



# Law Enforcement Agency Responses to Racially Biased Policing and the Perceptions of Its Practice

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The vast majority of law enforcement officers—of all ranks, nationwide—are dedicated men and women committed to serving all citizens with fairness and dignity. They are concerned both with racially biased policing and the perceptions of its practice, but addressing each of these involves complex issues and challenges. The issues involved in “racial profiling” and racially biased policing are not new—they are the latest manifestation of a long history of sometimes tense, even volatile, police-minority relations. This need not be viewed, however, as proof of the problem’s intractability. Police are more capable than ever of effectively detecting and addressing police racial bias. In the past few decades, there has been a revolution in the quality and quantity of police training, the standards for hiring officers, the procedures and accountability regarding police activity, and the widespread adoption of community policing.

In this article, we will set forth the specific challenges facing law enforcement agencies and discuss various options for addressing them.

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## CONCEPTUALIZING RACIALLY BIASED POLICING: DEFINITIONS, ISSUES, AND MANIFESTATIONS

### Definition of the Issue

The discussion of terminology and definition has advanced over the several years that this topic has been at the forefront of policing issues. There has been increased recognition on the part of law enforcement practitioners, scholars, and other stakeholders that “racial profiling,” as originally defined, does not fully encompass the important issues. That is, they recognize that “racial profiling” has been defined so restrictively that it does not fully capture the concerns of both police practitioners and citizens. Racial profiling is frequently defined as law enforcement activities (e.g., detentions, arrests, searches) that are initiated *solely* on the basis of race. Central to the debate on terminology and definitions is the word “solely.” In the realm of potentially discriminatory actions, this definition likely references only a very small portion. Even a racially prejudiced officer likely uses more than the single factor of race when conducting biased law enforcement. For example, officers might make biased decisions based on the neighborhood and the race of the person, the age of the car and the race of the person, or the gender and the race of the person. Activities based on these sample pairs of factors would fall outside the most commonly used definition of racial profiling.

Moreover, one could interpret the common definition of racial profiling to exclude activities that are legally supportable in terms of reasonable suspicion or probable cause, but are nonetheless racially biased. Because the traditional definition only prohibits actions based *solely* on race, it does not encompass decisions based on reasonable suspicion or probable cause *plus* race. That is, this definition could be interpreted to exclude, for instance, officers’ pulling over black traffic violators and not white *because* of race, or citing Hispanic, but not white, youth for noise violations *because* of race/ethnicity. Such disparate treatment would not necessarily be encompassed by a definition that referred to actions based “solely” on race, because the officers would have acted on the basis of reasonable suspicion or probable cause, as well as race.

Further, during the course of focus groups held around the country by staff of the Police Executive Research Forum (PERF), it became clear that the term “racial profiling” hampered national and local discussions of the problem. This was most clearly exemplified in focus groups composed of both police and citizens. Staff noted that most *citizens* were using the term “racial profiling” to discuss *all* potential manifestations of racial bias in policing. The *police* participants were likely to define “racial profiling” quite narrowly—as law enforcement activities (particularly vehicle stops) based *solely* on race. The citizens claimed that “racial profiling,” as they defined it, was widespread. In contrast, the police, using their more narrow definition were

frequently quite adamant that police activities based solely on race were quite rare. These contrasting, but unspoken, definitions led to police defensiveness and citizen frustration.

As mentioned above, the concerns of law enforcement practitioners and citizens are clearly broader than the use of race as a sole criterion for police decision making. Our language and actions should reflect this broader concern. The PERF report adopted the term “racially biased policing” which occurs “when law enforcement inappropriately considers race or ethnicity in deciding with whom and how to intervene in an enforcement capacity.” The various policy models discussed below articulate more precisely when the use of race/ethnicity might be “inappropriate.”

### Reality versus Perception

The topic of racially biased policing actually breaks down into two challenges for the executives of law enforcement agencies (e.g., chiefs, sheriffs): (1) personnel’s racially biased policing conduct, and (2) citizens’ perceptions of racially biased policing. We are unable in some contexts or within individual incidents to determine whether racially biased policing is real or perceived; the executive should commit to address both even if they cannot be fully disentangled. While racially biased policing is the misuse of race/ethnicity to make law enforcement decisions, the counterpart is the perception on the part of citizens that race/ethnicity is being used inappropriately in police decision making.

### Potential Manifestations

Within both of these subtopics—actual and perceived racially biased policing—the executive needs to think about and respond to the various ways they might manifest. Specifically, the executive needs to think about (1) how to deal with “bad apples,” (2) how to guide well-meaning officers, and (3) how to identify and fix institutional practices that contribute to the problems. That is, an executive needs to attend to the possibility of current or future problems of biased policing that result from the actions of a few “bad apples” among his/her personnel, the unintentional biased activities on the part of well-meaning officers, and/or department policies and practices that *inadvertently* (we hope, anyway) reflect bias.

