

THE USE OF AUDIO AND VIDEO RECORDING TECHNOLOGY
TO REDUCE INCIDENTS OF BIAS-BASED POLICING

Article

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INTRODUCTION

The Illinois Association of Chiefs of Police defined bias-based policing as the differential treatment of individuals in the context of rendering law enforcement services based solely on a suspect classification, such as race, ethnic background, gender, gender identity, sexual orientation, religion, economical status, and or cultural background. Bias-based policing may also be identified as a law enforcement action based on an assumption or belief that any of the aforementioned classifications have a tendency to participate or engage in criminal behavior.

During the 1980s, law enforcement officers became proficient in using a United States Drug Enforcement Agency-developed drug trafficking profile for stopping individuals to search for drugs without probable cause as they drove the highways of this country. Whether law enforcement calls it having a hunch or simply good police work, profiling citizens has been identified by many states and the United States government as a mechanism used by law enforcement to justify detaining or searching people without probable cause. Not only has this issue received national attention, but also bias-based policing has become a worldwide problem, as evidenced by legislation introduced in Great Britain and New Zealand to eliminate this practice. The 106th Congress felt so compelled to address bias-based policing by law enforcement that it adopted Senate Bill 821 to provide for the collection of data on traffic stops to determine if federal law enforcement officers are profiling citizens. The American Civil Liberties Union reported the State of New Jersey was adjoined in a consent decree with the

United States Department of Justice from entering into any practice that used or embraced a policy or procedure to stop people based solely on race. In Australia, the Institute for Forensic Psychology recommended the use of screening techniques to capture enforcement stop data on police officers. This is in an effort to eliminate racial biases in the nation's police forces. The IFP also suggested screening out potential officers who exhibit tendencies to profile people on the basis of race.

There are those like John Derbyshire who expand the premise that racial profiling is perfectly rational. Mr. Derbyshire advances the contention that young black males commit most inner-city crime.¹ And, if you subscribe to his theory, the police should pay more attention and pull over young black men more often, question them more vigorously and search their cars. After all, it makes sense, if law enforcement is only trying to ensure safety by increasing the number of criminals arrested.

However, the young black men stopped by law enforcement who are not responsible for inner-city crime would disagree with Mr. Derbyshire's contention. The innocent subjected to police profiling would be left with only one reason why they were stopped, race. So is it wrong to police with biases? Is it wrong to profile people without any probable cause? Policing with evidence and facts that allows law enforcement to target a person and not a people is an acceptable method of providing public safety services to any community. However, profiling a people is bias-based policing and unacceptable.

¹ Clegg, Roger, , "No to Racial Profiling", National Review, February 2001.

Many think law enforcement is the only governmental entity that engages in profiling or uses biases to carry out their duties. In December 1941, the rational thought process of reasonable people was cast aside when American sovereignty was attacked in Pearl Harbor, Hawaii. This time Americans of certain ethnicity were subject to profiling based upon their appearance and being Japanese. These people were interned and deprived of their property as potential enemies of the government.

On September 11, 2001, America again was under attack, this time on United States soil. Shortly after this attack, all males with Middle-Eastern features were immediately suspected of complicity to promote terrorism. The United States government responded by rounding up many Middle-Eastern individuals, detaining and holding them pending further investigation.

Biases and profiling incidents are not limited to government entities. Since September 11th, private companies have begun engaging in this practice. On Christmas Day 33-year-old Secret Service Agent Walled Shater had planned to meet the team responsible for the security of the President of the United States. Mr. Shater, of Middle East descent, was doing something he has done countless times as a federal officer, flying on commercial airlines. The pilot of an American Airlines jet, which Mr. Shater boarded, had him removed from the airplane after it was found that his papers were allegedly not proper. Most associated with this incident felt this was simply a case of racial profiling targeting Middle-Eastern men, not just a Secret Service agent with improper papers. Again, if you follow the logic of John Derbyshire, this action was necessary and appropriate since the

planes hijacked and crashed into the World Trade Centers and Pentagon were piloted by Middle-Eastern men. In addition, most acts of terrorism against American interests around the world have been completed at the hands of Middle-Eastern men. So, John Derbyshire would have you believe that the action directed at a person's ethnicity would be appropriate to justify safety.

Is there a worldwide racial profiling problem, or is this just the perception of a few misguided do-gooders who are soft on crime? If law enforcement is to maintain a feeling of security and safety, society should be willing to set aside some liberties to eliminate the possibility of being victimized. But who has the final say when the cost of safety infringes on freedom?

