



Public Safety Software Series

INFORMATION TECHNOLOGIES, INC.

BEYOND THE POLICY MANAGING THE “DWB” PHENOMENON

AN ITI WHITEPAPER FOR RACIAL PROFILER
REPORTING

As anyone who has been paying attention knows, law enforcement today is under attack over the issue that has commonly become known as DWB, “driving while black or brown.” The belief that many police actions are directly based only upon race is according to some, reaching a critical mass in communities of color. In a national survey conducted by the Gallup organization, a random sample of Americans over 18 years of age were asked the following question:

It has been reported that some police officers stop motorists of certain racial or ethnic groups because the officers believe that these groups are more likely than others to commit certain types of crimes. Do you believe that this practice, known as “racial profiling,” is widespread or not?

The poll showed that six of every ten Americans believe the practice is widespread. Seventy-six percent of black Americans replied that they believed the practice to be widespread and fifty-six percent of the whites polled agreed. Even more importantly, eighty percent or more of both races disapproved of the practice.

What is the driving force behind the negative public opinion of American policing that was captured by the Gallup poll? Is this something new? Will law enforcement agencies be required by legislation or legal action to keep records on the race or ethnicity of each person they stop? Should law enforcement agencies establish policies condemning and prohibiting the use of race as a consideration for any and all police actions? If a policy is established how will it be enforced? How are law enforcement agencies across the county dealing with this situation? This article will address each of these questions and discuss how technology can assist in preventing the causes of officer misconduct based upon bias.

Whether perception or reality, the belief that race plays a significant role in an officer’s decision to stop a pedestrian or a motorist is not new. The 1967 report of the National Advisory Commission on Civil Disorders (The Kerner Commission) noted that one of the complaints that was heard repeatedly from the witnesses concerning the causes of the riots which had taken place in 150 cities in 1966 concerned the police practice of “stopping of Negroes on foot or in cars without obvious basis.”

If the situation has been ongoing for so long why has the issue of “racial profiling” only recently been elevated to the level of concern that is currently being expressed? To answer that question and to understand the issue more fully requires a brief historical review. The Drug Enforcement Administration (DEA) developed one of the first widely used “profiles” in the early 1970s. DEA Special Agent Paul Markonni created a “profile” of drug couriers based on behavior characteristics. The profiles used common characteristics and actions to identify likely violators. Did the person appear to be nervous? Did he pay for his ticket in cash and in large bills? Was he going to or arriving from a destination considered a place of origin of cocaine, heroin or marijuana? Was he traveling under an alias? By 1979, Markonni’s drug courier profile was in use at over 20 airports.

By the 1980s, crack cocaine became the drug of concern, and skin color became a major additional profile component. As a result, innocent black travelers found themselves the subjects of interrogations and searches by the DEA and the U.S. Customs Service. In 1982, President Ronald Reagan officially declared “war on drugs” and intensified interdiction efforts in the South Florida area.

In 1985, the Florida Highway Patrol issued guidelines to their troopers on “The Common Characteristics of Drug Couriers.” The profile included elements such as; the use of rental cars, scrupulous obedience to traffic laws, drivers wearing “lots of gold,” or who do not “fit the vehicle,” and “ethnic groups associated with drug trade.” Building upon the profiles in use, in 1986, DEA introduced “Operation Pipeline.” Operation Pipeline is a highway drug interdiction program that has been taught to over 27,000 police officers in the United States. The use of “pretext” traffic stops is incorporated into the Operation Pipeline program and is used in the interdiction effort. While proven to be an effective law enforcement tool it has, according to opponents of the program, implicitly (if not explicitly) encouraged the targeting of minority motorists.

The belief by many members of the minority community that race is a factor in police action has been long in duration. Being stopped, questioned, and searched by the police for no apparent reason had been a common experience shared by many but it was not until several lawsuits were filed and media attention directed at the issue did it become one of national concern.

In 1993, the American Civil Liberties Union (ACLU) brought a class-action lawsuit against the Maryland State Police. The issues raised in that case are consistent with those used in other similar lawsuits that have been filed against law enforcement agencies across the country. By the end of 1999, the ACLU had filed lawsuits in eight states. In the Maryland State Police case a study was done under the supervision of Dr. John Lamberth, a Temple University professor. A “rolling survey” of 5,741 cars was conducted over the course of 42 hours. In 96.8% of the case it was possible to identify the race of the driver of the vehicle. 16.9% of the cars had black drivers and 75.6% of the cars had white drivers. Four thousand three hundred and fifty four of the cars or 93.3% were observed to be operating in violation of a traffic law and therefore eligible to be stopped by the police. Of the violators, 17.5% were black, and 74.7% were white.