The “bad apples” are the small minority of racist officers who act on their biases with impunity. These personnel are a great challenge to executives. Policy and training are not likely to impact on these officers; for the most part, their actions are already contrary to the existing policies of the agency and the training they have received. The greatest hopes for impacting on the behavior of these practitioners are close and effective supervision, an early warning system, and accountability through discipline or dismissal. There may be additional problem officers that, while they may not be conducting racially biased policing, treat citizens in such a negative and disrespectful manner as to give

rise to the perceptions of it. Again, this calls upon measures in the form of effective supervision, early warning, and accountability.

In stark contrast to these bad apples, the vast majority of police personnel are well-meaning individuals who are dedicated to serving all citizens with fairness and dignity. Despite their good intentions, however, their behaviors may still manifest racially biased policing or give rise to the perceptions of it. It is likely that many of these officers are not fully cognizant of the extent to which race/ethnicity are used in their decision making (something that is equally true of individuals in other professions) or fully cognizant of the behaviors that may give rise to citizen perceptions of bias. These officers need policy to provide them with guidance on the circumstances in which race/ethnicity are or are not appropriate factors in the decisions they make and training that conveys that policy and facilitates their analytical understanding of racially biased policing. They need to be informed about their actions that citizens perceive as biased. Also important are effective supervision and an agency reward structure that reinforces behaviors consistent with the executive’s commitment to impartial law enforcement and the dignified treatment of all citizens.

An executive needs to consider that racial bias is not the result of either intentional or unintentional deviation from agency policy or standards, but instead is the result of adherence thereto. Executives need to review policies, enforcement strategies, deployment, reward structures, and other operational administrative practices to ensure that they do not reflect biases and communicate openly and constructively with residents who express concern about the disparate impact of police activities.

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## RESPONDING TO REAL AND PERCEIVED RACIALLY BIASED POLICING

A law enforcement executive should consider responses/reforms within these areas:

- institutional practices and priorities,
- accountability and supervision,
- recruitment and hiring,
- education and training,
- minority community outreach,
- policies prohibiting racially biased policing, and
- data collection.

We will review potential responses within all of these areas.<sup>1</sup>

### Institutional Practices and Priorities

Many of the potential response areas below focus on trying to remove bias from incident-level decision making by individual officers; we discuss

how to hire impartial officers (or, at least, hire officers who are attuned to their own biases), guide officers with policy and training, supervise them, and so forth. Biased policing or perceptions of biased policing, however, may occur, not because individuals are working *outside* of agency parameters but *within* them. That is, there may be institutional policies and practices that produce biased policing or perceptions of its practice—even unintentionally. As such, an important early step for any department committed to addressing racially biased policing should include an “audit” of all operational and administrative practices that might result in disproportionate negative impacts on racial/ethnic minorities *and* that cannot be justified by race-neutral factors.

An assessment of how operational strategy might contribute to racially biased policing might begin by having personnel challenge some of the assumptions underlying conventional police strategy which emphasizes criminal and traffic enforcement as the primary means to control crime and disorder. The expectation with the conventional strategy is that numerous stops, searches, citations, and arrests will yield reductions in crime, disorder, and accidents. Under certain conditions, and with adequate community input and support, intensive criminal and traffic enforcement may be justified and sensible. But sometimes, intensive criminal and traffic enforcement (particularly if they are the only strategies in place to address particular problems) fall short of the desired effects, and instead, only worsen the relationship between police and the minority community.

Racial bias does not manifest itself the same way in every jurisdiction. Thus, it might make sense in one jurisdiction to explore how racial bias might play out in police efforts to interdict illegal drug shipments along major highways, but not make sense to do so in a jurisdiction where drug trafficking is not a major concern. In some jurisdictions, the potential for racially biased policing might manifest itself most prominently in how police handle problems associated with disorderly youth, gangs, migrant workers, or any number of concerns. There may be particular units in the department that—as a result of their mandate—are at greater risk than others for manifestations of bias.

Agencies should also review patterns of deployment for signs of over- or under-policing that cannot be explained by relevant and reasonable factors related to effective policing (such as calls for service). For instance, the primary author recently facilitated a focus group with citizens on the topic of racially biased policing. The perceptions of this group were that their police department *under*-policed their areas because the residents were predominantly minority (and low income). In contrast, another city is being sued on the charge that they over-police racial/ethnic minorities in their undercover drug enforcement efforts. In both of these examples, the first step for the agency would be to conduct an assessment to determine whether their deployment patterns reflect relevant, race-neutral factors such as general calls for service, citizen complaints of drug trafficking, and so forth. Agency practices may, in fact, result in *disparate impact* on racial/ethnic groups. However,

disparate impact is not necessarily biased policing. The key to an assessment is to ensure that operational strategies and allocations of resources are not influenced by racial biases, but rather reflect reasonable and rational factors that facilitate effective policing for all citizens. Disparate impact, however, may lead to citizens' *perceptions* of bias that need to be heard and addressed constructively in public forums.

