

VILLAGE OF BENSENVILLE



Profiling

Racial

Training Seminar



CHARLES E HERVAS
MICHAEL W. CONDON
HERVAS, SOTOS, CONDON & BERSANI, P.C.
333 PIERCE ROAD, SUITE 195
P.O. BOX 4109
ITASCA, IL 60143-4109
630-773-4774

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. Area Wide Issues.

1. Highland Park.

(Notes)

2. Mt. Prospect.

(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*, slip op., decided January 12, 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)

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.

(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.

1. *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)

2. *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)

3. *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.

1. *Chavez v. Illinois State Police*, No. 94 C 5307 (N.D.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)

2. *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.

(Notes)

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

(Notes)

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

(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)

E. Bensenville Racial Profiling Policy.

1. General Review.

(Notes)

2. Supervisor Considerations.

(Notes)

3. Reporting Considerations.

(Notes)