HISTORY

All human beings have biases, but the ability to overcome these biases is one of the many factors that identify professional law enforcement from an occupying force. Professionalism is the cornerstone of law enforcement's ability to function in this environment, which promotes a sense of fairness.

As law enforcement officers, it is mandatory to provide police services without biases. The ability to maintain the public's trust is imperative to the mission of law enforcement. The lack of trust demonstrated by past transgressions, like the Rodney King incident where an African American motorist was beaten by Los Angeles police officers, or the Abner Louima incident where an Haitian National was assaulted with a broom stick in a New York police facility, and the Rafael Perez incident where a former Los Angeles police officer

pled guilty to assault under the color of authority and theft of drugs, covers all law enforcement with the shame and disgrace earned by those who perpetuated these incidents. In society, the spectacular is often the focal point of public interest. The responsible and professional law enforcement officers are often unwillingly associated to those who choose to use their position of power to limit the constitutional rights of a people simply because they are different. Unfortunately, bad cops make headlines, which sells newspapers, sells ad space on television and allows the public to form negative opinions of law enforcement when they choose not to educate themselves on the facts.

Law enforcement training has taught its officers to anticipate criminal actions. This knowledge is gained through experiences, which are learned from dealing with individuals who violate the law. Law enforcement officers make the assumption that a crime has occurred when they interpret a set of facts that are available and apparent, no matter who the person is. The dilemma for law enforcement is one of achieving a balance that will allow officers to effectively police their communities, while ensuring that the rights of citizens are protected. No matter what, law enforcement responses to observations should not include their personal biases.

Law enforcement has the ability to reduce the incidents of bias-based policing through technology. The introduction of current and emerging audio and video recording technology can play a part in this process by documenting the conduct of law enforcement prior to and during enforcement contacts.

Technology has been instrumental in ushering law enforcement into the modern era. With advancements like the two-way radio, computers, and less-lethal devices, law enforcement has pushed the Dodge City mentality aside for a more cerebral philosophy. Forward-thinking law enforcement organizations have started looking to non-traditional sources to improve effectiveness of their employees, while increasing the professionalism in the service that they deliver. Through the years, other industries have used technology to monitor the effectiveness and productivity of their employees. Whether it's through technology like point of sale cameras used in the grocery industry, or tachographs in the trucking industry to ensure that over-the-road truckers operate their vehicles in a safe manner. Law enforcement officers have used various tools, such as video cameras and personal recorders as an impartial third party to provide protection from frivolous complaints by documenting citizen contacts. However, law enforcement agencies have been slow to realize the benefits recording devices represent to public trust. The lack of consistent application and the lack of trust with law enforcement management has been an impediment to overall acceptance of recording devices by the rank and file.

The Gardena Police Department, a small law enforcement agency located southwest of the City of Los Angeles has been instrumental in earning the trust of its officers and the community through experiments with audio and video technology. This trust enabled the organization to establish this technology, which provided video cameras in the police vehicles and equipped each officer with a portable digital recorder. The goal of the experiment was to put in place

current technology to provide a degree of protection against frivolous complaints, while ensuring the public's rights. The success of the Gardena Police Department's test demonstrates the potential that audio and video technology has on reducing citizen complaints. It stands to reason that emerging recording technology will have significant impact on reducing the incidents of bias-based policing.

FINDINGS

As a society, criminals have always been portrayed as shadowy figures who can be identified by their shabby appearance or their clothing, whether it is the black leather jackets worn by renegade motorcycle gangs or black hats worn by bad guys in westerns. The history of using a person's race, ethnicity, origin, or sexual preference as a means of subjecting them to scrutiny is well documented in this country through incidents like the internment of Japanese Americans during World War II, or the enslavement of a people because of the color of their skin.

In California, the issue has come into prominence with the alleged racial profiling traffic stop of African American Senator Kevin Murray of Culver City. In 1998, Senator Murray was driving his expensive sports car through the City of Beverly Hills when the police stopped him for no apparent reason. So outraged by the conduct of the Beverly Hills Police Department, Senator Murray

immediately introduced legislation seeking to require all local and state law enforcement officers to track the ethnicity of every motorist they stopped.²

Until recently, little or no published information has been available outside the law enforcement community on the number of stops, the reason for the stop and the enforcement action taken. From July 1999 through April 30, 2000, the California Highway Patrol concluded Part One of a mandatory three-year study to collect traffic stop data to determine if racial profiling or biased-based policing exists. During this period, the California Highway Patrol collected 2.6 million records that included race/ethnicity, gender, age and arrest data on citations as well as written or verbal warnings. The California Highway Patrol's interpretation of the data indicated there was no verifiable evidence of bias-based policing within their agency (2002).

