, on the surface, the statistics from such stops would appear to be bias policing by officers.

Statistical data gathered from current racial profiling mandates has, in many ways, been used to make unsupported assumptions that law enforcement officers are stopping motor vehicles based on actions motivated by racial bias. Current statistics of motor vehicle stops varies widely across the state. Liederbach (2007) gathered data from five departments that showed that minorities were stopped at disproportionate rates from whites. The rate at which these stops were conducted changed from one agency to another, and some agencies conducted motor vehicle stops that correlated to the known population. One agency stopped a disproportionate number of minorities as related to the population of the jurisdiction that they could have been patrolling. The study found that the frequency of minority stops did correlate to an area in the jurisdiction that officers work more frequently. Agencies working in metropolitan areas had more disproportionate numbers than officers who work mainly on highways. The report also indicated that another cause for error could be that law enforcement officers are dispersed through high crime areas, many of which can be predominately minority. This disbursement of officers would naturally inflate the reported stops of minorities.

A Traffic Stop Data Report (Texas Department of Public Safety, 2002) from the Texas Highway Patrol, who mainly enforces traffic laws on Texas highways throughout

the state, had the following information for total traffic stops: 68.12% of Whites were stopped compared to 60.69% of the population; 9.66% of Blacks were stopped compared to 11.66% of the population; 19.98% of Hispanics were stopped compared to 25.55% of the population; and 2.44 of other races were stopped compared to 2.10% of the population. Figure 1 shows that stops conducted over a large population not concentrated on dense populations closely reflected the overall population of the Texas.

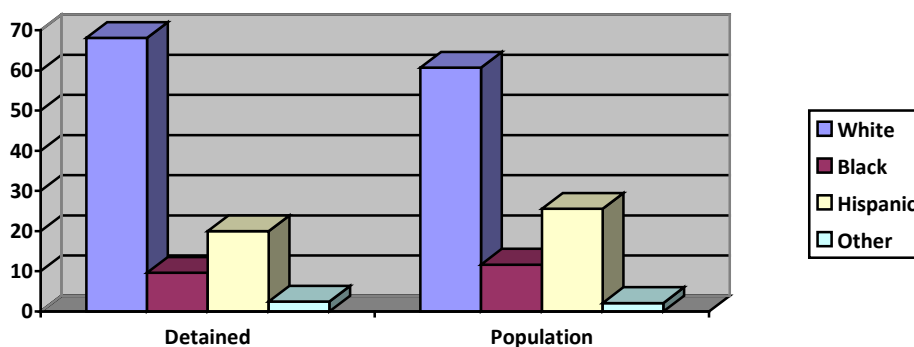


Figure 1. Stops vs. Population

In analyzing the data from traffic stops made by individual departments, the problem with statistics correlated from this data is the lack of reasoning by an officer in conducting a motor vehicle stop. Theory and Racial Profiling: Shortcoming and Future Directions in Research (Engel, Calnon, & Bernard, 2002) stated that the use of aggregate rate of stops does not indicate racial prejudice anymore than prison populations indicates prejudice by sentencing judges. According to "Arrests – Crime in the United States" (U.S. Department of Justice, 2009), males were arrested at a rate of 75.5% when the male/female ratio is close to half of the population. The study, Theory and Racial Profiling (Engel, Calnon, & Bernard, 2002), further indicated that any use of aggregate stops could in no way be used as an indication of racial profiling. According

to Hoover (2001), officers may not consciously realize that they are selecting minorities. The possibility exists that an officer may be stopping subjects that seem different from the norm of the officer, and the officer may not be aware. Data does not show the percentage of stops performed by a minority officer in relation to a white populace or even another minority.

According to Kilday (2009), one city council member in Bellaire, Texas asked if their city was possibly profiling race during traffic stops. Dr. Alex Del Carmen, a professor at the University of Texas in Arlington, who is a leader in the gathering of such statistics gleaned from traffic stops, answered the council in such a way that the article bore the title, *Statistics "Cannot Provide The Answer" Concerning Racial Profiling*.

The requirement for law enforcement agencies to report motor vehicle stops and race may also be tainted by the non-use of some motor vehicle contacts as outlined in the recent legislature update. Motor vehicle stops that result only in a warning are not used in the data that is provided and used to tabulate racial profiling statistics. In many agencies, these motor vehicle stops make up for the majority of the traffic stops conducted by an agency. In the quest for gathering as much information from motor vehicles and the possibility of officers conducting stops that are racially biased, these contacts being eliminated from the data would only create a further error in any data gathered from motor vehicle stops. The Texas Code of Criminal Procedure (*Texas Criminal and Traffic Law Manual, 2009-2010 Edition, 2009*) states the following under Article 2.132(6): The policy must require each agency to collect information regarding motor vehicle stops when a citation or arrest was made; the information must include the race or ethnicity of the driver and if a search was conducted; the information must

also include whether the search was initiated by probable cause or by consent; and, the information must also include if the officer had prior knowledge of the driver's race or ethnicity.

The use of photo-speed recorders has been rising in use as technology moves forward. When these recorders become more dispersed, data captured from these recorders could be used to detect speed violators on major highways. The stops could be considered as an unbiased base sampling of those that law enforcement would subject to a motor vehicle stop. Where a record of the violator includes a photograph of the violator, such statistics may give a more reliable base for data analysis. Racial profiling statistics could be compared with such unbiased information. However, at this time, such statistics are not gathered by companies that deploy the photo-speed recorders.