Another aspect of analyzing agency practices is to review reward structures to determine if they result in increased minority stops and/or searches. Reward structures include all those activities that are recorded and/or counted and that can have a positive job-related impact on the employee (e.g., be considered in merit raises and/or promotion). While the rewarded activity will most certainly be neutral with regard to race, it may interact with employees' stereotypes to produce an inappropriate negative impact on racial/ethnic minorities. For example, positive departmental reinforcements for weapons arrests or for drug seizures might lead officers to be particularly aggressive in their weapons and drug stops. Officers may link these crimes to racial/ethnic minority citizens, producing a disproportionate amount of detentions that may exceed their actual representation among offenders of these crimes. This type of finding could result in changes to the reward structure<sup>2</sup> or might be addressed through training and education as described more fully below.

Agencies can promote some of the aspects of community and problem-oriented policing that are directly relevant to the issue of racial bias. One important principle of community policing is the emphasis placed on having police personnel develop a comprehensive knowledge of the area to which they are assigned—whether a beat, a sector, or a district. Essential to this understanding is getting to know, not only the general demographics of the area—including which residents can be expected to be where, and when—but also, to the extent possible, getting to know the particular routines in an area, including which individuals normally are in certain places at certain times.

Knowing many citizens by face and name improves officers' abilities to differentiate between suspicious and nonsuspicious people on a basis other than race. Getting to know the community's law-abiding citizens helps police overcome stereotypes based on characteristics such as race. For example, the more young black males officers know by face and name, the less likely they will be to view all young black males as suspects or potential threats.

Also consistent with the principles of community and problem-oriented policing is actively soliciting community input about crime and disorder problems, what priority each should have, and how they might best be addressed. These conversations can reveal possible manifestations of racial bias or the perceptions of its practice and also allow police to convey their priorities, concerns, and issues regarding crime and disorder in the neighborhoods. These forums also provide the opportunity to explain that particular policies that produce disparate impact are, in fact, based on race-neutral principles and are in place to serve the public safety objectives of community resi-

dents. Garnering community support, especially minority community support, for police actions can go a long way toward reducing perceptions of racial bias.

Finally, agency executives should explore possible racial bias or the perceptions of it as it relates to the internal operation of the police agency itself. If there is racial mistrust and tension among police personnel, it is highly likely that some of that mistrust and tension will show in their attitudes and conduct toward the public. For instance, if racial bias is tolerated within the agency, some officers might conclude it will be tolerated in police-citizen interactions as well. Alternatively, officers who feel aggrieved by racial bias within the agency might take out their frustrations on citizens. These outcomes are not inevitable, but a climate of racial mistrust and tension within the agency, at a minimum, inhibits its efforts to discuss and address police racial bias on the streets.<sup>3</sup>

### Accountability and Supervision

Police accountability and supervision are important factors in reducing or eliminating bias in policing. The tasks of policing are most often performed by single officers or pairs of officers operating independently and without immediate institutional oversight or independent observers. Under these circumstances, effective supervision to ensure accountability is a great challenge.

Sergeants, lieutenants, and captains wield by far the most powerful influence over the day-to-day activities, attitudes, and behaviors of street personnel. Top management must clearly convey to these supervisory personnel the expectations that the agency has for them, which is to prevent and detect actions that reflect racially biased policing or the behaviors that promote citizen perceptions of its practice. The first-line supervisor has the responsibility to spot-check officer performance in a variety of circumstances, observing the style of verbal communication and quality of discretionary decision making and enforcement action. The supervisor must be alert to any pattern or practice of possible discriminatory treatment by individual officers or squads (through observation, information from fellow officers, or close review of complaints) and be willing and able to take appropriate action in response to inappropriate behavior.

In-car video cameras should be considered if resources permit. This technology has the potential to suppress inappropriate behavior, increase supervisors' ability to observe behaviors, and document proper or improper officer actions in defense or support of later allegations. The introduction of video cameras should be accompanied by a policy that sets forth standards for supervisors' periodic review of officer tapes to enable detection of problem behavior.

Many progressive law enforcement agencies are implementing record systems with decision-prompting mechanisms called "early warning systems." These systems collect occurrence data on a broad selection of individual performance indicators, not only from public complaints, but other

elements of an officer's performance from disciplinary actions, vehicle collisions, absenteeism reports, performance appraisals, personal problems, and training results. Any employee activity that could signal the presence of stress, dysfunctional behavior, or a training need becomes the subject of record. To provide for balance and equity, data collection could include positive inputs such as commendations, letters of appreciation, and awards.