The results of the “rolling survey” were then compared against the actual enforcement activities of the Maryland State Police between January 1995 and September 1996 on I-95, north of Baltimore. The state police reported searching 823 motorists during the period, 600 or 72.9% of those stopped and searched were black. 80.3% were black, Hispanic, or other racial minorities. Based upon the analysis of the data, Professor Lamberth concluded:

The evidence examined in this study reveals dramatic and highly statistically significant disparities between the percentage of black Interstate 95 motorists legitimately subject to stop by Maryland State Police and the percentage of black motorists detained and searched by MSP troopers on this roadway. While no one can know the motivations of each individual trooper in conducting a traffic stop, the statistics presented herein, representing a broad and detailed sample of highly appropriate data, show without question a racially discriminatory impact on blacks and other minority motorists from state police behavior along I-95.

In the late 1990s, media attention intensified over the racial profiling phenomenon. Coverage of complaints of minority citizens being stopped and searched by the police based only on racial profiles began appearing in newspapers and on television across the country. The complaints were no longer coming from just young males of color or criminals but from law abiding businesspersons and sports figures. The case of Aaron Campell, a police major with the Metro-Dade Police Department galvanized the public’s attention to the

issue. In 1997, Major Campbell was driving through Orange County Florida and was stopped by sheriff's deputies on the Florida turnpike for making an illegal lane change and having an obscured license plate. Major Campbell identified himself to the deputies as being a police officer and then became belligerent believing that the stop was racially motivated. The situation escalated and ended with the Major being maced with pepper spray, wrestled to the ground, and arrested. The sight of a decorated high-ranking black police officer fighting with the deputies was captured on the officers' in-car video system and played repeatedly by television stations across the country.

Coverage of lawsuits brought against the police by the ACLU on behalf of minorities being allegedly illegally stopped and searched in violation of the 4th Amendment increased. The number of lawsuits being filed increased and in some cases judgments were rendered in favor of the plaintiffs.

By 1998 the term DWB became synonymous with racial profiling and police misconduct. As could be expected, it was only a matter of time before the issue reached the political arena. In March 1998, the U.S. House of Representatives unanimously passed the Traffic Stop Statistics Act. The legislation required that police officers would be required to collect several categories of data on each traffic stop, including the race of the driver and whether a search was performed. The legislation died in the Senate Judiciary Committee. The Bill has been reintroduced by Congressman John Conyers in April 1999 and is pending at the time of this article's publication.

On April 21, 1999, North Carolina passed the first law in the nation to require the collection of data by the police to develop a statistical portrait of the use of traffic stops. Similar bills have been introduced in at least twelve other states.

In early 1999, the Chief of the New Jersey State Police, Carl Williams, whose agency had come under scrutiny over the DWB issue, attempted to defend his officers' use of racial profiling. He was quoted in a news article to say that "mostly minorities" trafficked in marijuana and cocaine. As a result Governor Todd Whitman dismissed him from his position in March. In December 1999 the State of New Jersey and the State Police were sued by the U.S. Department of Justice "to remedy a pattern or practice of racially discriminatory conduct...that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States..."

Reacting to the intense pressure over the issue, in February 1999, Chief Jerry Sanders of the San Diego California Police Department, announced that his department would begin collecting race data on traffic stops without any federal or state requirement or any threat of litigation. Other departments quickly followed San Diego's example. Model policies began to appear in law enforcement agencies across the country prohibiting the use of race, ethnicity, gender, sexual orientation, religious beliefs and other form of illegal criteria from being used by the police as a basis of investigation detentions, traffic stops, arrests, and searches and seizures of property.

While the debate within law enforcement continues over whether the police should collect race related data, the issue most hotly discussed is how that data

will be used and to whom it will be disseminated. Many agencies fear creating a source of liability by collecting data, which if obtained by attorneys could result in lawsuits. They also fear negative media attention drawn to their department based only upon raw statistical information that does not take into consideration the racial or ethnic demographics of their community. Rank and file officers and their commanders worry about the potential for increased complaints and negative public relations that may occur when an officer makes an inquiry as to a person's race or ethnicity. The term "disengagement" has been created to describe the expected outcome of policies that required data collection. It is expected that the police will reduce the number of traffic and investigative stops due to the burden of collecting mandatory data.

