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S.B. 1074: Racial Profiling:
Guarding Rights or Pacifying Special Interest?

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Abstract

The 77th Texas Legislature in 2001 adopted S.B. 1074, which is commonly known as the racial profiling law. The racial profiling law has created new demands on law enforcement and the regulations for reporting are identified in this paper. Many newspaper articles have been reviewed to determine how information about the law is passed to the public. Court cases have been reviewed to determine how the courts are dealing with issues relating to racial profiling. The question of how effective is S.B. 1074 is the main topic of this paper.

The problems associated with the law are discussed and law enforcement professionals present ideas about the reason and necessity of the law. A survey of the public, specifically citizens of the City of Cedar Park, gives some statistical data in reference to the public opinion of issues related to racial profiling. The errors in statistical data are presented and the contradictory mandated requirements for peace officers is stated. Effectiveness is presented in a political manner, the need for the State to address the issue is important to show Texans that racial profiling is not acceptable.

A common theme that has repeated itself in Texas law enforcement is that when the State issues guidelines about how to conduct police work officers meet it with resistance. Sometime after new legislation is passed officers realize that the laws are necessary, and that in fact law enforcement somewhere caused the issue.

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Introduction

This project is intended to review the effectiveness of S.B. 1074 Racial Profiling. The 77th Legislature in 2001 included the adoption of new laws regarding the issue of racial profiling and how Texas law enforcement agencies are required to address the issue. The Texas Code of Criminal Procedure Section 2. Chapter 3 was amended by adding Article 3.05 to read as follows: "RACIAL PROFILING. In this code, 'racial profiling' means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity" (G.P. of Texas, 2002).

On January 1, 2002 law enforcement agencies in the State of Texas began a mandated gathering of statistical information as it pertains to racial profiling. This new law has created definitions and requirements for law enforcement agencies to follow, but is it effective? How did racial profiling become such a heated issue and why now? Policing resources are being dedicated to maintain compliance with this law include: millions of tax dollars, officer duty hours and new training requirements that are being expended to facilitate these newly legislated demands. The States who do not comply with the Racial Profiling Prohibition Act of 2001 would lose 10% of their \$591 million in Federal appropriations or an average of \$59.1 million a year. Opinions and perception by the public greatly affect the determination of how effective this law has been and by surveying public opinion, effectiveness can be determined to some degree. The actual prevention and detection of racial profiling is what this law is designed to control, however, based on interviews with law enforcement personnel, it will likely be found that the procedures in place to identify possible racial profiling are currently not effective.

When reviewing complaints investigated by police agencies (in central Texas area) it will likely be found that the rate of substantiated race-based complaints have not been affected based on the new regulations. The likelihood is that officers in law enforcement understand loopholes in the legislation, which would allow for officers intending to conduct racial profiling to go undiscovered. While researching this question I will try to determine how racial profiling can be detected, and when it is detected, how police agencies deal with violators. Currently, there are no standards for disciplinary actions, only individual agency policy, for officers who are found to be in violation of this Article. Proponents of the law to include organizations such as the NAACP and the American Civil Liberties Union have commented on the issue and their messages will be reviewed. The review of facts and public perception of racial profiling will determine how effective this law is and may give insight on how to make it better. "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" (Walker, 2001, 1). However, if they do bring it to work how is it dealt with and will it be effective?

Literature Review

To effectively look at the issue of racial profiling the most recent court rulings must be reviewed. The U.S. Court of Appeals for the Seventh Circuit made a ruling in reference to the use of statistical data to determine if racial profiling had occurred. The case was based on two complainants, one Hispanic and an African-American, who had been stopped by the Illinois State Police Operation Valkyrie, a drug interdiction unit, which was allegedly stopping motorists based on their race without legal justification.

