

**RACIAL MISUSE OF “CRIMINAL PROFILING” BY LAW
ENFORCEMENT: INTENTIONS AND IMPLICATIONS.**

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ABSTRACT

This article examines critical issues regarding criminal profiling, its misuse by law enforcement, and its utility to solve serious crimes with the technique, hereinafter known and called “Criminal Profiling”. The specific issue under investigation is the misuse of criminal profiling in the United States, and its impact on African Americans, and other minorities. In that realm, a discussion and analysis of the importance of criminal profiling, the development of criminal profiling and, the misuse of criminal profiling as a critical issue in the 21st century are analyzed.

INTRODUCTION

This paper investigates criminal profiling. Criminal profiling has always been an important law enforcement tool in solving crime. Profiling narrows the field of investigation by indicating the kind of person most likely to have committed a crime by focusing on certain behavioral and personality characteristics. It is a collection of leads, and has been described as an educated attempt to provide specific information about a certain type of suspect (Geberth, 1981), and as a biographic sketch of behavioral patterns, trend, and tendencies (Vorpapel, 1982). Behavioral forensic science has been used for years by law enforcement in crime solving by creating psychological profiles of criminals (Houck & Siegel, 2006). Particular psychological calling cards help and allow law enforcement to manage criminal events that may demand detail investigation. These behavioral analysts gather information from the victims and crime scenes to determine possible characteristics of the perpetrator(s). However, it must be emphasized that criminal profiling does not necessarily provide the exact identity of the offender and as a result, many law enforcement agencies around the world are still

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skeptical of the work of criminal profilers (Douglas, Ressler, Burgess, and Hartman, 1986).

This paper attempts to present an overview and history of criminal profiling used in the Criminal Justice System here in the United States, and would show that criminal profiling has been a legitimate investigation tool for law enforcement but is often misused in a racially insensitive way by some law enforcement professionals. The paper examines progression of criminal profiling usage and should also show how it turned into and has become a dreaded investigative tool for some segment of the U.S. society. The need to re-examine criminal profiling stems from (1) racial profiling which has and continues to be a public relations crisis for law enforcement and (2) profiling tends to be used by law enforcement agents more frequently on racial and ethnic minorities which may have unique psychological implications. Thus, it is imperative that attempts be made to re-evaluate the current system that yields the best results necessary to restore the legitimacy of the “original intent of criminal profiling”.

The issue is that law enforcement criminal profiling is otiose and often racist, and the society at large fails to credit the tool as a method or as the procedure or means of solving or clearing crime or preventing criminal tendencies sometimes with or without probable cause. The problem here is whether or not to keep it as a mechanism of solving crime problems or to eliminate it as racist and otiose. This paper examines validity/invalidity of criminal profiling, since it does not apply to society as a whole. Law enforcement should guide and monitor police discretions that lead to criminal profiling. Various theories have been advanced for changes in the criminal justice system particularly the police administration but none of these theories has advocated for upholding the use of criminal profiling officially nor quash it as a racist tool against minorities.

A number of theoretical and practical consequences flow from this paper. Looking at its phenomenological significance, one can identify several points regarding law enforcement criminal profiling as discussed supra. This paper will help to clarify the explanatory scope and potential of criminal profiling as applied by law enforcement or patrol officers without guideline by their superiors. This paper will be used as a tool for generic research initiative in law enforcement functions including patrol mechanism. Moreover, it will provide the possibility for comparative studies with other generic models as well as cross-cultural studies of this dimension of human and police culture. After this paper is published, there would be a consensus in regard to criminal profiling in our criminal justice system on whether or not it would be guided and monitored as a tool for solving crime problems or to use it for racial discrimination against minorities.

METHODOLOGY

The method used in this paper is case study strategy commonly used to interpret and understand different phenomena. Here we are looking at the racial misuse of criminal profiling. In a case study, multiple methods and sources are employed in the collection and analysis of data. Such method includes in-depth interview, personal observations and secondary data collection. The second method used in this study is content analysis which is a type of qualitative method. Krippendorff (1980) defines context analysis as a technique for making inferences about the context, in which the data are found. Analysis of academic journal articles, books, and internet based documented source materials will also be used.

HISTORY AND REVIEW

What is today regarded as profiling was first used in the middle Ages by the Inquisition to analyze the beliefs of accused heretics. It was not until the 19th century that profiling was used in a truly systematic fashion in England by the police surgeon Dr. Thomas Bond who wrote a lengthy description of the unknown British serial killer “Jack the Ripper”. Dr. Bond in his profiling notes detailed “Jack the Rippers” possible habits and psychosexual problems. This did not produce a positive result and the identity of the Ripper remains a mystery. In the U.S., the Californian psychiatrist J. Paul De River was the first to use profiling in assisting the police to catch a child killer in the 1937 case nicknamed the “babes of Inglewood Murders”. Dr. James A. Brussel of New York profiled “the Mad Bomber” in the 1950s. His profiling helped in capturing and convicting George Metesky of the crimes. In late 1960s and 1970s Schlossberg developed profiles of many criminals including David Berkowitz- New York City’s “Son of Sam”. In the ‘80s in England the “Railway Rapist” (John Duffy) was apprehended through profiling. The “Red Ripper” (Andrei Chikitilo) the Soviet Union’s most notorious multiple murder was apprehended through profiling.