Supervisors should take advantage of annual and periodic performance appraisals to recognize and promote professional, unbiased behavior. The appraisal instrument should provide an opportunity to grade officers on their communication skills, ability to carry out duties absent of bias, and ability to demonstrate tolerance and respect for individual rights in enforcing the law.

### Recruitment and Hiring

Recruiting and hiring policies and practices have the potential to reduce racially biased policing and citizen perceptions that an agency is biased in two basic ways: (1) by hiring officers who can police in an unbiased manner, and (2) by establishing a police workforce that reflects the racial demographics of the community the agency serves. Good police officers carry out their duties with fairness, integrity, diligence, and impartiality. They respect basic individual rights and civil liberties. They know how to communicate effectively and respectfully to people of any race, culture, or background. They make the effort to understand the culture, language, mores, and customs of whatever population they are policing, and to get others to understand their own perspective. They look for ways to resolve disputes and address chronic community problems without creating or aggravating racial tensions. They do not rely solely on their arrest powers to establish their authority. They exercise their professional discretion thoughtfully and judiciously. They understand why some communities distrust the police as an institution, and work hard to earn their trust. They reject racial and cultural stereotypes, recognizing how unfair, inadequate and even dangerous they are to effective policing. They have the self-confidence and courage that is sometimes needed to reject the biased attitudes and behavior they may find among some fellow police officers.

Most police officers today have these qualities, and it is in no small measure because of how they police that there is not greater tension between the police and citizens in many communities. Police agencies must seek to recruit and hire more applicants who have, and can further develop, these qualities. To recruit and hire such applicants, however, is no simple matter. It calls not only for making judgments about applicants' racial attitudes, but also for predicting how applicants would act on these attitudes while working in the highly autonomous and discretionary environment of street policing.

It is important to bear in mind that few, if any, people are totally free of bias in one form or another. Most people stereotype others whom they don't know in some, usually benign, way. The search for unbiased police officers is not the search for the saintly and pure, but rather a search for well-inten-

tioned individuals who, at a minimum, are willing to consider and challenge their own biases and make a conscious effort not to allow them to affect their decision making as officers.

In the search for unbiased police officers, staff must consider applicants' own statements on matters involving race and what background investigations might reveal about applicants' character, reputation, and documented history. Applicant interviews, whether conducted by community members or police staff, might include questions that reveal applicants' understanding and attitudes about race relations and police-community relations. Asking the questions alone signals to applicants that their attitudes about race are important to the police agency and that the agency will not tolerate biased policing. Applicants will sometimes admit to harboring attitudes and opinions that one might expect they would keep to themselves. While not fool-proof, if one wants to know about applicants' racial attitudes and biases, there is no better place to start than by asking them directly.

Background investigations should explore many facets of applicants' lives, including clues about how they feel and act toward members of other racial and cultural groups. It is especially important to look for applicants who have some experience interacting with members of other races and cultures, and to assess how well they have done so.

A police agency whose officers reflect the racial demographics of the community they serve fulfills several important purposes in reducing racial bias and/or the perceptions of its practice. First, it conveys a sense of equity to the public, especially to minority communities. Second, it increases the probability that, as a whole, the agency will be able to understand the perspectives of its racial minorities and communicate effectively with them. Third, it increases the likelihood that officers will come to better understand and respect various racial and cultural perspectives through their daily interactions with one another.

Executives must communicate to their recruiting staffs their commitment to a diverse workforce and devote the resources necessary to achieve that goal. Police recruiters themselves should reflect the community's racial and cultural makeup and the recruitment messages should appeal not merely to potential applicants' desire for the adventure of policing or the wages and benefits offered, but also to a spirit of fairness, justice, and racial equality. To counter mistrust of police agencies, recruitment messages can promote policing as an opportunity to serve society in ways that can truly advance justice and racial harmony. Some methods for recruiting minority applicants are (1) recruiting at historically black colleges and universities, (2) recruiting through military channels, (3) recruiting with the help of current minority police officers, (4) recruiting through the religious community, and (5) recruiting people who want to change careers.

Police executives should periodically audit their agency's personnel recruitment and hiring process to gauge the fairness of each aspect of the selection process and whether the process as a whole, or at any stage, dispro-

portionately disqualifies minority applicants. If there is evidence of disparate impact, the agency should explore the reasons for it and determine if remedies exist that will not compromise hiring standards. As a case in point, PERF staff recently visited a coastal community and learned that their greatest loss of minorities (including bilingual applicants) during the hiring process was a result of their high swimming standards. We also learned that the agency responded to just three or four incidents per year that might require swimming skills. While reasonable minds can certainly differ regarding whether the swimming standard is necessary, this recognized disparate impact, at the very least, calls for a serious cost-benefit analysis of the standard.