Having thus presented the history and issues surrounding the DWB phenomenon, the question of how to track officers' conduct and how to prevent the violation of citizens' rights and department policies prohibiting racial profiling remains to be answered.

Identifying and tracking officers who may have a propensity for bias at first glance seems to be a difficult task. What information do you want to gather, race, ethnicity, gender, and age? What will be the source of the data and how reliable will it be? One simple and inexpensive method of collecting such information is through use of computer databases like, Information Technologies, Incorporated's (ITI) **LAW ENFORCEMENT SOFTWARE SERIES**. Officer's citations, arrests, warning tickets, and field interview reports are entered into the system and become the documented base data for analysis. Since each entry captures specific information such as: date, time, location, citizen pedigree and the reason for each police/citizen contact, an audit trail exists and can be used to prevent false reporting.

The data can then be analyzed using ITI's Query Tool. Using Query Tool the data can be retrieved, sorted, and exported to a spreadsheet application. The information then can then be segmented and individualized and departmental statistics can be studied. Agency statistics can be measured against the demographics of the community and region to determine if the agency's actions and statistics are consistent with the population being policed. Table #1 illustrates a presentation using ITI's Query Tool and Microsoft's Excel to display a sample of a small department's traffic enforcement statistics. A full inquiry of the database could be done to include warning tickets, arrests, and field interviews, or other system entries but for the purposes of the illustration only traffic tickets were used.

Table 1's data is retrieved directly from the traffic citation information entered into the ITI Records Management System. The information being retrieved for the purposes of this illustration only includes race segmented by white, black, and other. Variables such as additional specific race indicators such as; Hispanic, Asian, and Native American can also be viewed. The gender, and age characteristics of the person cited can also be retrieved and audited.

As indicated in Table 1, forty officers' traffic statistics for one time period are presented. The complete spreadsheet produced from the ITI Records Management system would indicate the time period, the officers' names, and

their department identifier number. This information was deleted for simplification of presentation.

In the illustration, the forty officers issued a total of 9,848 tickets during the period. Of that amount 1593 were issued to blacks (16.2%) and 8085 to whites (82.1%). Using these statistics a comparison of enforcement activity to community or driver racial demographics can be made. A macro examination of the data can then be made to compare one shift against another, one precinct or district against another or against the whole department. Expanding the comparison could be conducted to compare one agency against another. Of course, care must be taken to identify the differences in demographic and community variables that may occur between each different database.

Using the data to conduct a micro examination is less complicated, however one should consider differences in demographics that may occur between beats. The fact that an interstate highway may pass through some beats but not others is an example of demographics that may play a role in explaining differences in statistics between officers. Work schedules and assignments must be considered in determining an officer's behavior. For example, Officer #12 issued 40% of his tickets to blacks in comparison to the group average of 16.2% and therefore may based only upon this information lead to an incorrect assumption of bias. Closer examination would reveal that Officer #12 only issued a total 5 tickets, that his assignment was that of a School Resource Officer assigned to a high school, and the circumstances and limited amount of tickets issued do not reflect a pattern of behavior of bias enforcement.

However, the situation is different with Officer #17. In this case the officer issued a total of 458 tickets, 42.9% to blacks. A closer look into the officer's assignments, beat characteristics and work schedule should be done to ascertain any reason for such a large deviation from the group average. A review of his warning tickets, field interviews, and arrest statistics by race may reveal a pattern of race bias enforcement. Acting on the results of the review the officer may need to be counseled, retrained, or disciplined. However, without this type of information being readily available and easily obtained by police administration no intervention is likely.

Another glance at Table 1 reveals a counter situation. Officer #10 has issued only four tickets to blacks (3.1%) and 123 tickets to whites. In this case the officer under review is black. Upon comparison if it is discovered that this officer is using his discretion to not issue tickets to other blacks in numbers that are clearly inconsistent with the workgroup's averages a new problem is revealed and questions arise. Are other black officer's enforcement patterns similar or are you only dealing with one officer's conduct? Would you have identified what may be a serious problem without a computerized system? What are the patterns of officers' enforcement concerning females? Do male officers issue fewer tickets than female officers? Do you have a male officer whose statistics reveal a very low enforcement rate against female violators when compared to his work group? Is that officer just "easy" on women or perhaps he is exchanging "breaks" for sexual favors. Without having a system in place to capture and display this information corrective action is not possible.