The FBI formed its Behavioral Science Unit in 1974 to investigate serial rape and homicides cases. FBI agents Howard Teten and Pat Mullany created a system of profiling for the Bureau’s Behavioral Science Unit in Quantico, Virginia. John Douglas and Robert K. Ressler the most famous FBI profilers refined profiling technique by breaking down killers into categories such as “organized” or “disorganized”. They also developed methods that allowed profilers to more clearly determine if a crime scene had been staged to mislead investigators into surmising that the perpetrator was more disorganized than he actually was. Forensic science based profiling has gained a lot of popularity in recent years particularly in the media as can be seen from today’s most top rated television shows such as Criminal Minds, CSI, and Law and Order, etc. Government agencies such as the FBI has used profiling for many years. According to Owen (2006), in 1985, the Behavioral Unit (BSU) was incorporated into the Federal Bureau of Investigation’s (FBI’s) national Center for Analysis of Violent Crime (NCAVC) which was set up at the FBI Academy in Quantico, Virginia.

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After recognizing the effectiveness of profiling, the technique became a valuable tool in helping law enforcement fight against violent criminals (Owen, 2006). Of course, some crimes can be solved relatively easy because of conclusive forensic evidence such as blood and fingerprint matches of the offender. In this type of situation, a profiler would not be needed. On the other hand, when forensic evidence is not available, profilers will gather all possible information from the victim, crime scene, and other sources to develop a profile of the offender (Owens, 2006). Clearly, criminal profiling is an effective tool for law enforcement to solve crimes when specific evidence is not necessarily left during the criminal event (Owen, 2006). This helps investigators solve crime that would otherwise be a cold case and remains unsolved for years.

Innes (2005) points out that during the first half of the twentieth century, psychiatrist and psychologists dedicated their time to studies of criminal mind, but rarely applied them to forensic questions. However, the first important attempt to relate psychological analysis to determine future behavior of a person was made during World War II in 1943. According to Innes (2005) the U.S Office of Strategic Services requested the psychiatrist Walter Lange to develop a 'psychodynamic personality profile' of Adolf Hitler. Most importantly, the OSS wanted to know his psychological makeup. In addition, Lange created a long detailed report about Hitler which also included a section predicting future behaviors. Lange predicted that Hitler would commit suicide to avoid capture by the Allied Troops. Lange's prediction was correct (Innes, 2005). Some scholars may declare this prophecy as mere coincidence. Nonetheless, using psychological assessment to explain future behaviors definitely gained notoriety among experts in the criminal justice system. At this point, forensic profiling was relatively new and not much evidence or literature was available. Recently, forensic psychiatrist Michael Stone developed a rating scale for 'who is most evil'. This rating scale may in the future contribute to criminal profiling of dangerous offenders who may deserve selective incapacitation.

According to Holmes and Holmes (1996) an offender profile is usually only called in when the police have exhausted all other leads, sometimes including psychics and astrologers. Profiling suggests the kind of person(s) that may have committed the crime by focusing on certain personality characteristics (Douglas et al., 1986). Remarkably, in a small number of cases, the criminal may be identified correctly and in most cases there is abundant bias in profiling against people of color and the poor. Criminal profiling is relevant in Criminal Justice because this is an investigative tool that assists investigators and police officers when trying to solve crime(s). Trying to solve certain crime or crimes would almost be impossible without creating some type of psychological profile considering the number of people in the U.S.

Alison, Bennell, Modros, and Ormerod (2002) clearly describe the theoretical approach of offender profiling as relying on trait perspective, which has two basic principles: 1) behavior is consistent across offenses and 2) stable relationship exist between criminal behaviors and background characteristics. Therefore,

when describing behavior using trait approach, individuals will act very similarly throughout his or her life span. For example, if someone is aggressive or impulsive as a child or teenager, he or she will probably portray these same characteristics throughout life. Yet, traits are not directly observable; instead, they are inferred from conduct (Alison et al., 2002). As these authors explain, profiling uses latent behavior to infer personality characteristics from the original crime scene. Clues are not provided only at the crime scene, but also through the actual crime itself. Various crimes can typically give insight into the type of perpetrator who may have committed the crime. In most cases of rape, rapists do not necessarily seek sexual gratification as they do power and control of victim. Though some cases may appear relatively easy to answer, covert issues may be the motive behind a seemingly obvious offense.

Owen (2006) and Douglas et al., (1986) detailed adequately the various ways of preparing a criminal profile. As the authors describe, the FBI's Crime Scene Analysis (CSA) typically uses six logical steps which make up the profiling process: 1) *profiling inputs*, 2) *Decision process models*, 3) *Crime Assessment*, 4) *Criminal Profile*, 5) *Investigation* and 6) *Apprehension*.

PROFILING INPUTS: This involves collecting and assessing the evidence involving the case being profiled (i.e. photographs, results of autopsy, and many information needed to determine what happened before, during, or after the crime) This stage is particularly important, because this is the foundation of creating a profile.