### Education and Training

Education and training can play critical roles in reducing actual and perceived racial bias in policing. Police executives should be clear, however, about what such programs can realistically accomplish. They can convey new information, provide and refine critical skills, encourage compliance with policies and rules, facilitate dialogue, and/or convey a commitment to addressing the problem. They are unlikely to alter individuals' fundamental beliefs and biases. These programs must be of high quality to be effective. Education and training programs relating to racial bias in policing should be carefully monitored and evaluated to ensure they are credible to the participants and cover the issues in sufficient breadth and depth. They should be developed and presented in a genuine spirit of professionalism in which police executives commit themselves to helping their personnel understand and deal more effectively with an extraordinarily complex matter. These programs should not convey an accusatory tone; they should engage personnel in discussion, rather than preach to them.

Considerations of racial bias in policing should be woven into many education and training courses and should target all police personnel, including command officers.

Topics to be addressed should include the following:

- *Protection of Individual Rights:* Discussions of racial bias in policing should begin by having police personnel reflect on the core mission and values of policing. The founding principles of modern policing should be revisited, as should the mission and value statements adopted by the trainees' own agencies. Personnel should understand that the protection of civil rights and liberties is a central and affirmative part of the police mission, not an obstacle to effective policing. In this vein, they should understand the fundamental purpose and underpinnings of our nation's constitution, particularly the Bill of Rights.
- *Evidence of Racial Bias and the Perceptions of Racial Bias:* Education and training programs should present what evidence exists about the forms and dimensions of racial bias in policing and the extent of citizen perceptions of its practice. Trainers could present public opinion and sur-

vey data on perceptions of racial bias, as well as statistical data from quality research on such things as police stops, searches, and arrests.

- *Effects of Racially Biased Policing on Individual Citizens, Police and the Community:* Police personnel should consider how the level of public trust in the police affects their ability to carry out their duties. Specifically, they should consider how public support for police policies and initiatives is eroded, how the flow of information from citizens to police is inhibited, and how police officers themselves are placed at greater risk because of mistrustful citizens who might harm or fail to assist them. Personal testimonials from minorities who have suffered from the effects of racial profiling or other forms of racial bias in policing can be effective in personalizing the problem and emphasizing the real harm caused to real people.
- *Key Decision Points at Which Racial Bias in Policing Can Occur:* Racially biased policing can occur at the incident level or be reflected in strategies or policies. A discussion of the key decision points at which racial bias in policing can occur reflects the possibility that practitioners are not always cognizant of the extent to which race/ethnicity enters into the decisions they make. Training for line officers should focus on the activities with the potential for bias at the incident level while training for supervisors, mid-managers, and command staff should reflect on strategic-level decisions and policy. Line officers should reflect on the potential for bias in decisions such as whom to contact or detain to investigate suspicions, deciding what attitude to adopt during contacts, deciding how long a stop will last, deciding whom to search or from whom to request consent to search, and deciding how dangerous suspects are and what level of force is necessary to control them. Some high-risk, strategic-level activities and policies were mentioned in the section on Institutional Practices and Priorities. Police personnel should consider what factors they rely on to make such decisions, and how suspects' race/ethnicity may or may not affect their decisions.
- *Policy on Racially Biased Policing:* The discussion regarding the key decision points at which racial bias in policing can occur, should go hand in hand with training on department policy. A subsequent section of this article recommends two policy options for executives to consider. The adoption of either of these should be accompanied by training in their implementation.
- *The Ineffectiveness of Racial Profiling:* Police personnel should also be informed about what the research reveals about using race/ethnicity to predict criminality. Studies have demonstrated that race/ethnicity is not a useful predictor of criminality, either as a sole factor or in combination with other factors.<sup>4</sup> Police personnel should understand that not only are there legal and moral concerns about targeting minorities for suspicion of criminality, but also that doing so is not an effective crime

control strategy. Furthermore, false predictions erode public trust in and support for the police.

- *Steps to Reduce Perceptions of Racial Bias:* Education and training should also address ways to minimize the likelihood that police actions will be perceived as racially biased. Training should highlight how police can deal with people, including suspects, in ways that minimize the likelihood for misunderstanding, conflict, hostility, and violence.

### Minority Community Outreach

Both the incidents and the perceptions of racially biased policing lead to mistrust of police. Relying as they do on resident input, support, and compliance, the police cannot function effectively where tensions are prevalent. Outreach to all residents, but particularly to minority communities is an important component of any departmental strategy to respond to racially biased policing and the perceptions of its practice. Departments should reach out to minority communities on the specific topic of racially biased policing and institute methods for building and sustaining, at a more general level, mutually respectful and trusting relationships.

