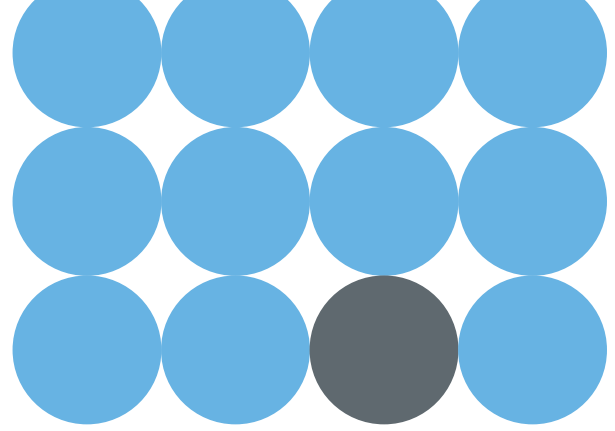


Social Justice Brief

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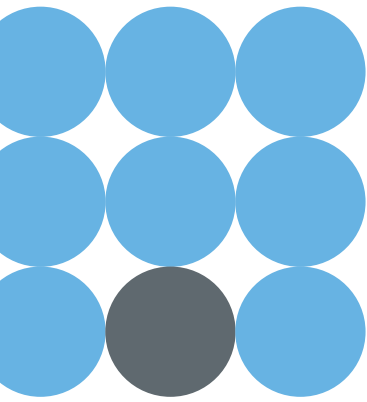
The Role of Racial Profiling in Encounters with Law Enforcement

The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty.



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The National Association of Social Workers (NASW) is the largest membership organization of professional social workers in the world, with nearly 135,000 members. NASW works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies.



The Role of Racial Profiling in Encounters with Law Enforcement

In recent months, the United States has been grappling with challenges to and conflicts involving our law enforcement and judiciary systems. The issue, of course, stem from grand jury decisions in Ferguson, Missouri and Staten Island, New York where there were failures to indicted police officers in the deaths of two unarmed African American men (Michael Brown and Eric Garner, respectively). On top of the two high profile cases, was the failure to charge a Cleveland, Ohio policeman in the shooting death of a 12 year old black male, “armed” with a toy gun. These, among other similarly tragic events, sparked national outrage and provided momentum to a growing movement calling for reforms in policing and judiciary processes and comprehensive criminal justice reforms. Perhaps one of the critical action steps related to criminal justice reform is the elimination of racial profiling.

Racial profiling is one of the most insidious and potentially damaging phenomenon related to law enforcement’s relationship with communities of color. Concerns about racial profiling leading to disproportionate arrests and police stops of ethnic minorities are not new. For many decades African American and Latino communities have accused law enforcement agencies (or individual officers) of targeting them without probable cause. More recently, post the September 11, 2001 terrorist attacks, Americans of Asian and Middle Eastern descent have also been vocal about police profiling.

Strong reaction to law enforcement policies and procedures that appear to be racial profiling gained national prominence during the 1980’s when the term “driving while

black” was coined. The term referred to overt or covert police procedures where law enforcement officers use race, ethnicity, gender, religion, or national origin as a factor in deciding whom to investigate, arrest or detain absent evidence of a specific crime or criminal behavior (Huffington Post). Additionally, the 1980s brought us the “War on Drugs” which begat policing policies such as “stop and frisk” and reemphasized policing procedures based on the “broken windows” theory of targeting specific neighborhoods and communities for proactive police scrutiny. The concern for the broken windows policy to the discussion of racial profiling is that most of the targeted neighborhoods are majority minority communities, broken windows policing can functionally become racial profiling.

Originally proposed by Dr. James Q. Wilson and George Kelling, broken windows theory suggests that a society (or a subset of society) that appears to be lawless will itself breed lawlessness (The Manhattan Institute). Broken windows theory is most closely associated with conservative sociology that embraced an aggressive national emphasis on social cohesion and law and order. The central tenet of broken windows theory holds that when neighborhoods appear to be broken down, disordered, and generally unfriendly, they serve as a magnet to delinquent behavior and crime (The Atlantic). Wilson seems to have embraced social pathology to justify broken windows policing strategies when he stated:

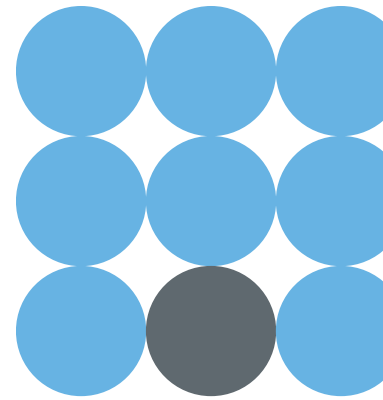
“Community safety can be negatively affected by a surfeit of disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, and the mentally disturbed.”