DECISION PROCESS MODEL: This consists of arranging and classifying all the information from stage one into a logical pattern. This step will determine the possible number of victims or criminals involved.

CRIME ASSESSMENT: Here the profiler reconstructs the series of events which took place at the crime scene. This stage especially focuses on the behaviors of the victim and the criminal. This helps the profiler understand certain personality characteristic through behavior analysis in order to develop a criminal profile.

CRIMINAL PROFILE: The investigator begins to determine characteristics of the criminal such as background, psychological, and physical information. This stage will determine the age, race, gender and mental status of the perpetrator.

INVESTIGATIVE STAGE: This consists of using the actual profile in the investigation process. This will help investigators determine what information may need to be added or modified to the original profile.

APPREHENSION STAGE: This may or may not take place depending on the success of the investigation in finding and arresting the criminal. However, even if the suspect is arrested, it is still important to cross reference the details or the profile with the detainee. As previously mentioned, criminal profiling does not always identify the specific perpetrator, rather it tries to understand and create the psychological profile of the criminal.

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Furthermore, Owen (2006) also pointed out that investigative psychology was started in 1985 when David Canter, a Psychology instructor was asked to use his expertise in order to assist police with criminal investigation. Investigative Psychology is a technique that involves a series of steps, like the FBI's approach, but centers around five different phases of interpersonal interaction between the criminal and the victims as described by Owen. These five steps include: 1) Interpersonal coherence. This is based on the theory that criminals will interact with other people in their daily lives in similar ways as they interact with their victims. 2) Significant of time and place focuses on the time and location of the crime. This provides information about the criminal's possible routine or possible residence. The Criminal Characteristics step classifies the perpetrators responsible for a crime into the right criminal group. Upon classifying the perpetrator, investigators can gather more characteristic from these particular groups (i.e. rapists, murderers, or arsonist). The Criminal Career step consists of evaluating whether the perpetrator already has an existing record. If a criminal record is available, investigators can gather additional information about the suspect's previous criminal acts. Last, Forensic Awareness involves evidence at the crime scene which may indicate whether or not the perpetrator has any knowledge or awareness of the typical routines or techniques used when collecting evidence. For example, when a burglar breaks into a home, he or she more than likely has forensic awareness that fingerprints could be obtained if protective gloves are not worn during the crime (Owen, 200). It would mean that there is a positive correlation between number of crimes and forensic awareness—as the number of crimes increases so does the forensic awareness of the criminal. If the criminal appears to have a relatively high forensic awareness, he or she may have committed numerous crimes in the past with a higher degree of sophistication compared to inexperienced criminals. Therefore, investigators may be describing an individual with higher intelligence or more charisma than the average population.

Owen (2006) also added another category that is standard in profiling investigations and that is whether a criminal is organized or disorganized. Owen suggests that this category was an extremely valuable criterion for assessing the behavior of the perpetrator of the crime. As the term suggests an organized criminal carefully plans his criminal act decreasing the risk of being caught. An organized criminal tends to target specific victims according to age, gender, physical appearance, and lifestyle. Owen suggests that what makes this criminal so dangerous is the perpetrators ability to appear non-threatening to the victim (i.e. serial killer, Ted Bundy). This type of criminal typically does not represent the average criminal.

On the other hand, a disorganized criminal is completely different. He or she does not plan the crime; instead, he or she commits the criminal act suddenly or impulsively. The crime scene will appear chaotic or in total disarray. This individual could possibly leave more trace evidence than the organized type. FBI research indicates that disorganized criminals are often below average

intelligence and are socially inadequate. These individuals will not have charm and social skills to lure their victims. When compared to organized types, a disorganized perpetrator may appear more like the average criminal. Owen goes further to create a summary of organized and disorganized crime scene offender characteristics. He concludes that all crime scenes are mixed to some degree, but establishing which category a crime scene or perpetrator falls under provides a starting point during the early stages of the investigation.

In his studies of psychological profiling of serial arson offenses Kocsis (2004) used questionnaire to determine characteristics of the offenders who may have committed a crime. The questionnaire successfully identified significant characteristics that assist in developing a more comprehensive profile. The major categories include 1) *physical characteristics*, 2) *Cognitive process*, 3) *Offensive behavior, and social history and habits*. Physical characteristics determine these factors about the offender: gender, age, ethnic background, general build, hair color, hair style, and presence of facial hair. Cognitive process examines familiarity of location where the crime was committed, was the offender comfortable in these locations of the crimes, did the offender have knowledge of the victim prior to the offense, what was the primary motives of the crime, did the offense appear organized? Offenders behavior and possible residence of the perpetrator (i.e. did the offender live within a certain radius of the crime scene), did the offender take steps to conceal his or her identity when committing the crime, did the offender take any items from any of the crime scenes, was sexual activity related to the crime?, and if apprehended and questioned by the police, would the perpetrator possibly confess?. Last, social history and habits explore the offender's marital status, level of education, general employment history, military background, history of drug use, history of diagnosis of mental illness/disorder, how old is the offender's vehicle, condition and model of vehicle, and most importantly, does the offender have a criminal record for any previous crime(s).