Police practitioners should be willing to discuss racially biased policing and the perceptions thereof with community residents. Constructive dialogue between the police and citizens can lead to an agreement that racially biased policing likely occurs to some unknown degree within the jurisdiction, but perceptions may not always reflect the scope and nature of the problem. With this understanding in place, police and citizens can begin to collaborate to develop ways to address the issues. A jurisdiction-level task force comprised of police and citizens can take the lead—analyzing the problems and formulating interventions. These discussions can and should also take place within smaller geographical areas. Lieutenants and sergeants can develop task forces or arrange for focus groups within districts or beats to hear the concerns of citizens and focus on area-level issues. A key aspect of this dialogue is listening to what citizens have to say—allowing them to voice their frustrations or even anger. This process is key to initiating dialogue and constructive joint development of solutions.

Effective outreach, however, involves more than police-citizen engagement on the topic of race. Police departments should have long-term, sustained programs for reaching out to minority communities. While some outreach programs focus on making police accessible and approachable or improving minorities' perceptions of police, departments should also initiate concerted efforts to engage minorities in dialogue and decisions about department operations. Trust between the police and the community is built through long-term engagement. The police gain respect by consistently demonstrating respect for citizens. Giving up absolute control and allowing citizens to participate in decision making affecting how they are policed ensures a shared responsibility between police and the community. Police department

efforts to provide significant means for community input into operational and policy decisions are the backbone of community engagement. Improved relations between police and minorities will increase officers' ability to provide high quality police services to all the residents in their jurisdiction and produce mutual trust, respect, and shared responsibility for public safety.

### Policies Prohibiting Racially Biased Policing

According to the definition provided above, racially biased policing occurs when law enforcement inappropriately considers race or ethnicity in deciding with whom and how to intervene in an enforcement capacity. There are significant differences of opinions as to when it is and is not appropriate to consider race or ethnicity, and these views are reflected in the various policies that have been adopted around the nation to address racially biased policing.

It is critically important for an agency executive to be sure that his/her personnel are provided with guidance as to the appropriate use of race/ethnicity in making decisions. A key way to convey this guidance is in policy (supported by training). Executives shouldn't assume that all of their personnel use race/ethnicity the same way and should be concerned that their use may be broader than what the executive believes is just. In focus groups held around the country, it became clear to PERF staff that practitioners at all levels—line officers, command staff, and executives—have very different perceptions regarding the circumstances in which officers can consider race/ethnicity. Participants discussed when officers can use race/ethnicity as one factor in the "totality of the circumstances" to establish reasonable suspicion or probable cause. We found many differences of opinion among line officers and command staff, even within agencies, on this point. Some believed that officers should not use race/ethnicity to justify law enforcement intervention except when specified as part of a suspect's description. Others—when provided with hypothetical examples—clearly revealed an on-the-street use of race/ethnicity as a general indicator or predictor of criminal activity.

Most of the policies that have been adopted by agencies nationwide are what we call "anti-racial profiling" policies. They are distinguished by the use of the words "sole" or "solely," such as in *"the race or ethnicity of an individual shall not be the sole factor in determining the existence of probable cause . . . or in constituting a reasonable and articulable suspicion"* (Connecticut Public Act No. 99-198). Some agencies have adopted policies that direct personnel "not to discriminate." Neither of these policy models provides sufficient guidance on the use of race/ethnicity to make law enforcement decisions. Without clear parameters, some officers will, and do (as indicated by the focus group data), use race/ethnicity as a general indicator of criminal activity, to help justify, for instance, detentions of citizens. In this environment of minority citizen mistrust of law enforcement, agencies should set forth written policy parameters on the use of race/ethnicity to justify law enforcement intervention. Without clear guidance in both policy and training, law enforcement execu-

tives risk having line personnel inappropriately intrude on citizens' freedom based on those officers' personal biases as opposed to objective criteria.

Much more meaningful guidance can and should be afforded line personnel and there are two policy models that can fulfill this purpose: the "suspect specific model" and the PERF report policy. Both of these policies attempt to distinguish between the appropriate, or legally relevant, use of race/ethnicity in making decisions and the inappropriate use of race/ethnicity—when that usage is based on stereotypes and/or biases. Both of these policies place significant restrictions on the use of race/ethnicity in making law enforcement decisions; the suspect-specific model is more restrictive than the PERF report model.

The suspect-specific policies generally read as follows: *Officers may not consider the race or ethnicity of a person in the course of any law enforcement action unless the officer is seeking to detain, apprehend, or otherwise be on the lookout for a specific suspect sought in connection with a specific crime who has been identified or described in part by race or ethnicity.* The key to this model is that the set of identifiers—which includes reference to race/ethnicity—must be linked to a particular suspect that is being sought for a particular crime. Thus, if reliable witnesses describe a convenience store robber as 5' 8" tall, lean, long-haired, and Asian, Asian can be considered along with the other demographics and with other evidence in developing reasonable suspicion to detain or probable cause to arrest.