Each party involved in the suit supplied statistical information supporting their differing positions, which, the court found discrepancies in both. The ruling in brief established "Even if statistics are enough to demonstrate discriminatory intent in some other contexts, this is not true for claims of racial profiling" (BNA May 30,2001). Proof of racial profiling is extremely difficult to articulate using only statistical data. How data is collected has been established by H.B. 1074 which will alleviate some of the controversy in Texas when presenting statistical information. The majority of cases filed accusing racial profiling are based upon the belief that a persons civil liberties have been infringed upon. The plaintiffs seeking judge ments have identified specifically the Fourth and Fourteenth Amendments as those violated. Plaintiffs reporting civil rights violations of the Fourth Amendment have claimed that no probable cause existed for their detention or search and that only their race caused the law enforcement interaction. Discrimination by police is the major assertion of those plaintiffs reporting civil rights violations of the Fourteenth Amendment. The Equal Protection Clause found in the Fourteenth Amendment describes that in order to show a violation the plaintiffs must prove that, the defendant's actions (1) had a discriminatory effect and (2) were motivated by a discriminatory purpose. To prove discriminatory effect, the plaintiffs are required to show that they are members of a protected class, that they are otherwise similarly situated to members of the unprotected class, and that the plaintiffs were treated differently from members of the unprotected class.

This leads us back to the original question about the need for racial profiling legislation or does the U. S. Constitution already address such issues. The practice of

profiling is not new to law enforcement. In fact, profiling was widely accepted in the 1970's and 1980's based on the Drug Enforcement Administration's drug courier's profile. There seems to be a trend in the United States that whenever a war is declared a profile of our adversary is created and commonly accepted by the public. For instance, during WWII thousands of Japanese Americans were placed in internment camps, the "War on Drugs" has led us to the profiling of African-American and Hispanic drivers, and the most recent "War On Terror" has established a profile which includes Middle Eastern men. Many persons in the field of law enforcement have expressed the idea that if S.B. 1074 was presented post Sept. 11,2001 it would not have passed. This point is further supported by an article in the New York Times

For many Americans who say they have deeply believed that it was wrong for law enforcement officers to single out members of minorities for special interrogation or searches, the terrorist attacks on Sept. 11 have prompted a painful confrontation with the sudden. anxieties they acknowledge feeling in the presence of one minority in particular (Verhovek,2001).

Even leaders of popular minority groups Gary Bledsoe, president of the Texas chapter of the NAACP, and Will Harrell, executive director of the ACLU of Texas, commented during a Texas State NAACP annual conference that racial profiling legislation would likely not have been passed after the Sept. 11 attacks (Gott, 2001).

Why is racial profiling in the face of the public now? Prior to the terrorist attacks the roots of racial profiling can be traced back to the drug war. In an online publication, it was explained that "Both statistical studies and anecdotal evidence support the view

that drug crimes are the almost exclusive focus of investigation in racial profiling cases (Callahan, 2001). The City Journal indicates, "According to the racial profiling crowd, the war on drugs immediately became the war on minorities (Mac Donald, 2001). The most accepted toot cause of racial profiling is indeed the perception by law enforcement that a specific minority has a disproportionate involvement in the illegal narcotic trafficking. Many articles have been written about why racial profiling exists but how legitimate factual data on the subject shall be collected was another question in this project.

The law requires certain fields of information to be collected depending on which tier the law enforcement agency is in compliance with. The requirements for Tier I include video/audio recording of the interaction as well as documentation about the race, ethnicity of the subject, whether a search was conducted and if so was it consensual. The video and audio recordings must also be stored for a period of ninety days. Tier II requires that data must be collected in reference to;

1. a physical description of the person(s) detained
2. gender
3. race or ethnicity
4. location of the stop
5. law or ordinance violated giving rise to the stop
6. was a search conducted
7. was the search consensual
8. probable cause for the search
9. facts supporting the probable cause
10. was an arrest made or citation issued
11. a statement regarding the offense or violation charged (S.B. 1074).

The mandated collection of data creates several issues for law enforcement agencies. The cost of implementing these mandates are high financially as well as time consuming to the officers. The storage of the video and audio recordings has also created hardships on

agencies. The entering of statistical data requires manpower as well as storage, maintenance and production costs. The legislature did allocate 18.5 million dollars to be granted by the Department of Public Safety to purchase in-car video camera systems for police agencies. The funds allocated are considered insufficient by many law enforcement personnel, for example the Houston Police Department would require more than eight million dollars alone in order to install video systems in their marked units (Elliot, 2001). The accuracy of the data will always be somewhat inaccurate due to human error when officers are required to record and report statistics.