Many characteristics are parallel to the category of organized or disorganized as mentioned previously. This can help investigators determine whether the perpetrator is pre-cautious or impulsive. Both types are dangerous, but in different aspects. Kocsis (2004) suggests that all categories listed in the questionnaire are important. However, the last category exploring Social history and habits is more relevant to psychological profiling. These characteristics may identify the perpetrator's social skill and possible mental status. Many psychological assessments will include these facets of the individuals of interest. Alison et al. (2004) explained that traits and behaviors are typically stable over time. Therefore, this allows for future predictions of individuals.

According to Douglas et.al; (1986) a basic principle of profiling is that the cognitive process (i.e. ways and/or patterns of thinking) guide the person's behavior. Bennell et al (2002) suggest that when trying to complete a criminal profile, many traits will overlap with offenders that have committed the same or

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similar crimes. Yet, two profiles may not be exactly alike in all aspects. Through research and experience, criminal profilers have determined personality traits that appear consistent in certain offenses. Bennel et al. (2002) observed motivational typologies, which were outlined in a variety of rape cases which included the following types: power reassurance, power assertive, anger disciplinary, anger excitation, and profit. They state that power assertive and offender behavior suggest an underlying lack of self-confidence, as a sense of personal inadequacy. These characteristics are expressed through control, mastery, and humiliation of the victim. More importantly, the rapist is trying to demonstrate his sense of authority. Once more, these key personality traits relate to the perpetrator's social history and habits as described above. However, it needs to be reiterated that all perpetrators, such as rapists, are not all alike. Each criminal and case is different, but similar characteristics appear evident in more cases than not.

Additionally, there are two important variables to consider when discussing criminal profiling, the accuracy and validity of professionals. In a study, 77.2% of profiling reports provided by the FBI was indeed considered useful in providing an outside perspective on a case and in helping to focus on the investigation (Alison, West, and Goodwill, 2004). This particular study does lend profiling as a constructive tool for law enforcement. However, profiling may have some disadvantages such as biases.

According to Dabney, Dugan, Topalli, and Hollinger (2006) profiling is a focused and directed form of attribution formation. They describe attribution as helping us infer the intentions of others and how our behaviors may have affected them. Consequently, attributions are created through observations or social interaction and relevant cues that are important to immediate situation. Unfortunately, these attributions are integrated with our existing beliefs and cognitive schemas (Dabney et.al 2006). Therefore, attributions can have biases and results in incorrect profiling. For example, a robbery may have taken place, and two men were noticed at the scene, one a Caucasian and the other Hispanic male. Dabney et al. inferred that the Hispanic male will be questioned before the Caucasian and the reason is that some professionals are unable to resist the idea of cultural stereotyping when deciding which suspect to question first. This thus brings the issue of racial profiling and the misuse of profiling.

This paper started by discussing the usefulness of criminal profiling to law enforcement and how it is a vital law enforcement tool for solving crime. Unfortunately, criminal profiling has become racial profiling, thus has cast a serious shadow on the original intent and legitimate use of criminal profiling. How did this crime solving tool that was hailed as an important law enforcement tool turn into racially-biased tool and policy used against certain racial groups? To answer this question it is important to note that profiling can be proactive or reactive. Proactive profiling is "to make judgments about another, relative to possible criminal activity, based on a number of overt and subtle factors which may or may not include things such as a person's race, manner of dress, and

grooming, behavioral characteristics, when and where the observation is made, the circumstances under which the observation is made, and relative to information the officer may already possess” (Fredrickson and Siljander, 2002:15). Reactive profiling is what has been glamorized in films and some T.V. shows when investigators use profiling to solve crimes that have already happened. Simply put proactive profiling involves an attempt to interdict and foil crime before it happens. It seems whenever proactive profiling is discussed in the context of police activity in areas where significant number of inhabitants are ethnic minorities, the charge of racial profiling is raised. Likewise, so-called “broken windows” policing (which pays attention to little things like vandalism, graffiti, broken windows, abandoned cars, and ill-kept property; on the assumption that such things broadcast a message that crime is welcome here) sometimes raises the charge of racial profiling because of the aggressive patrol and stopping of suspicious people involve. However, broken windows policing was very successful in cleaning New York City when consistently applied to crime problem there, at least according to most accounts (Carlson, 2002)

Racial profiling has been defined as the inclusion of racial or ethnic characteristics in determining whether a person is considered likely to commit a particular type of crime or an illegal act or to behave in a “predictable” manner. According to Amnesty International, racial profiling occurs when race is used by law enforcement or private security officials to any degree, as a basis for criminal suspicion in non-suspect specific investigations. Discrimination based on race, ethnicity, religion, nationality or on any other particular identity undermines the basic human rights and freedom to which every person is entitled. It further goes on to state that racial profiling is a serious human rights and problems affecting millions of people in the United States in even the most routine aspects of their daily lives. A year-long study conducted by the Domestic Human Rights Program of Amnesty International USA found that the unlawful use of race in police, immigration, and airport security procedures has expanded since the terrorist attack of September 11, 2001. The study further found that state laws provide insufficient and inconsistent protection against profiling. This practice continued despite promises by President George W. Bush shortly after taking office to end racial profiling, the number of Americans, ethnic, racial and religious groups whose members are at high risk of being subjected to this scourge has increased substantially.