As mentioned above, the suspect-specific model is the most restrictive that we have identified. The PERF report policy encompasses the suspect-specific provision, but allows for additional uses of race/ethnicity beyond the circumstances involving a "specific suspect" and a "specific crime." The PERF model has both 4th and 14th Amendment provisions. The 4th Amendment<sup>5</sup> provision is what distinguishes the PERF report model from the suspect-specific model and will receive the most attention here. It reads: *"Officers shall not consider race/ethnicity to establish reasonable suspicion or probable cause except that officers may take into account the reported race/ethnicity of a potential suspect(s) based on trustworthy, locally-relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s)"* (Fridell et al., 2001:52).

Pursuant to the 4th Amendment provision, the PERF report policy disallows race/ethnicity used as a general indicator for or predictor of criminal behavior; it disallows the use of racial or ethnic stereotypes in making law enforcement decisions. It allows for the use of race/ethnicity when those demographics are legally relevant descriptors.

Reflecting the 14th Amendment guarantee of equal protection<sup>6</sup> in all law enforcement activities, the PERF report policy states that *"Except as provided above [referencing the 4th Amendment provisions], race and ethnicity shall not be motivating factors in making law enforcement decisions"* (Fridell et al., 2001:52). The 4th Amendment provisions are insufficient by themselves. Even if officers meet the 4th Amendment mandates of law and policy, they could still be biased in deciding, for instance, *which lawbreakers* they will arrest or let go or *which citizens* to treat with respect and dignity. We need the second provision reflecting the general principle of equal protection.

Together, the 4th and 14th Amendment provisions prohibit racially biased policing. They will prompt officers to carefully consider their motives for engaging citizens, and tightly circumscribe their use of race/ethnicity in making enforcement decisions.

There are two important similarities between the two policies that must be highlighted. First of all, neither policy permits the use of race/ethnicity as the *sole* factor for law enforcement decision making. These policies, instead, reference when it is acceptable to use race/ethnicity as *one* factor among multiple factors in establishing reasonable suspicion or probable cause. Secondly, these policies rely on *descriptions* of actual suspects as opposed to *predictions* of who may be involved in crime. As Harris (2002:152) states: "What must *not* be allowed is using race or ethnic appearance, alone or in combination with other factors, to stop a particular person based on a *prediction* that he or she is more likely to be involved in crime."

## Data Collection

Since "racial profiling" has become a national issue, many jurisdictions have started collecting data on the race/ethnicity of citizens stopped and/or searched by the police. It is interesting that data collection became known early on as *the way* for police agencies to respond, with very little attention given to other ways agencies might address both racially biased policing and perceptions thereof (e.g., training, recruitment/hiring, supervision).<sup>7</sup>

The agencies involved in data collection require officers to report information on each targeted stop. Most agencies are collecting data for just traffic-related stops or for all vehicle stops (traffic-related stops and crime-related stops of vehicles). The information collected by officers includes the race/ethnicity of the driver and other information about the driver (e.g., age, gender) and the stop (e.g., reasons for the stop, disposition of the stop, whether a search was conducted, outcome of the search).<sup>8</sup>

There are arguments for and against collecting this police-citizen contact data. On the positive side, collecting police-citizen contact data helps agencies convey a commitment to unbiased policing and builds trust with the community. Data collection conveys important messages to both the community and agency personnel: that biased policing will not be tolerated and that officers are accountable to the citizens they serve. This has been the impetus for many agencies around the country that have adopted data collection systems.

Two major arguments—one for data collection and one against—go head to head and center on the ability of social science to turn the data that are collected into valid and meaningful assessments of whether racially biased policing is occurring. On the one hand—supporting data collection—is the argument, articulated by Ron Davis of NOBLE that "You cannot manage what you don't measure." He (among others) argues that much of management within police departments is based on information. We use information such as reported crime, calls for service, and complaints to make

decisions regarding the allocation of resources, training needs, and so forth. Similarly, "[p]roper data collection, utilizing credible benchmarks . . . provides an organizational 'snap shot' . . . [which] assists administrators in identifying institutional and systemic problems" (Davis, 2001:1).

Challenges to this position reflect the concern that police-citizen contact data do not yield valid information regarding the nature and extent of racially biased policing and are therefore of questionable utility as a management tool. That is, there are legitimate questions as to whether the data collected on police stops can tell us whether those stops are based on police racial/ethnic bias. The challenge is in developing the "benchmarks," to which Captain Davis refers, to determine whether racially biased policing is indicated by, for instance, the fact that 25 percent of an agency's traffic stops are of Hispanics. Developing the right benchmark is critical to making data collection efforts worthwhile, and yet this process poses many challenges.