The Violent Crime Control and Law Enforcement Act of 1994 mandates an annual report on the topic of police use of excessive force. As a partial response to that mandate, the Bureau of Criminal Statistics initiated a survey of police-public contacts in 1999. The National study is conducted on people ages 16 and older that had face-to-face contact with law enforcement. Among the black drivers age 16-24, 17.1% did not differ significantly from whites, (20.1%) or Hispanics, (15.5%) in the probability of being stopped. The average number of stops was greater for young black males, (2.7%) than for young white males (1.7%) and marginally greater than male Hispanics (1.8%).

Could the ever-changing makeup of the communities with their commuters, day laborers, municipal workers and visitors contribute in unforeseen

² Custodio, Kathleen, "Racial Profiling: A Just Practice?" Bamboo Offshoot Winter 2000; 55.

ways that affect the interpretation of traffic stop data? How does law enforcement verify the accuracy of the traffic stop data? More importantly, how does law enforcement account for the disparity in what is believed to be a problem of differential treatment identified by lawmakers and the public?

As a society, the question must be asked: if traffic stop data points away from bias-based policing, why is there legislation demanding law enforcement track stops? And, why is there a hue and cry in minority communities that the practice of bias-based policing must stop?

For the traffic stop data to survive public scrutiny, there has to be a control factor that documents the individual law enforcement officer's conduct. In other words, the public has to have confidence in law enforcement's ability to report incidents, which could be perceived as less than favorable. Police agencies should question those in law enforcement that point to their data as vindication from accusations of bias-based policing.

It is apparent that this issue will not be solved through the collection of traffic stop data that depends on a check mark on a contact card. This negative practice by law enforcement has to be dealt with in an affirmative, positive manner that ensures proper sanctions are levied against those who choose to police with biases. A failure to recognize that law enforcement officers police through their biases, and to apply affirmative solutions beyond data collection, indicates an unwillingness to deal with, or solve, the problem.

There are non-technical practical solutions to monitoring differential treatment, like the fair witness suggested by Sandy Sandford (1994). Ms.

Sandford suggests a way for society to manifest the fair witness in the form of a person to observe and document law enforcement activity. A fair witness could be trained to observe and remember events without prejudice or bias as they accompany law enforcement officers during their tour of duty. This has potential, but how can the fair witness be protected from exposure to the dangers that are ever present in law enforcement? What happens if the fair witness is seriously injured incapacitated or killed while documenting law enforcement activity? If the fair witness is limited to safe areas, how does he or she document the officer's actions? In holding with the purpose of this project to look beyond the present to promote thought on emerging technology that could reduce the issues of bias-based policing, the fair witness is impractical.

There are emerging recording technologies that have the ability to be that fair witness or impartial third party to protect citizens from the abuses of bias-based policing. For years, officers have used cameras in their patrol vehicles and carried personal recorders. The proposal of this article is to design a recording system that is completely hands-off. The trigger for the system would be a physiological t-shirt no different from the ones worn by all officers, except for the small waterproof one-year battery pack sewn into the base seam. The physiological t-shirt will detect those physiological changes in the officer's body that are associated with police activity and automatically turn on the officer's camera and audio system. The proposed system is completely wireless and transmits sounds and images from a state of the art pinhole audio camera imbedded in the officer's badge. The video and audio images, which are unique

to each officer, are transmitted to the police vehicle. The police vehicle acts as an amplifier that transmits the sound and images to the police station where the supervisor can view the actions of each officer on the shift. The images can also be transmitted through a system of delays to personal data recorders or the World Wide Web for public access to information of a nature that would not compromise officer safety.

With this technology, police agencies have the ability to witness each incident and document the reason law enforcement officers stop individuals. This system will also provide law enforcement with the ability to monitor officer conduct prior to field encounters to detect precursors to bias policing. With the emerging technology, police abuse issues will no longer be subject to conjecture because technology will document all contacts.

As law enforcement looks to the future of policing, there are definite possibilities for building on the experiences of the Gardena Police Department through the introduction of emerging audio and video technology to reduce the incidents of bias-based policing.