The Domestic Amnesty International (USA) from July 2003 to August 2004 studied the current state of racial profiling by law enforcement agencies in the United States. The process began with the consultation of a wide range of community organizations and organizing of a series of public hearings across the United States throughout the Fall of 2003 (San Francisco/Oakland on September 9, Tulsa on September 30, New York, on October 2, Chicago on October 18 and 20, Dallas on November 15). At the hearings, victims, human rights advocates, experts and law enforcement officials testified about their experience with racial profiling.

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The major findings of this study may be summarized as follows:

- (a) A staggering number of people in the United States are subjected to racial profiling. Approximately thirty –two million Americans, a number equivalent to the population of Canada reportedly have already been victims of racial profiling.
- (b) Approximately eighty –seven million Americans are at high risk of being subjected to future racial profiling during their lifetime
- (c) Racial profiling directly affects Native Americans, Arab Americans, Asian Americans, Hispanics Americans, African Americans, Persian Americans, American Muslims, many immigrants and visitors, and, under certain circumstances, white Americans.
- (d) Racial profiling happens to both men and women, affects all age groups, is used against people from all socio-economic backgrounds, and occurs in rural, suburban, and urban areas.
- (e) Racial profiling of citizens and visitors from Middle East, South Asia, and others, who appear to be from these areas or members of the Muslim and Sikh faiths, has substantially increased since September 11, 2011.

There is growing evidence that racial profiling and the misuse of criminal profiling is widespread. For example one of the earliest scholarly articles on this issue (Harris, 1997) states that:

“The stopping of black drivers, just to see what officers can find, has become so common in some places that the practice has its own name: African Americans sometimes say they have been stopped for the offense of ‘driving while black’-----I have heard this phrase often from clients I represented in Washington, D.C., and its surrounding Maryland counties; among many of them, it was the standard way of describing the common experience of constant stops and harassment of blacks by police.....Profiling is not the work of a few ‘bad apples’ but a widespread, everyday phenomenon that will require systemic reform”

Quite a few studies support the claims of the existence of significant racial profiling in the jurisdictions in which data are available. In a New Jersey study while black and Hispanic motorists made up only 13.5 percent of the drivers on that state’s highways, they represented 73.2 percent of those stopped and searched by the New Jersey State Patrol. In a similar study of traffic stops in Maryland from 1995 to 1997 revealed that, though black motorist made up only 17.5 percent of the drivers on certain roadways, they composed more than 72 percent of the motorists stopped and searched by the Maryland State Police. Yet another study in four large Ohio cities revealed that black motorists are two to three times as likely to be ticketed as white motorists (Harris, 1999). Yet another

study, by the American Civil Liberties Union in Illinois, showed that, although Hispanics make up less than 8 percent of the state's population, they were 27 percent of those stopped and searched by a highway drug interdiction unit (Cole, 1999).

There are equally some arguments defending racial profiling especially given the different patterns of crime involvement by different ethnic groups. Kennedy (1999) argued that

“Defenders..... Of racial profiling maintain that, in areas where young African American males commit a disproportionate number of street crimes, the cops are justified in scrutinizing that sector of the population more closely than others, just as they are justified in scrutinizing men more closely than women... For {some} cops, racial profiling is a sensible, statistically based tool that enables law enforcement to focus their energies more efficiently; it lowers the cost of obtaining and processing information... and {thus reduces} the overall cost of policing.... Racial profiling then ...is good police work...empirically based, and above all, an effective tool in fighting crime”.

Based on this assumption those who defend racial profiling generally do so on statistically grounds, citing some evidence that in certain jurisdictions, individuals associated with particular racial groups commit a disproportionate number of crime. In the Sourcebook of Criminal Justice, a federal data reveals that in 1996 nationwide, blacks, who made up approximately 12.8 percent of the nation's population, represent 43.2 percent of the persons arrested for Part I violent crimes, and 32.4 percent of persons arrested for Part I property crimes.

Psychologists exploring the personal impact of racial profiling concluded that racial profiling can inflict serious emotional anguish (Butts, 1999). The study by a researcher who conducted in-depth interviews regarding reactions to racial profiling and racialized law enforcement in different Washington D.C neighborhoods reveals that feelings of anger, powerlessness, and stigmatization are the norms for racial minorities subjected to criminal suspicion because of their race (Weitzer, 2000). In-fact, racial profiling imposes substantial burdens on persons who are innocent. Racial profiling has also been opposed as a violation of the Fourth Amendment's prohibition against unreasonable searches and seizures. Scholars have argued that a search or seizure based on an individual's race as a predictor of possible criminality violated the Fourth Amendment. (Maclin, 1990) In *Whren v. United States* the Supreme Court, however, has held that an officer's subjective motivation cannot be used to attack a search or seizure.

No other ethnic group has been affected negatively by racial profiling than African Americans. According to Ethnic Minority (2008) the most common example of police profiling is “DWB”, otherwise known as “Driving While Black”.