Race and Percent of Tickets by Race									
Officer	Black	% Black	White	% White	Other	% Other	Left Blank	Total # tickets	% of Total
1	29	17.6%	136	82.4%		0.0%		165	1.7%
2	48	10.8%	390	87.8%	6	1.4%		444	4.5%
3	79	15.7%	412	81.9%	8	1.6%	4	503	5.1%
4	21	14.3%	121	82.3%	2	1.4%	3	147	1.5%
5	35	29.4%	79	66.4%	5	4.2%		119	1.2%
6	8	5.5%	130	89.7%	7	4.8%		145	1.5%
7	26	23.4%	80	72.1%	4	3.6%	1	111	1.1%
8	17	7.5%	209	92.5%		0.0%		226	2.3%
9	21	14.1%	121	81.2%	7	4.7%		149	1.5%
10	4	3.1%	123	96.1%		0.0%	1	128	1.3%
11	17	11.0%	130	84.4%	6	3.9%	1	154	1.6%
12	2	40.0%	3	60.0%		0.0%		5	0.1%
13	8	5.9%	124	91.2%	4	2.9%		136	1.4%
14	28	14.4%	160	82.5%	6	3.1%		194	2.0%
15	69	11.7%	511	86.3%	11	1.9%	1	592	6.0%
16	39	19.6%	153	76.9%	7	3.5%		199	2.0%
17	197	42.9%	261	56.9%	1	0.2%		459	4.7%
18	79	16.7%	391	82.5%	3	0.6%	1	474	4.8%
19	2	6.1%	31	93.9%		0.0%		33	0.3%
20	23	14.5%	136	85.5%		0.0%		159	1.6%
21	5	6.0%	75	90.4%	3	3.6%		83	0.8%
22	38	8.7%	391	89.3%	8	1.8%	1	438	4.4%
23	68	23.9%	216	76.1%		0.0%		284	2.9%
24	55	19.5%	223	79.1%	4	1.4%		282	2.9%
25	31	14.6%	181	85.0%	1	0.5%		213	2.2%
26	18	16.7%	90	83.3%		0.0%		108	1.1%
27	26	9.4%	252	90.6%		0.0%		278	2.8%
28	16	6.9%	214	92.2%	2	0.9%		232	2.4%
29	4	8.5%	43	91.5%		0.0%		47	0.5%
30	30	11.9%	223	88.1%		0.0%		253	2.6%
31	95	11.7%	702	86.6%	14	1.7%		811	8.2%
32	43	13.5%	261	82.1%	14	4.4%		318	3.2%
33	22	26.2%	61	72.6%		0.0%	1	84	0.9%
34	105	24.0%	327	74.8%	5	1.1%		437	4.4%
35	40	19.5%	161	78.5%		0.0%	4	205	2.1%
36	35	10.2%	309	89.8%		0.0%		344	3.5%
37	62	28.8%	152	70.7%	1	0.5%		215	2.2%
38	57	23.3%	188	76.7%		0.0%		245	2.5%
39	22	21.0%	74	70.5%	9	8.6%		105	1.1%
40	69	21.3%	241	74.4%	14	4.3%		324	3.3%
Totals	1593	16.2%	8085	82.1%	152	1.5%	18	9848	100.0%

For those police executives that believe that the racial profiling and “DWB” issue will fade away and therefore, they need not take any action; they merely need to consider that several presidential candidates have publicly remarked that if elected president they would end the practice of “racial profiling.” Vice

President Gore has stated that, “the first civil rights act of the 21st century will be a national law outlawing racial profiling.” The fact is that race based enforcement is illegal and the vast majority of Americans want it ended. One does not need to be a political pundit to realize that the combination of political pressure, legislation, litigation, and public opinion will cause police agencies across the country to re-visit how their officers are enforcing the law. The collection of race, ethnicity, and gender based data by law enforcement is predictably going to be the norm. Whether agencies are forced to collect the data by legislation, litigation, or voluntarily do so, the fact remains that this is an issue that will not just go away. Prudent law enforcement executives will take action to detect officers who are engaged in race-based enforcement and to correct that behavior. Those that do not will be at risk.

About the author: Neil Kurlander is a thirty-five year police veteran serving the last fifteen as chief of police. He is currently the Vice President of Information Technologies, Inc. He may be contacted for additional information concerning the use of technology to address the issue of racial profiling at (800) 814-4843 or by e-mail at nkurlander@itiusa.com.