

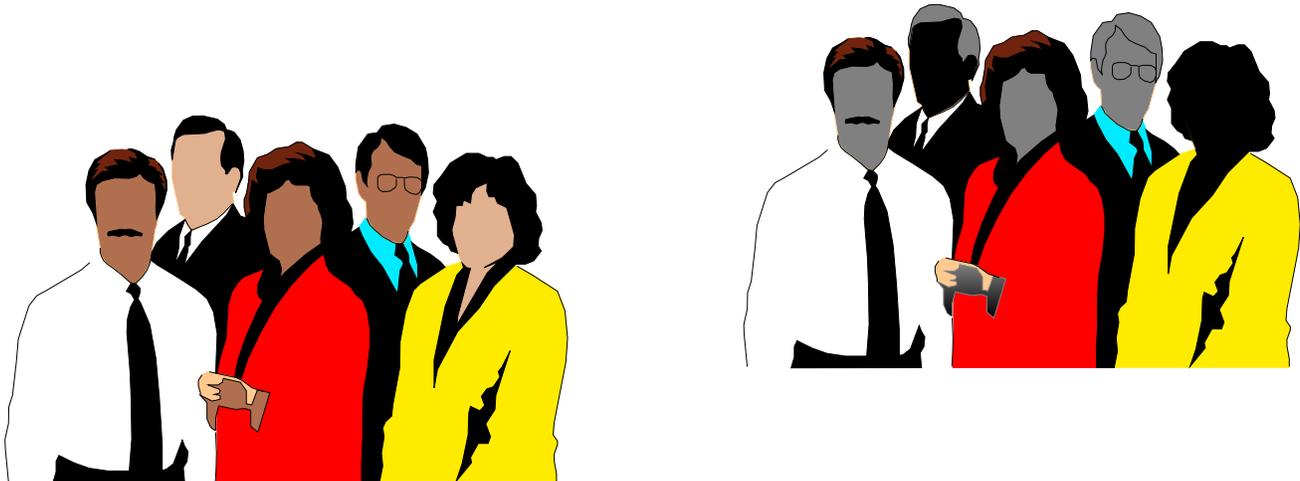
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WARRENVILLE POLICE DEPARTMENT
TRAINING SEMINAR

RACIAL PROFILING:



Legal and Departmental Issues



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INTRODUCTORY REMARKS

(Notes)

I. RACIAL PROFILING - UNDERSTANDING THE PROBLEM

A. Definition - "Profiling" is the interdiction, detention, arrest or other non-consensual treatment of an individual because of a characteristic or status (CALEA)

1. Direct Evidence - Open intent to profile (hostile racial attitudes, slurs, etc.)

(Notes)

2. Indirect Evidence - Statistical patterns with no apparent intent.

(Notes)

3. Most racial profiling lawsuits will combine direct and indirect evidence.

(Notes)

B. Contributing Factors

1. Legal Issues - Criminal law context.
 - a. Reasonable Suspicion/Probable Cause Issues.

(Notes)

- b. What is legal in criminal law context may STILL lead to civil liability.

(Notes)

2. Individual attitudes and prejudices.

(Notes)

3. Institutional Concerns - Performance standards/quotas.

(Notes)

4. Media - Racial Profiling is HOT.

(Notes)

C. Understanding Relevant Statistics in Racial Profiling.

1. Residential Population v. Service Population.

- a. Itasca example.

(Notes)

- b. Use of experts.

(Notes)

D. The Mount Prospect Example.

1. Litigation was three employment cases.

(Notes)

2. Did not start out as racial profiling cases.

(Notes)

3. Court rulings and judgments.

(Notes)

4. Solutions/Resolution

- a. Three years comprehensive data collection - all traffic stops.
- b. Village affirmative action program to hire Hispanics.
- c. Creation of Human Rights Review Board.
- d. Entire department receives cultural diversity training.
- e. Elimination of individual officer performance standards. Move toward department-wide standards.

- f. Promulgation of specific policies prohibiting racial profiling.

(Notes)

II. RACIAL PROFILING - POTENTIAL LEGAL LIABILITY

A. Fourth Amendment Claims - protects against unreasonable searches and seizures.

1. *Terry* stop - Officer may stop and question individual if he has reasonable suspicion that person has committed crime.

- ▶ *Illinois v. Wardlow*, 120 S.Ct. 672 (2000). Individual's flight from officer in high crime area justified *Terry* stop.

(Notes)

- ▶ *Maryland v. Wilson*, 117 S.Ct. 882 (1996). Police officer making traffic stop may order passenger out of car pending completion of stop.

(Notes)

- ▶ *People v. Barnes*, 152 Ill. App. 3d 1004, 505 N.E.2d 427 (4th Dist. 1987). Computer information that car owner has suspended license provides reasonable suspicion warranting *Terry* stop of vehicle. *See also Shah v. Village of Hoffman Estates*, 2000 WL 1705294 (N.D.Ill. Nov. 13, 2000) (federal court agrees with *Barnes*).

(Notes)

2. Arrest - Officer has probable cause to make an arrest when he has a reasonable basis to believe that an individual is committing or has committed a crime.

- ▶ *Atwater v. City of Lago Vista*, 2001 WL 408923 (U.S. April 24, 2001). Supreme Court holds police may effect full custodial arrests even for minor misdemeanors such as failing to wear seat belt, driving without license and no proof of insurance.