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This refers to the practice of police targeting African Americans for traffic stops because they believe that African Americans are more likely to be engaged in criminal activities. Rarely do we hear about a criminal suspect as white because we think of the white criminal as “an individual deviant, a bad actor”. We do not think of his actions as representative of an entire racial group (Volpp, 2002). African Americans have continued to be the repository for American fear of crime and to be treated as amalgamation of presumed group trait rather than as individuals. While racial profiling is illegal, a 1996 Supreme Court decision *Whren v. U.S.* Allow police to stop motorists and search their vehicles if they believe there is evidence of trafficking of illegal drugs or weapons. More traffic stops lead to more arrests, which further skews the racial profiling statistics against African Americans. Studies have shown that African Americans are far more likely to be stopped and searched. Are African Americans really committing more crimes or are they just caught more often because they are the target of police? This is a vicious cycle that even the strictest law enforcement advocates would admit is patently unfair. According to reports, racially profile arrests of drugs for African Americans have been one of the most troubling one.

Harris (1999) suggests that racial profiling is based on the premise that most drug offenses are committed by minorities, and this premise creates a profile that results in more traffic stops of minority drivers. He further states that the pervasiveness of racial profiling by the police in drug law enforcement is the result of an escalation in laws on drugs. Drug use and drug selling are not confined to racial and ethnic minorities; in fact, five times as many whites use drugs. The war on drugs, however, has targeted people of color and skin color and this has become a proxy for criminality. Consequences of racial profiling in law enforcement are evident in the demographics of the prison population. For example, Davis tell us that Blacks constitutes 13% of drug users in the United States, 37% of those arrested on drug charges, 55% of those convicted, and 74% of all drug offenders sentenced to prison. This leads Harris to conclude that the racial profiling premise that most drug offenses are committed by minorities is factually untrue, but that it has nonetheless become a self-fulfilling prophecy.

Because police are suspicious and search for drugs primarily among African Americans and Latinos, they find a disproportionate number of them with contrabands. Therefore, more minorities are arrested, prosecuted, convicted, and jailed, thus reinforcing the perception that drug trafficking is primarily a minority activity. This perception creates the profile that results in more stops of minority drivers. At the same time, white drivers receive far less police attention, many of the drug dealers and possessors among them go unchecked, and the perception that whites commit fewer drug offenses than minorities is perpetuated, and so the cycle continues says Harris. Harris further states that this vicious cycle carries with it profound personal and societal costs. It is both symptomatic and symbolic of larger problems at the intersection of race and the criminal justice system. It results in the persecution of innocent people based on their skin color. It has a corrosive effect on the legitimacy of the entire justice system. It deters people of color from cooperating with the police in criminal investigation, and in the court

room, and it causes jurors of all races and ethnicities to doubt the testimony of police officers when they serve as witnesses, making criminal cases more difficult to resolve.

Employing a law and economics analysis in terrorism investigation Professor Lund (2003) argues that “governments are highly prone to excessive racial stereotyping and largely immune from forces that keep {practices like racial profiling} in check in the private sector”. He further argued that the danger of government abuse arising from the *ex ante* use of race in terrorism investigation is too great when considered in light of the fact that “{m}any of the efficiency benefits of racial profiling ----can be captured through the use other screening criteria, such as country of origin---- age, sex, and travel patterns”. Traditional profiling relies on the correlation between behavioral factors and the past experience of law enforcement in discovering criminal behavior associated with those factors, thus, it rests on the perceived accuracy of the profile as a predictor of criminality. When this is misused, that is when it is based on race it brings fear, anxiety, humiliation, anger resentment, and cynicism on the suspects. It also damages law enforcement and the criminal justice system as a whole. Other conservatives oppose racial profiling on “law and order” ground, that is, that it “makes law enforcement less effective” because “discriminatory police practices create unnecessary and unproductive hostility between police and the communities they serve” (Forman, 2001). When profiling is misused, it can inflict serious emotional anguish and stigmatization on the victim.

Yet despite overwhelming evidence, including the police department’s own statistics on traffic stops, say Harris – officials in law enforcement continue to deny the reality of racial profiling on our nation’s highways. Some deny that the phenomenon of racial profiling even exists, while others declare with indignation that their officers do not stop motorists on the basis of skin color. Still others argue without apology that making disproportionate numbers of traffic stops of African Americans and other minorities is not discriminatory, but rational law enforcement. But as one officer learned, such “honesty” can be a dangerous counterpoint to official denial of profiling. To demonstrate the resistance to acknowledge some reality in this issue, Harris cites a case where Carl Williams, New Jersey’s Chief of Troopers, was dismissed in March 1999 by the Governor Todd Whitman soon after a news article appeared in which he defended profiling because, he said “mostly minorities” trafficked in marijuana and cocaine. Williams’s remarks received wide media attention at the time when Whitman and other state public officials were already facing heightened media scrutiny over recent incidents of profiling and public anger over police mistreatment of black suspects. Governor Whitman and the Attorney General, Peter Veniero, recouped from Williams remarks somehow when they issued a statistical report on April 20, 1999, acknowledging that the problem of racial profiling is, as Veniero put it “real, not imagined”. As events in New Jersey demonstrates, even when faced with lawsuits, statistical evidence from independent experts, public pressure and intensive news coverage, officials in law enforcement and government are not

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eager to acknowledge the problem of racial profiling. It is believed by many including the ACLU that addressing the problem will require a multi – faceted effort. Several law suits have been brought against states in racial profiling and police discriminatory practices by some civil rights advocates, but law suites are just the beginning as these cases are always difficult to win. Concerted efforts are needed by the public to fight this cancerous disease.