COUNTER POSITION

The American Civil Liberties Union (2001), along with many minority organizations, such as the Texas National Association for the Advancement of Colored People, the Texas Criminal Justice Reform Coalition, the National Council of La Raza, the Latino Voters League, and the Anti-Defamation League of Southern Texas have set forth the idea that expanding the collection of data and making it mandatory for every state to collect data would provide protection from officers who might racially profile. These same agencies support a federal mandate for the collection of traffic statistics and a federal law making racial profiling illegal. This researcher supports the idea of racial profiling being made illegal by statute, but the statute should include the

punishment for the violation of the law and the punishment for the false allegation of those that would falsely accuse an officer of racial profiling.

While an overview of the racial profiling data gleaned from law enforcement agencies indicated that there are times that the information does not correlate state, city, or area populations, it in no way proves the existence of racial profiling. According to Kruger (2002), the collection of the data for racial profiling is flawed from the start. She explained that the protocol for racial profiling statistics has not come from either academic or mathematicians who are capable of dictating what data must be obtained and the scientific analysis of such data produced. The current data has come from the protocol constructed by legislators who have no training in the area of securing or analyzing such data. Kruger (2002) also addressed the issue that minorities may have a tendency to believe that they have been or could have been a victim of racial profiling. Kruger used a quote from U.S. Attorney General John Ashcroft that addressed the fact that one who believes that they have been such a victim is like the person who is unemployed. The unemployment rate for that person is, in his eyes, 100%.

According to Totman and Steward (2006), minorities have been and are being searched at a rate that is disproportionate to population. Seventy-one percent of departments in Texas search Blacks more frequently than Whites, and 62% of agencies searched Hispanics more frequently than Whites. Statewide, only 2.3% of all drivers were subjected to consent searches. According to the study, this indicated the possibility of law enforcement officers racially profiling. Totman and Steward (2006) stated that the statistics do not suggest that Whites are consent searched infrequently, merely that in most departments, minorities are being consent searched more

frequently. The number of consent searched does not give enough statistical data that is needed to form any opinion of racial profiling.

Consent searches are conducted on the expressed permission of the subject and are therefore unreliable as any indication of racial profiling. According to *Schneckloth v. Bustamonte* (1973), the Supreme Court explained that if consent is given voluntarily, an officer need not have any indication of criminal activity. The argument can thus be made that consent may be the product of a class of people that allow or reject any request by a law enforcement officer. The knowledge in refusing consent searches may be provided by a number of ideas: the education of an individual, the activity he is engaged in during daily routines, and the area in which he lives may play a role. Consent is impossible to use as a basis of racial profiling since it is mandated to be voluntary. Whatever the reason an officer asks for consent, even if the officer has underlying reasons, the fact remains that the officer does not have to have any valid reason for asking for a consent search since the officer is asking for the person's voluntary act. According to Totman and Steward (2006), consent statistics is indicative of racial profiling. There has been legislature introduced that seeks to limit officers the ability to ask for consent. Since the Supreme Court has established the fact that any officer may ask for consent, it is unlikely that any such move to limit the rights of an officer to ask for consent would be found unlawful in the onset. According to *Schneckloth v. Bustamonte* (1973), the Supreme Court also upheld the right for any individual voluntarily to waive his rights at anytime.

While statistics showed that minorities are stopped in disproportionate numbers, it may also be due to economic levels. According to Hoover (2001), it is also possible

that those that live near the poverty level may not maintain vehicles as well and therefore may be more prone to equipment violations. These same people are also more prone to live in high crime areas where law enforcement would concentrate more of its forces.

RECOMMENDATION

The gathering of racial profiling data and the use of it has been driving a wedge of suspicion and mistrust between minorities and law enforcement agencies since the beginning of the gathering of such statistics. The idea of healing a nation and growing as a society cannot take place with the idea of injustice being perpetrated on society looming over the idea of freedom and equality. While the idea of the gathering of data is unopposed by this researcher, the delivery of the data to the state and the subsequent scrutiny of the data by organizations outside of those trained in such academic endeavors should be stopped. However, if the data from racial profiling could be analyzed in a way that could produce an objective overview on whether or not officers were racially profiling, then the public should use the information. The endeavor of gathering meaningful statistics should be placed into the hands of those in academia that have the knowledge and expertise in capturing and analyzing data.

Mandates of video and audio recorders for law enforcement from interest groups have been a benefit to every agency committed to the equal and unbiased application of law. The use of mobile video recorders should be mandated for all departments regardless of size. While this researcher knows of no instance where individual officers have been proven to be racially profiling as identified by the use of racial profiling statistics, officers have been identified and convicted of profiling when the officer's

organization has fielded a complaint of being profiled from an individual and investigated. Therefore, this researcher suggests that those believing to have been racially profiled should file a complainant with the organization. The continued education of what constitutes being racially profiled should also be continued with both law enforcement and the public. Law enforcement agencies should educate, train, and mandate a zero tolerance policy for an officer utilizing race as a sole factor in determining any type of law enforcement action. In the law enforcement community, the idea of to protect and to serve should be reiterated to law enforcement. The protection is that of rights afforded to individuals by the Constitution of the United States, which must be the main focus in law enforcement. To conquer injustice, law enforcement officers need to protect the right of individuals to be free as much or more than their mission to arrest those that violate the law, which harms the peace and dignity of the government. Society should also make a united stand that false reporting from anyone accusing officers of racial profiling would be met with the same fervor and contempt and violation of any such a law.

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