(Notes)

3. Impermissible traffic stops based solely on race may lead to Fourth Amendment violation.

(Notes)

4. Objective Standard - Fourth Amendment requires that an officer's conduct was objectively reasonable, without regard to his underlying intent or motive.

(Notes)

5. *U.S. v. Whren*, 116 S.Ct. 1769 (1996). Supreme Court held that pretextual stop did not necessarily violate the Fourth Amendment when the officer has a legitimate basis for stopping a vehicle (i.e., usually a minor traffic violation) to perform another function not otherwise supported by the facts.

(Notes)

B. Fourteenth Amendment Claims - The Equal Protection Clause of the Fourteenth Amendment protects an individual from intentional and arbitrary discrimination.

- ▶ *Village of Willowbrook v. Olech*, 120 S.Ct. 1073 (2000). An individual may bring an equal protection claim if he can prove that he has been treated differently from other similarly situated individuals and there is no rational basis for the difference in treatment.

(Notes)

- ▶ *U.S. v. Armstrong*, 116 S.Ct. 1480 (1996). In selective prosecution case based on race, an individual must prove that similarly situated individuals of a different race were not subjected to the challenged conduct.

(Notes)

- ▶ *U.S. v. Whren*, 116 S.Ct. 1769 (1996) - While pretextual stops do not necessarily violate the Fourth Amendment, the Fourteenth Amendment prohibits the selective enforcement of the law based on race.

(Notes)

C. Racial Profiling - Recent Caselaw.

- ▶ *Chavez v. Illinois State Police*, 2001 WL 543707 (7th Cir. Ill.). Plaintiffs allege that the Illinois State Police had a practice of stopping, detaining and searching Hispanic and African-American motorists based on their race. Court dismissed equal protection claim because no proof that plaintiff was treated differently than similarly situated white motorists.

(Notes)

- ▶ *Soto v. New Jersey State Police*, No. 99-5970 (MCC). Court found that statistical evidence proved that the New Jersey State Police had a *de facto* policy of stopping minority motorists traveling the New Jersey turnpike on a disproportionate basis than white motorists, thus establishing selective enforcement in violation of the equal protection laws.

(Notes)

D. The Racial Profiling Lawsuit - What to Expect.

1. Municipal Claim - Suit will typically name the municipality and its policy makers alleging an unconstitutional policy or practice of selective enforcement.

(Notes)

2. Class Action - Plaintiff may seek certification of a class of motorists who were similarly stopped based on their race.

- ▶ *U.S. v. New Jersey*, Civil No. 99-5970 (D.N.J.). Consent decree at <http://www.usdoj.gov/crt/split/documents/jerseysa.htm> on DOJ web site.

(Notes)

- ▶ *Romero v. Village of Mt. Prospect*, No. 00 C 0861 (N.D.Ill. 2000).

(Notes)

3. Injunctive Relief - Plaintiff will typically seek injunctive relief seeking to put an immediate stop to the alleged discriminatory conduct.

(Notes)

- ▶ *Ledford v. City of Highland Park*, 2000 WL 1053967 (N.D.Ill. 2000).

(Notes)

4. Money damages - Plaintiff will seek both compensatory and punitive damages.

(Notes)

- ▶ *Price v. Kramer*, 200 F.3d 237 (9th Cir. 2000) (\$245,000 in favor of teenagers stopped, ticketed, searched and roughed up due to race.

(Notes)

5. Section 1988 Attorneys Fees - If plaintiff or a group of plaintiffs prevail, they will seek to have all of their attorneys fees paid by the municipality or its insurer.

(Notes)

6. Consent Decree - Plaintiff may want the municipality to enter into a consent decree agreeing not to engage in the alleged discriminatory practice in the future.

(Notes)

7. Indemnification issues - What you need to know.
 - a. Duty to Defend - If the allegations in the complaint trigger a duty to defend a portion of the complaint, then insurer has obligation to defend the entire complaint, including non-covered portions.

(Notes)

- b. Duty to Indemnify - The duty to indemnify is narrower than the duty to defend. Insurer only has to indemnify the covered portions in complaint.

(Notes)

- c. Reservation of rights letter.

(Notes)

- d. Punitive damages generally are not covered by insurer.

(Notes)

- e. Check policy to determine if Section 1988 attorney's fees are covered.

(Notes)

- f. Insurer generally has right to settle case - examine policy.

(Notes)

III. RACIAL PROFILING POLICY

A. Clearly and Strongly Worded Policy Statement Prohibiting Stops, Detentions and Searches Motivated by Race or Other Impermissible Factors and Expressly Prohibiting Racial Profiling.

1. Exception: A specific report in which suspect has been identified or described in part by race.

(Notes)

B. Supervisory Responsibilities.

1. Review stops and video tapes.

(Notes)

2. Document and investigate reports or complaints of improper conduct.

(Notes)

3. Take appropriate action regarding reports or complaints of improper conduct.

(Notes)

C. Community Outreach/Policing.

(Notes)

D. Training.

1. Identifying racial profiling issues.

(Notes)

2. Review traffic stop, detention, search and arrest procedures and legal precedent.

(Notes)

3. Reporting and investigating misconduct complaints.

(Notes)

4. Sensitivity training.

(Notes)

E. Mandatory Record Keeping.

1. Stop reports.

(Notes)

2. Eliminate verbal warnings.

(Notes)