EVALUATION OF OFFENDER PROFILING:

Generally, a number of misconceptions about profiling exist usually because of its fictional use. Profiling does not provide the specific identity of the offender which of course is not the purpose. The aim is to narrow the field of the investigation and suggest the type of person who committed the crime (Douglas et al, 1986). There have been a lot of successes and failure in profiling. One of the most famous failures in the United States was the case of Albert DeSalvo (known as the “Boston Strangler”, the profile put forward was that the offender was a male homosexual schoolteacher living alone. When he was arrested it was found that DeSalvo was a heterosexual construction worker living with his family. The case of the gateway sniper was another instance where profiling went completely wrong. John Allen Muhammad and John Lee Malvo terrorized the D.C. area from September 21, 2002 to October, 20th of the same year killing about ten people but all the profilers never taught that such crime will be committed by a black person. Most profilers taught it is a white male probably an ex-soldier.

Another notable failure was that of Rachel Nickel who was brutally murdered while walking on Wimbledon Common in South London. When the profile was put together and the suspect was arrested and confession was not forthcoming the case fell apart. Another classic failure was the case of Richard Jewell a security guard during the 1996 Olympics in Atlanta who discovered a bomb and began moving people to safety when the bomb exploded. The FBI had arrested him profiling him as a “lone bomber”. But fortunately the case was solved after a series of abortion clinic bombing when Eric Rudolf was arrested and confessed to the Olympic bombing incident.

Equally, there have been successes recorded in this field. The murder by Carmine Calabro of a special education teacher on the roof of her Bronx apartment building turned out to be accurate. The profile appeared to be an important factor in reducing the number of suspects and eventually arresting the correct person. Profiling helped in apprehending Arthur Shawcross after a series of murders of prostitutes the profile suggested that the offender might return to the scene. Shawcross was observed masturbating in his car on a bridge near the scene, and was arrested and eventually confessed in custody. In some cases profiling can be shown to successfully identify some of the characteristics of the offender. A good example is the Green River case. Garry Ridgway who is regarded as the most prolific serial killer in U.S. history was apprehended through profiling. He admitted the murder of 48 women, mainly prostitutes over a 22 year period. In the end, Ridgway was apprehended as a result of DNA analysis, and a profile

prepared by John Douglas was found to be reasonably accurate (Levi-Minzi and Shield, 2007).

Pinizzotto and Finkel (1990) argued that profiling is most effective in serial offenses because of the extensive research base, and least effective for fraud, burglary, robbery, theft and drug induced crimes. Agreeably, Kaufman (1998: 1223) made a number of recommendations in regard to profiling, including the following:

“Police officers should be trained as to the appropriate use of, and limitations of criminal profiling. Undue reliance on profiling can misdirect an investigation. Profiling once a suspect is identified can be misleading and dangerous, as the investigators’ summary of relevant facts may be colored by their suspicions. A profile may generate idea for further investigation and, to that extent, it can be an investigative tool. But it is no substitute for a full and complete investigation, untainted by preconceptions or stereotypical thinking.”

Legislation at the federal and state levels and local voluntary efforts can advance the momentum to collect accurate data on the problem and rein in overzealous – and sometimes illegal-law enforcement practices.

THE FOURTH AMENDMENT IMPACT

“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 warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized” (U.S. Constitution: Fourth Amendment). Since the provision as enumerated in the fourth amendment, the United States Supreme court has issued several opinions broadening law enforcement discretionary authority. In fact, fourth amendment cases including but not limited to Carroll V. United States, Belton V. New York, Whren V. United States, Terry V. Ohio, Atwater V. The City of Lago Vista etc. have all broadened police powers and particularly and effectively given law enforcement personnel freedom to target minorities. Police are now able to set up vehicle stop and search without obtaining a judicial warrant. Racial profiling is indeed illegal in the United States, but the flexibility guarantees to them by the Supreme Court rulings make it easy for them to profile. Police stops and searches that are due to race and without any legal bases are improper and should be regarded as a fourth amendment violation.

The 2002 department of USDOJ national survey indicates that the police were more likely to carry out some type of search on African Americans who were found to be stopped 10.2% of the time, Hispanics are stopped 11.4% of the time and Caucasians 3.5% of the time. In the United States Supreme court cases