Law enforcement officers have also seen some disparity in the mandatory training requirements for licensed officers. Prior to requiring mandated racial profiling training, included in S.B. 1074, officers had to attend cultural diversity training biannually. Since the passing of S.B. 1074 officers are now required to attend a cultural diversity training class every fourth year, which appears to be in contrast with the needs identified in this legislation. The Texas Commission on Law Enforcement Officer Standards and Education has been tasked with many new responsibilities pertaining to S.B. 1074. Training requirements have been established and department policy reviews (see attached letter) are among the most important responsibilities of the commission with the establishment of the law.

Methodology

This project is intended to review the effectiveness of the racial profiling law, S.B. 1074. The outcome of the research will identify the shortcomings of the legislation and the impact on Texas law enforcement. The predicted outcome is that the law itself does not change how the majority of law enforcement officers perform their jobs. The

legislation will be found to have been an expensive tool to pacify special interest groups who have demanded action and that the majority of the public does not agree with racial profiling and they also do not feel that it is as prevalent as portrayed in the media. A literature review of recent newspaper and journal articles as well as court decisions will establish some background about the issues surrounding the law. Interviews with law enforcement education and theory professionals will provide insight from a perspective not directly affected by the legislation but familiar with the industry. A survey will be completed to determine the public opinion and knowledge of the law. The survey consists of the definition of racial profiling and six multiple-choice questions. The survey questions are:

1. Are you aware that the Texas Legislature passed a law prohibiting racial profiling in 2001? Yes or No
2. Do you believe that racial profiling by law enforcement occurs in this country? No/a little/often/frequently
3. Do you believe Central Texas law enforcement officers conduct racial profiling? No/a little/often/frequently
4. Do you believe that since 9/11 racial profiling is necessary to prevent crime? No/a little/often/frequently
5. What single factor most significantly has caused racial profiling to become such an emotional issue nationwide? Police abuse/Media/Politicians/Special Interest Groups

6. If an officer is found guilty of racial profiling what if any punishment should they receive? None/training/suspended without pay/termination/criminally prosecuted

The target groups for the survey are the citizens of the City of Cedar Park, Williamson County, Texas. The citizens will be contacted by Cedar Park police officers that are participating in National Night Out 2002 on Aug. 6, 2002. The citizens responded with one hundred and ninety-nine completed surveys at the time of the officer contacts. A total of three hundred surveys were distributed of which many respondents requested to return the survey at a later date, none did. The information will be analyzed by the race, gender, and age of the respondents.

Findings

The results of the survey indicated that thirty-three percent of persons polled were not aware that S.B. 1074 had been legislated. Citizens surveyed felt that Central Texas law enforcement racially profiled less often than that of the national rate. Only twenty one percent of those polled felt that no racial profiling should be done in the name of crime detection. Sixty-one percent of those polled blamed the media for the sudden emphasis on the issue and only twelve percent indicated police abuse as the stimuli. The determination about how an officer should be dealt with when it has been determined that they were racially profiling varies greatly with the highest percentage (thirty-nine) identifying training as a corrective measure. The complete results of the survey are included in Appendix A.

The legislation has created new challenges for law enforcement. The cost of videotapes and supplies related to the storage and maintenance of the video camera

systems does impact the operating budget of a police department. The Cedar Park Police Department has found it necessary to utilize funds allocated for equipment purchases to buy enough videotapes to remain in compliance with the Tier I mandates. The storage of the videotapes has also impacted the available space in many already cramped police facilities. The paperwork necessary to remain in compliance and the reports to be generated for public presentation take time away from the already over-tasked administrative responsibilities in many agencies. The administrative impact of S.B. 1074 on law enforcement is time and financial resources. The actual prevention of racial profiling seems difficult to identify.