He seems to suggest that it was better to have police closely monitor such “deviants” before they commit a serious crime. Many believe that idea that police can preempt crime by focusing on deviant characteristic and socioeconomic profile of a given community became accepted and was widely adopted as a viable policing policy. The theory had great influence on law enforcement policy from the 1980s and still has its adherents. (Slate.com). In practice, Broken Windows police procedures, rundown parts of the city were cleaned up, and police focused more on problems such as panhandling, turnstile jumping, and public drinking and even people who cleaned the windshields of cars at stoplights with squeegees (Law Teacher).

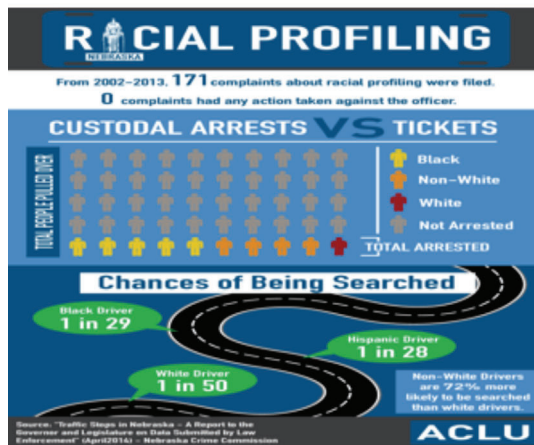
Broken windows theory was operationalized as an active policy directive in New York City

during Mayor Rudi Giuliani’s tenure. The homeless were the first targets of New York City broken windows policy. Advocates of such tactics argued that in order to address these crimes, the police must be afforded wide discretion that skirted constitutional rules (Law Teacher).

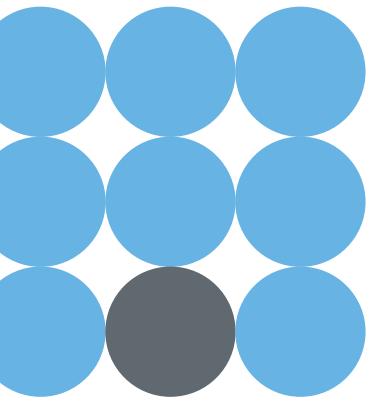
Over subsequent years, the policy was credited by many with producing dramatic declines in serious crime (Law Teacher). Conversely, some critics argue that the theory is a neoconservative philosophy that results in over policing and mass incarceration for relatively minor offenses. They also feel that broken windows disproportionately target poor, black and Hispanic people. Moreover, they say there is no empirical scientific evidence there is a connection with the theory to the city’s drastic decline in major crime (New York Times, 2014).



Traffic Stops Racial Profiling



As we discuss racial/ethnic disproportionality of law enforcement stops, we must look beyond the inner cities and crime-related stops and arrests. There are emerging data that show a high degree of racial/ethnic disproportionality in the number of persons of



color that were stopped by police on a minor traffic violation. The ACLU conducted a traffic stop study in Nebraska. In the Nebraska study, it was found that African Americans and Latinos were significantly more likely to be:

- » Stopped for traffic violations;
- » Searched during a traffic stop; and
- » Arrested (as opposed to being ticketed) for a minor traffic violation;
- » Of the 171 traffic stop related racial profiling charges filed in Nebraska from 2002 through 2013, none was resolved by an action against the officer. (ACLU, 2014).

Similarly, in 2012 the State of Illinois conducted its own traffic-stop study (State of Illinois, 2012). This report examines several items. Of all traffic stops (not involving an accident) in the state, 66% involved whites and 34% involved minorities which is about equal to the ratio of whites to minorities in the general population. However, when looking at important variables related to racial disproportionality the findings indicated clear racial disparities often associated with racial profiling. For example:

- » Of all the traffic stops for 2012, 59% of minorities received a citation, while 51% of whites were cited;
- » While law enforcement officers have a great deal of latitude to search a vehicle without a warrant, each officer has the discretion to ask for a “consent search.” In Illinois, such searches are contentious because there is frequently as question as to whether the motorist actually gave consent;
- » Searches of vehicles by consent (1,390 times). Chicago Police Department (CPD) was over four times more likely to search black and Hispanic motorists, compared to white motorists (4.74 and 4.09 times);
- » Paradoxically, CPD was about twice as

likely to find contraband when they searched white motorists, compared to black and Hispanic motorists (2.1 and 1.86 times respectively);

- » Searches of vehicles by *non-consent* (2,421 times). CPD was far more likely to search black and Hispanic motorists compared to white motorists (3.42 and 4.82 times); and
- » In 2012 when the vehicle of a white driver was consent searched, police officers found contraband 26% of the time. By contrast when a vehicle driven by a minority driver was consent searched, officers found contraband 17% of the time.