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mentioned earlier, the court clearly allows the police conduct of using simple traffic violation to justify a “Stop” though the actual intent was to conduct investigation into suspected or perceived criminal activities. A significant case is that of *United States V. Arvizu* in which the court announced that the 4th amendment does not prohibit investigatory stops as long as the “facts and circumstances” (Pellic, 2003) lead to reasonable suspicion that the occupant of the vehicle has indeed engaged in criminal event. The *Arvizu* case has strengthened police powers and reinforces the previous Supreme Court decisions that also increased law enforcement discretionary authority. In his analysis of the issue of racial profiling, Scott Belshaw (2007) argued that “the court in *Atwater* case permits the field officer a wide range of discretion when stopping and investigating citizens operating motor vehicles, standing in the street, or walking down the street...this discretion is allowing the officer to make judgmental decisions which are fundamental to racial profiling issues”. Devon Carbado (2010) postulated several hypothesis: That the fourth amendment jurisprudence is insensitive to and unconcerned with, the contemporary realities of race; that literature on race and the fourth amendment has not fully examined the ways in which current doctrine affects the everyday lives of people of color...the suggestion that suspicion is racialized and that this racialization burdens people of color is not novel; and that the scholarship on race and the fourth amendment is under inclusive , focusing primarily on Blacks”. Furthermore, Carbado argued that the “Supreme court has not explicitly articulated colorblindness as a guiding principle of the fourth amendment. As a result of this racial elision people of color continue to experience the fourth amendment more as a technology of surveillance than as a constitutional provision that renders them secure in their persons, homes, papers, and effects”.

DJ Silton (2002) thought that in *Whren v. United States*, “the supreme court effectively declared the fourth amendment dead with respect to protecting citizens against racial profiling”. Furthermore, Silton argued that in the *Whren’s* case, “the court held it reasonable for police officers to pull cars over for nominal traffic violations with the specific intent to discover illicit drug use...the result of this decision is that police officers have unfettered discretion to stop any car for any reason, since it is virtually impossible to drive without violating at least one traffic law”. Several Supreme Court decisions seem to escalate incidents of racial profiling in their confused interpretation of the fourth amendment in *Whren* and which was reinforced in *Ohio v. Ronette* in which the court ruled that an officer need not tell a driver that they can refuse an officers’ search request, *Thornton v. United States* in which the Court ruled that police can search a parked vehicle for drugs, guns, or other evidence of a crime while arresting the occupants, *Wyoming v. Houghton* where the court ruled that after arrest the police can search the closed purse of vehicle occupants even without probable cause, and in *Maryland v. Wilson* in which the court granted law enforcement agents the power to order vehicle occupants out regardless whether there is or no reason to believe that they were dangerous. All these cases have emboldened the police and have made it easy for them to engage in racial profiling. Fighting crime is surely a high priority. But it must be done without damaging other important values: the

freedom to go about our business without unwarranted police interference and the right to be treated equally before the law without regard to race and ethnicity guaranteed by the Constitution. “Driving While Black” assails these basic American ideals, says Harris. And unless we address this problem, all of us – not just people of color – stand to lose.

RECOMMENDATIONS

Daigneault (2010) defined racial profiling as “that terrible vestige of segregation, intolerance, and hatred. It is his position that racial profiling “has to be fought on many levels, from terrorists profiling to drug dealer and other common criminal profiling”. Daigneault suggested two ways to prevent racial profiling and we agree including education and cultural immersion. According to this author, we begin “from grade school and beyond....this is a way to help get rid of racial stereotypes that all African Americans and Latinos driving expensive cars are drug dealers, and not all people with Arabic or Persian accents are terrorists”.

The proposed Traffic Stops Statistics act of 1997 was dead on arrival at the United States Congress. What we need is a strong federal law that gives individual States guidelines on the prevention and elimination of misuse of racial profiling. When the federal law is implemented it should mandate documentation of all traffic stops, searches and arrests. Furthermore, and as with the PCB recommendation for Washington DC Police, collect data on traffic stops, implement documentation of all stops, hire expert statisticians to help implement data collection, implement officer education and training including intensive sensitivity training, and law enforcement agencies need to develop and adopt a racial profiling policy that all officers must abide by and in fact internalize.

In conclusion, this paper tried to demonstrate a number of issues. It not only has been able to show that criminal profiling has been and can be a legitimate law enforcement tool based on its history but also that its’ original and legitimate law enforcement utility has been twisted. It has become almost like an illegitimate law enforcement concept because of how it is used by some law enforcement professionals. In the process, the paper narrated the history and how profiling was relevant in criminal justice because it is a useful investigative tool that assists investigators and police officer when trying to solve crime(s). As a relevant criminal investigative tool, it caught the attention of law enforcement agencies worldwide as well as the media. Profiling was described in this paper as the process of using available information about a crime and crime scene to compose a psychological portrait of the unknown perpetrator of a crime, usually a serial offender, through analysis of the scene left by the perpetrator. This paper also delved into the unfortunate misuse of criminal profiling and it became evident that it has turned into a racial and ethnic characteristic stereotyping used in determining whether a person is considered likely to commit a particular type of crime or illegal act or to behave in a “predictable” manner. The paper has

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demonstrated that criminal profiling has become a racial policy and tool used by some law enforcement as a basis for suspicion in non-specific investigation. It has evidently become a discriminatory concept based on race, ethnicity, religion, nationality, as well as other particular identity which without question undermines the basic human rights and freedom to which every person is entitled to. As suggested, concerted efforts should be made by all to root out racial profiling because it undermines the law enforcement efforts and it makes us all unsafe and it has proven to be a failure on the war on drugs. Finally racial profiling should be completely rooted out because it is illegal, inhuman, and should be used as originally intended as described in this paper.

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