To draw definitive conclusions regarding police-citizen contact data that indicate disproportionate engagement of racial/ethnic minorities, we need to be able to identify and disentangle the impact of race from legitimate factors that might reasonably explain individual and aggregated decisions to stop, search, and otherwise engage people. In an attempt to rule out alternative factors, agencies strive to develop comparison groups against which to evaluate their police-citizen contact data. Agencies strive to develop comparison groups ("benchmark" groups) that most closely reflect the demographic makeup of groups at risk of being stopped by police *assuming no bias*. For example, a department collecting data on traffic stops would, ideally, want to compare the demographics of those stopped by police for a traffic violation with the demographics of those people legitimately at risk of a stop, taking into consideration numerous factors, including, but not limited to, driving quantity, driving quality, and driving location.<sup>9</sup>

Many agencies that are collecting data are analyzing their data using very weak benchmarks. For instance, many agencies are conducting "census benchmarking," whereby the analyst compares the demographic profile of drivers stopped by police to the U.S. Census Bureau demographic profile of jurisdiction residents. This is a very poor benchmark because the group of people who reside in a jurisdiction does not necessarily reflect the group of people who are at legitimate risk of being stopped by police. Possible variations across racial/ethnic groups in terms of driving quantity, quality, and location are not considered with this method. In the many jurisdictions that use census information to benchmark their data, the authors either irresponsibly draw conclusions regarding whether racial bias exists, or more responsibly, indicate that no conclusions can be drawn.

Researchers and practitioners are still struggling to identify methods for developing valid comparison groups. As yet, there is no consensus on what might be the most the cost-effective and valid benchmark(s). Some jurisdiction teams are comparing the demographic profiles of persons stopped with the demographic profiles of licensed drivers, people involved in vehicle acci-



dents, or persons observed to be driving in the jurisdiction. In jurisdictions with cameras that record the license plates of vehicles running red lights (a "color-blind" form of enforcement), the demographic profile of the owners (unfortunately, not the *drivers*, necessarily) of those vehicles can be compared with the profile of persons stopped by police. Similarly, radar stops can be a color-blind form of enforcement allowing agencies to compare the demographic profile of citizens stopped with radar to the demographic profile of citizens stopped without radar. Jurisdictions can also rely on internal comparisons—comparing the profiles of people stopped by individual officers or units to the corresponding data for other officers or units that are "matched" in terms of their assignments (e.g., beat, shift). Resident surveys can be used to collect data, not only on the extent to which residents are stopped by police but also on the nature and extent of their driving. Corresponding to the data that police collect on their own activities, the survey could solicit information from the respondents regarding the frequency and nature of their encounters with the police. Corresponding to benchmarking efforts for department-collected stop data, such a survey could ask the residents about the nature (e.g., speed, passing behavior, driving violations), location (e.g., interstate highways, around their neighborhood) and amount of their driving.

Many agencies involved in data collection are hiring an independent researcher or research group to assist in the analysis/interpretation of the data. This can promote the quality of the social science methodology in those agencies that lack advanced research units and, importantly, increase the credibility of the results. Further, many agencies are involving citizens in planning and implementing their data collection efforts. By including influential citizens on a police-citizen task force an agency can again enhance the credibility of the effort and educate these citizens as to the challenges of analyses so that they can, in turn, educate their peers through the media or other forums.

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## CONCLUSION

In this article, we have discussed the complex and challenging issue of racially biased policing and outlined how law enforcement can address both the real and perceived manifestations of it. As mentioned in the introduction, the issue of "racial profiling" is not new. We, instead, have a new label for the longstanding tensions between police and minority communities. But, as also conveyed above, law enforcement has never been better situated to address these issues. This is a new era of policing—one characterized by new tools and skills for dealing with complex and highly charged issues. Reflecting this changed profession, progressive chiefs and sheriffs across the nation are acknowledging the problems of racially biased policing and widespread perceptions of its practice and implementing initiatives to bring about critically needed, constructive change.

## Notes

- <sup>1</sup> The reader is invited to refer to the relevant chapters in the PERF report entitled "Racially Biased Policing: A Principled Response" (Fridell et al., 2001) for more depth on all topics.
- <sup>2</sup> For instance, rewarding search efficiency (percent of searches that result in hits), instead of total volume of contraband discovered.
- <sup>3</sup> With PERF's Assistance, the Kansas City (MO) Police Department conducted surveys and focus groups of personnel to assess concerns regarding racial bias and racial tensions in the agency.
- <sup>4</sup> See, in particular, Kennedy (1997) and Harris (2002).
- <sup>5</sup> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
- <sup>6</sup> "[N]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."
- <sup>7</sup> It is likely that this attention to data collection was spawned by the several prominent early court cases—including *State v. Pedro Soto* against the new Jersey State Troopers and *Wilkins v. Maryland State Police*—for which data were important aspects of the evidence and/or settlement.
- <sup>8</sup> For discussions of which stops to target and what data elements to collect, see Ramirez et al., 2000 and Fridell et al., 2001.
- <sup>9</sup> For more information on the conceptual challenges of benchmarking and the various methods used to create benchmarks, see Fridell 2004.

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