It is more likely than not that such patterns of disproportionality in stopping and arresting persons of color occur nationwide. Perhaps the most important question is how racial profiling in low-level crimes and basic traffic stops does escalate to use of force.

Racial Profiling Relationship to Disproportionate Risk of Use of Force for Persons of Color

Based on broken windows and stop-and-frisk policies, as well a traffic stop data, it is reasonable to state that there is a nexus to racial profiling and risk of experiencing a forceful encounter with law enforcement for persons of color. Basic probability analysis tells us that the more often one is stopped by police, the greater likelihood that one or more will involve some form of use of force within the *Use of Force Continuum* (National Institute of Justice). The following is a brief description of the guidelines:

The Use-of-Force Continuum

Most law enforcement agencies have policies that guide officers in their application of use of force. These policies describe an escalating series of actions an officer may take to resolve a situation. This continuum generally has many levels, and officers are instructed to respond with a level of force appropriate to the situation at hand, acknowledging that the officer may move from one part of the continuum to another in a matter of seconds (National Institute of Justice).

Officer Presence — No force is used

- » The mere presence of a law enforcement officer works to deter crime or diffuse a situation;
- » Officers' attitudes are professional and nonthreatening.

Verbalization — Force is not-physical

- » Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
- » Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."

Empty-Hand Control

- » Officers use bodily force to gain control of a situation.
- » *Soft technique* – Officers use grabs, holds and joint locks to restrain an individual.
- » *Hard technique* – Officers use punches and kicks to restrain an individual.

Less-Lethal Methods

- » Officers use less-lethal technologies to gain control of a situation.

- » Blunt impact. Officers may use a baton or projectile to immobilize a combative person.
- » Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray). Conducted Energy Devices (CEDs)
- » Officers may use CEDs to immobilize an individual.

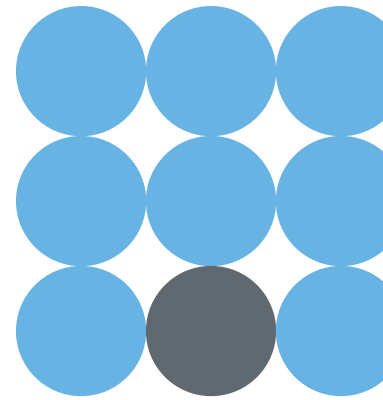
Lethal Force

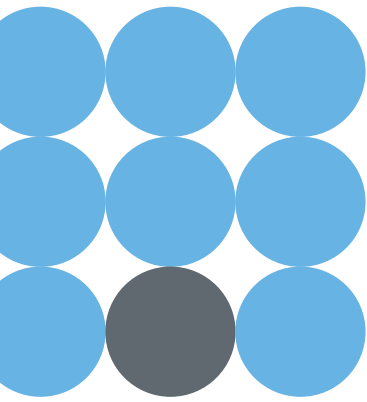
- » Officers use lethal weapons to gain control of a situation (should only be used if a suspect poses a serious threat to the officer or another individual) (National Institute of Justice).

Excessive Force By Police Data

No precise figures exist for the number of people killed by the police in the United States, but police departments each year voluntarily report about 400 "justifiable police homicides" to the Federal Bureau of Investigation (*New York Times*). However, these figures are probably low.

An interesting statistic about police use of lethal force is the disparate manner in which they are resolved in judicial system. For example, on a per capita basis, the rate of police officers officially charged with murder in an excessive force incident is only 1.06% higher than the murder rate general population murder rate. However if excessive force complaints involving fatalities were prosecuted as murder, the murder rate for law enforcement officers would exceed the general population murder rate by 472% (Cato, 2010). When the element of race/ethnicity is added to the equation, the odds of use of *less-than lethal* or *lethal* force greatly increases.





