

Racial Profiling



James F. Pastor, PhD., J.D.

Racial Profiling

- Racial Profiling: The use of race or ethnic background as a basis for conducting a traffic stop, or other police or security activity.

Typical Allegation

- Police or security personnel use race or ethnic background as one or as the sole factor for focusing suspicion of wrongdoing on minority citizens.
- That conduct constitutes intentional race discrimination and wrongly focuses greater enforcement or mitigation efforts on minority groups.

Pretext Stop Example

- Claim of stop for illegal u-turn was a pretext for stopping car for drugs
- Officer subjective reason for stop immaterial as long as there was a valid justification for the stop. *Whren v. U.S.*, 517 U.S. 806 (1996)

Profiling Does Not Mean

- Profiling does not prohibit:
 - 1) Targeting individuals based on CONDUCT or BEHAVIOR.
 - 2) Focusing on a person of a particular race or ethnic background if there is SPECIFIC SUSPECT information (witness says the offender is male, black, 5'10").

Racial Profiling

Agreements against Profiling

Against The Law:

- Potential civil and criminal liability
- Two Constitutional Claims can be asserted:
 - A) Equal Protection Clause of 14th Amendment
 - B) Search and Seizure under 4th Amendment

Amendments

- **14th** “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; **or deny to any person within its jurisdiction the equal protect of the law**”.
- **4th**The right of the people to be secure in their persons, houses, papers, and effects against **unreasonable searches and seizure**.....

Constitutional Claims based on Section 1983

- Against the officer – for the officer’s specific actions.
- Against the Police Agency – for the policy, customs, practices of the department.
- Compensatory damages against officer and agency possible.
- Punitive damages against the officer.
- Attorney Fees - for successful plaintiff.

Also Prohibited by:

- 42 USC Section 14141 – Violent Crime Control and Law Enforcement Act (1994) - cannot deny juveniles Constitution rights.
- 18 USC Section 242 – prohibition against discrimination based on color or race.
- 42 USC Section 2000d – prohibits discrimination by any entity receiving federal financial assistance or grants including Community Orientated Policing Services (COPS) Program Funds.

Racial Profiling

Agreements against Profiling

Morally Wrong

- Inappropriate because of its effect on thoughts, attitudes, and from the general result of the conduct – whatever your faith or beliefs.
- Violates principle that we should be fair and non-discriminatory in our dealings with others in both the private and public sectors.

Racial Profiling

Agreements against Profiling

Limits Organizational Effectiveness

- Perpetuates a false reflection of actual minority participation in any specific offense.
- Example: If one minority group is stopped in numbers greatly exceeding their number in the population, does that statistic indicate that minority to be a higher violator than non-minority groups?

Racial Profiling

Agreements against Profiling

Alienates Target Group and Fosters Distrust

- Impacts victims of profiling, minority persons and the entire group.
- Even those not personally victimized.
- Non-minority citizens also see the activity and may foster stereotypes.

Racial Profiling

Agreements against Profiling

Impacts Professional Integrity

- Encourages police and security personnel to be less than truthful about the circumstances leading to a stop, arrest, search, or seizure.
- Fosters suspicion of others in the criminal justice system against police or security personnel.
- Can lead to perpetuating the negatives associated with the criminal justice system or security protocols.

Agreements for Limited Profiling

Potential Devastating Impact of Terrorism

- Some argue that the impact of terrorism requires different application of profiling as compared to “normal” crime.
- Potential for great loss of life and its attendant public safety implications.

Agreements for Limited Profiling

Statistical Probability

- Certain types of individuals tend to commit certain types of crimes.
- Based on probability and propensity.
- Suicide terrorism disproportionately committed by radical Islamists?
- Violent crimes disproportionately committed by black males aged 18-25?

Policy Implications

- Must adhere to law and ethical framework while protecting public safety.
- Must balance these critical principles.
- Decisions must be made with an appropriate blend of behavioral and probability factors.
- Race should never be the only factor in making a decision.
- Should race or ethnic background be one of many factors in making mitigation decisions?
- Very controversial question—Are we prepared to honestly deal with its implications (both pro and con)?

QUESTIONS



Dr. James F. Pastor, Ph.D., J.D.

312-423-6700

www.securelaw.info