Since the passage of the law only one central Texas police officer has been fired for racial profiling. The officer is currently involved in a suit against the Austin Police Department trying to be reinstated. Interviews of persons involved in the law enforcement industry have given insight into some general public perception and the reasoning for the legislation. According to with Dr. Dorothy H. Bracey, of the City University of New York, when asked why does racial profiling occur? she explained that the "human mind allows people to associate things that we don't know to things we do know which can be bad, emphasis can be placed on the wrong place, which in law enforcement can make you lazy." When asked about why such legislation is necessary Bracey explains, "Passing a law is a statement even if it is totally ineffective, unfortunately the problem is when we stop there and do not continue to address the issue". (personal communication, October 15, 2002) Bracey also explained that profiling is not solely an American issue, in fact in Europe law enforcement profiling deals mainly with socioeconomic classes indicated by the type or style of a vehicle which people drive,

as it pertains to narcotic enforcement profiling. Another distinguished academia interviewed for this project Dr. Jim R. Alexander of Texas Women's University's Law Enforcement Leadership Command College gave insight as to why government reacts to issues. Dr. Alexander explained "Legislation is symbolic and important that the State make such a statement that racial profiling is an unacceptable practice". Dr. Alexander also explained that officers who use race in a profile might do so subconsciously with no intent of causing harm to the individual (personal communication, Oct. 16,2002).

Another concept that Dr. Alexander revealed is that mandatory training needs to be perceived in a positive light and not as a punishment. Questions relating to the validity of statistical information as mentioned in Chavez v. Illinois State Police (2001) indicates that such data can be interpreted many different ways and with many variables. The information collected by law enforcement has also been shown to be insufficient in many ways.

The Houston Police Department has indicated that errors in reporting have been as much as nineteen percent when indicating such factors as race (Feldstein, 2001). Typos and the failure to complete the required paperwork properly only address the issues of unintentional misrepresentations; the real difficulty lies in determining intentional abuses of documentation. Hans Marticiuc, president of the Houston Police Officers Union, stated in the April 15, 2001 Houston Chronicle "As a 21-year police officer, I can tell you, if someone is out there doing illegal activity, they're not going to tell you" (Feldstein, 2001). Racial profiling is not only difficult to detect it is also hard to prove. **(Graphs will be inserted in this section in the final copy)**

Conclusions

Racial profiling occurs in Texas, how often and to what extent may never be known. This project was intended to determine if the racial profiling legislation is effective and to discuss the issues surrounding S.B. 1074. The expected findings were that the law does not actually effect how the majority of law enforcement agencies operate but does cost a great deal to comply with the mandates. A few things have been discovered about public perception of racial profiling. A third of the surveyed population were not even aware of the legislation and most blame the media for the heightened awareness. Surprisingly, the surveyed public did not indicate that law enforcement abuses have caused this issue, when without law enforcement abuses the issue would not even exist. The survey was limited to a central Texas population that has not had any significantly publicized incidents of racial profiling. The inaccuracies in data collection will continue to be an issue whenever humans collect the data. Interpreting the data in order to determine if racial profiling has occurred is not scientific and the number of variables involved is unlimited. Effectiveness then must be determined in a non statistical sense. If a person understands that the legislation was intended to send a message to the community then it should be considered successful.

The Texas Legislature did a **good** thing for the people of the State of Texas by reinforcing the Constitutional ideas presented -in the Forth and Fourteenth Amendments to the U.S. Constitution and sending a message to law enforcement. The expectation that S.B. 1074 is a panacea and will end racial profiling in Texas is not widely accepted and since the September 11, 2001 attacks on the U.S. people have questioned the need for racial profiling. The reaction of law enforcement to S.B. 1074 has been repeated in the

past on different issues. Whenever legislation is presented which implies wrongdoing by law enforcement, the majority of law enforcement personnel react to it negatively as if it was criticism. That mind set usually changes after some rational thought about the new concept, restriction or direction when law enforcement realizes that they were doing something wrong. Texas law enforcement should realize that S.B. 1074 is a message to the people of Texas that all citizens should be treated equally, even if that must be legislated.

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