Legislative and National Policy Efforts to Eliminate Racial Profiling

Given the fact that suggestions of racially-based police misconduct often leads to volatile and polarizing responses, it important to seek solutions to racial profiling that do not compromise public safety. For this reason, many in the criminal justice advocacy community (including NASW) have long pushed for the passage of the End Racial Profiling Act (S.1038) which will be re-introduced in 2015. The End Racial Profiling Act is designed to enforce the constitutional right to equal protection of the laws by eliminating racial profiling through changing the policies and procedures underlying the practice. The bill provides:

- » A prohibition on racial profiling, enforceable by declaratory or injunctive relief;
- » Training on racial profiling issues as part of Federal law enforcement training,
- » Routine data collection on all routine or spontaneous investigatory activities that is to be submitted to the Department of Justice (DOJ);
- » States and local government receiving federal law enforcement and related funds must adopt effective policies that prohibit racial profiling.
- » DOJ will provide grants for the development and implementation of best policing practices, such as early warning systems, technology integration, and other management protocols that discourage profiling; and
- » The Attorney General will be required to provide periodic reports to assess the nature of any ongoing discriminatory profiling practices. (Leadership Conference for Civil and Human Rights)

Additionally, Attorney General Eric Holder recently authorized the release of DOJ's revised guidance on racial profiling (*Guidance for Federal Law Enforcement Agencies Regarding the use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* (Department of Justice). Succinctly, the guidance states:

"...when making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, federal law enforcement officers may not use race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity to any degree, except that officers may rely on the listed characteristics in a specific suspect description. This prohibition applies even where the use of a listed characteristic might otherwise be lawful."
(Department of Justice).

The major changes in the DOJ revised racial profiling guidelines is that it broadens coverage to include religion, sexual orientation, and gender identity. The inclusion of religion as a characteristic is especially important for persons of the Muslim faith who experienced a significant spike in police stops after September 11, 2001. It also is important to state that South Asians such as those from the Sikh faith saw increased stops, after September 11, because they are often mistaken for being Arabs (Muslims).

Among the numerous criticisms of the DOJ revised guidance on racial profiling is that it does not have any enforcement powers beyond federal law enforcement agencies. This means that state and local law enforcement entities can simply ignore them.

Recommendations

An end to racial profiling in any form will almost certainly lead to greatly reduced incidents of and exposure to use of force by law enforcement on the part of persons of color. It is undeniable that is a nexus between law enforcement racial profiling and the disproportionate number of young African American and Latino men you injured or killed during a *spontaneous law enforcement decision*. However, ending racial profiling is not as simple as passing legislation or changing policing policies. Some Americans have deeply held views of young men of color as being inherently dangerous people with a tendency to develop a criminal lifestyle. Such views are gross stereotypes and are ultimately racist. Therefore, if we are to avoid lethal force tragedies such as those seen in Ferguson, Staten Island, and Cleveland there has to be a national commitment to reforming our approach to community policing.

It should be emphasized that calling for reforms in community policing does not suggest that public safety is compromised. There is universal acceptance within the social justice and human rights community that reforms and public safety are not mutually exclusive. That said, the following are recommendations for moving towards significantly reducing racial profiling:

1. Need for disaggregated data collection on incidents of racial profiling.

At present, there is no national mandate for having all law enforcement agencies collect, maintain, analyze and publish racial profiling data using agreed upon data collection guidelines. These data have to be

disaggregated based on race, ethnicity, religion, sexual orientation, gender, and gender identity. The DOJ racial profiling guideline should be further amended to include a mandate that federal, state, and local law enforcement agencies collect such data.

2. Need for related data on incidents of use of force for all levels of law enforcement.

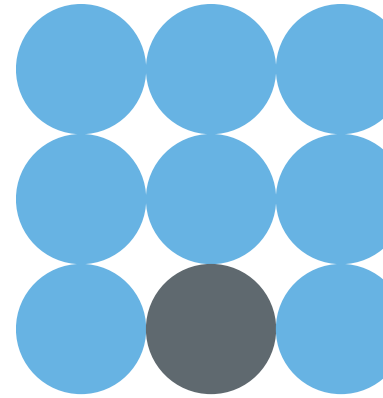
Another area about which there is a paucity of data is for tracking incidence of use of force by law enforcement. These data must also be disaggregated to identify race, ethnicity, religion, gender, gender identity, and sexual preference of the individual on which force was used. Use of force data collection should be mandated for all federal, state, and local law enforcement agencies. Each jurisdiction should develop and make public use of force reports on an annually.

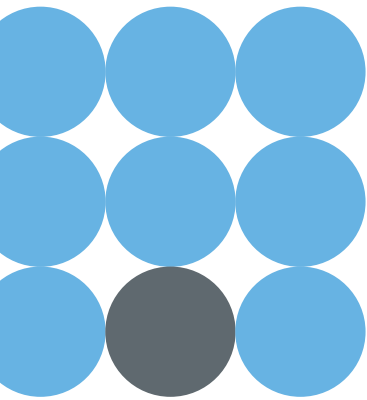
3. Support the AG's plan for a comprehensive review of policing practices.

Following the Ferguson and Staten Island grand jury report, the President and the Attorney General committed to reviewing police practices throughout the country. In December, 2014, the Attorney General announced the formation of a commission, Task Force on 21st Century Policing, to complete the review. President Obama appointed the Philadelphia Police Commissioner (Charles Ramsey) to chair the commission. NASW and other social justice/civil rights organizations should support the work of Task Force on 21st Century Policing;

4. Support appointing a special prosecutor in police excessive and lethal force cases.

The perception among many communities of





color that racial profiling is directly connected to disproportionate incidents of excessive force at the hands of law enforcement is likely to continue for a long time. The related perception that the race of the victim of lethal force is a major determinant of whether or not a police officer will be charged and indicted will also continue to be held. Additionally, many criminal justice scholars, advocates, and legal experts agree that the relationship between police and states attorneys is far too symbiotic resulting in prosecutors becoming advocates for the officer accused of excessive and lethal force rather than for the rights of the victim.

As stated in a Washington Post recent editorial:

“A sensible first step would be to establish automatic mechanisms to invoke a special prosecutor in cases where the police themselves are the suspects. There are many ways to create such a system, plenty of ways it can misfire, and no

guarantee that it will produce better outcomes than the status quo, under which local prosecutors handle cases where police are accused of abuses up to and including the unjustified use of lethal force.

At the least, though, special prosecutors can dampen or eliminate real and perceived conflicts of interest when a local district or state’s attorney prosecutes a law enforcement official.”
(Washington Post). December, 2014)

The automatic appointment of a special prosecutor for all police excessive force cases that result in serious bodily injury or death seems to be a sensible step. Social workers should join other social justice and civil rights organizations in supporting this idea.

For more information please contact Mel Wilson – Manager, Department of Social Justice and Human Rights, at mwilson@naswdc.org.

Resources

American Civil Liberties Union

www.aclu.org/racial-justice/racial-profiling

Department of Justice Agencies

www.justice.gov/agencies

Community Oriented Policing (COPS)

www.cops.usdoj.gov/Default.asp?Item=1972

La Raza

www.laraza.com/section/temas/?type=kw&kw=racial_profiling&label=Racial+profiling&source=temas-de-esta-nota

Leadership Conference for Civil and Human Rights

www.civilrights.org/criminal-justice/racial-profiling

National Association for the Advancement of Colored People

www.naacp.org/blog/entry/naacps-fight-against-racial-profiling-nationwide

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The Cato Institute

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Department of Justice

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LawTeacher.Net

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Leadership Conference for Civil and Human Rights

(<http://civilrightsdocs.info/pdf/policy/ERPA%20Section%20by%20Section%20-%20Senate%20-%20112th%20Congress.pdf>)

Manhattan Institute

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National Institute of Justice

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State of Illinois

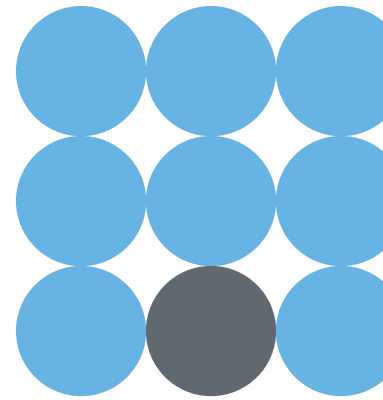
(www.idot.illinois.gov/Assets/uploads/files/Transportation-System/Reports/Safety/Traffic-Stop-Studies/2012/2012%20Illinois%20Traffic%20Stop%20Summary.pdf)

Think Progress

(<http://thinkprogress.org/justice/2013/05/24/2057481/analysis-nypd-stop-and-frisks-lead-to-more-marijuana-arrests-than-anything-else/>)

Washington Post. December, 2014

(www.washingtonpost.com/opinions/police-abuse-cases-need-special-prosecutors/2014/12/06/fcf57e28-7cd6-11e4-b821-503cc7efed9e_story.html)





NASW Resources

NASW » SocialWorkers.org

NASW Foundation » NASWFoundation.org

NASW Press » NASWPress.org

NASW Assurance Services, Inc. » NASWAssurance.org

NASW Center for Workforce Studies » Workforce.SocialWorkers.org

Help Starts Here » HelpStartsHere.org

Social Work Reinvestment Initiative » SocialWorkReinvestment.org

Social Work Policy Institute » SocialWorkPolicy.org

Social Work Portal » SocialWorkers.org/swportal



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