

AFRICAN AMERICANS AND RACIAL PROFILING BY U.S. LAW ENFORCEMENT: AN ANALYSIS OF POLICE TRAFFIC STOPS AND SEARCHES OF MOTORISTS IN NEBRASKA, 2002 – 2007

By

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ABSTRACT

*The purposes of this paper are to discuss the history of racial profiling; analyze the courts' positions on the topic; define racial profiling; review related literature on the theme; analyze Nebraska's law enforcement data between 2002 and 2007; draw appropriate conclusion and in the end make policy recommendations. It tests the hypothesis that race is a predictor or determinant of who (which motorist) and passengers the police in Nebraska would stop, search, arrest, detain or prosecute. Empirical data available is expected to show that there exists strong evidence that there is disparity in police stops, searches, arrests and detentions, and prosecutorial decisions and actions based on race. Put succinctly, more black (African American) motorists will be stopped, searched, arrested, detained and prosecuted because of their race than their white counterparts. The paper concludes that high incidents of arrest of minorities (black/African American, Hispanic and Native Americans) in comparison to their white counterparts in Nebraska was driven by targeted racial profiling (biased law enforcement) initiated by the Drug Enforcement Agency in its "operation pipeline" which had nothing to do with the propensity of members of minority groups to commit crime at a higher rate than whites in similarly situated positions. This disparate and stereotypical method of law enforcement or crime fighting was later upheld by the U.S. Supreme in the famous landmark case, *Whren V. U.S.A* (1996) thereby expanding much further, police latitude, pretext, and discretionary power of law enforcement. The study, recommends serious reform of the law enforcement establishment to include, public education, community policing, sensitivity training, race-based diversity recruitment and information gathering to improve law enforcement as well as enhance community-police relations in the state of Nebraska and beyond.*

Key Terms: Racial Profiling, Operation Pipeline, Racial Disparity, Pretext Traffic Stop, Community Policing, War on Drugs, Probable Cause, Reasonable

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Suspicion, Racial Diversity, Custodial Arrest, Unreasonable Search & Seizure, Plea-bargain, Contraband, Search Rate, Disparity Index, Contraband Hit Rate, Arrest Rate, Biased Policing.

Introduction

Empirical research to date suggests significant practice of racial profiling in law enforcement. This research presents the picture of Nebraska's traffic data for any indications of disparate treatment of minorities, between 2002 and 2007. The study also provides valuable insight into the way traffic stops are conducted in our nation's cities and states, as well as helps provide answers regarding the extent/ scope, intent and rationale of racial profiling.

This research involves extensive literature review, whose undercurrent assumptions will be tested, using the Nebraska traffic data as a case-study. The main objectives of this study are:

- To establish a nexus between race and bias policing
- To establish the central and emergent theme from numerous empirical researches on the relationship between race and racial profiling as expressed in police stops, searches and arrest.
- To explore the nature, breadth/scope and patterns of exposure of Black motorists and other ethnic minorities to racial profiling.
- To discuss the history of racial profiling
- To analyze the courts' positions on the topic;
- To define racial profiling
- To review related literature on the theme
- To analyze Nebraska's law enforcement data between 2002 and 2007
- To make recommendations regarding policies in order to reduce risks based on bias in law and law enforcement.

This study relies on data from reports submitted to the legislature of the State of Nebraska, from 2002 to 2007. The submissions reflect the information on the aggregate data collected and submitted by the state of Nebraska's law enforcement establishment covering this period. The data formed the basis of the traffic stops in Nebraska, submitted under the auspices of the Nebraska Commission on Law and Criminal Justice of April 1, 2008.

As a matter of impact, the researcher believes that his findings will assist the law enforcement community, government and stake holders in the criminal justice sectors in the following manner:

- To reduce biased law enforcement which swells the prison population and negatively affects productivity, family life and strains national, state and local financial resources.
- Devise ways to diffuse the tension between law enforcement and the minority community
- Renew the diminishing legitimacy of the government on the part of its ethnic minorities who perceive its actions as mostly unjust, illegal and unequal, degrading, humiliating and racist.

In conclusion, the study presents the “good practices” in policing as supported by academic research. It also examines the merits and shortcomings of racial profiling on effective law enforcement policing and ends by recommending necessary and effective reforms that would enhance the image and tactics of law enforcement before the public. By so doing, the appropriateness of policing practices would become more acceptable to both the police and the general public; and legitimizing them as effective law enforcement strategies in the promotion of good police-community relations worthy of serving as a model of police practices in the State of Nebraska in particular and the United States at large.

In this study, the terms “black” and “African American” will be used synonymously. Also, “racial profiling” will be used interchangeably with “bias” policing.

Ethnic Profiling: Concept and Definitions

Definition 1: Racial profiling is defined by Barlow, David E. and Barlow, Hickman M (2002) as “any situation in which race is used by a police officer or agency to determine the potential criminality of an individual” ***Definition 2:*** In the words of Goodey, Joe (2006), “The police practice of stopping someone for questioning or searching on the basis of their ethnic or racial appearance and not because of their behavior or because they match an individual suspect description.” Goodey argued that ethnic profiling practices in America and abroad have been given impetus by the terrorist attacks in 2001. He argues that law enforcement agencies have expanded it to target Muslim and Arab communities; and that the negative stereotyping of target groups has served to support and reinforce the practice of ethnic profiling. He observed that over representation of minority populations in arrest and prison figures has only served to justify the over-policing of minority groups. He further argued that crimes of the streets (petit/ minor misdemeanors), rather than crimes of the suites (“white collar”) continue to occupy the minds of the public, media and

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politicians. As such he concluded that minority communities find themselves on the receiving end (victims) of police attention that is compounded or made worse by the real and perceived threats that flow out of ethnic profiling practices by law enforcement agencies.

History, Evolution and Dynamics of Racial Profiling

The phrase “racial profiling” has been primarily used to denote police bias and stereotypes in its law enforcement practices on the basis of racial and ethnic consideration. For the purpose of this study, racial profiling is the disparate and disproportionate targeting of racial minorities for traffic stops, searches, arrests, detention, and charges. These pretext stops, according to the line police law enforcement officers, offer them the opportunity to stop, detain and in some cases search drivers that the police officers believe or suspect may be involved in other criminal activities, such as weapons and illegal immigrant smuggling as well as drug trafficking. The history of racial profiling has its root in the “war on drugs” which is perceived to have minorities as its primary target. The widespread use of cocaine in the 1980s and the stereotypical association of minorities as the primary users of cocaine by the majority population driven by negative popular media coverage of the issue reinforced the notion that Black and Hispanic minorities, especially males are criminals. This perception which later permeated law enforcement made them prime targets of police stops, search and arrest in many communities.

As the police made more arrests, the courts became overwhelmed and the prison population swelled to the extent that the United States is now designated as the most incarcerated nation in the world. Further, in 1986, the drug Enforcement Agency (DEA) introduced a racially biased drug courier profile designed as a drug-fighting template in its war on drugs program dubbed “operation Pipeline”. According to Harris (1999), The DEA relied too much on pretext in its law enforcement. The means of law enforcement involves using minor traffic infraction, whether real or imagined, as an excuse to stop and search vehicles and its passengers. In fact, in the U.S. Supreme Court validated and upheld the use of pretext in traffic law enforcement in *Whren V. U.S.A* (1996).

Having internalized the notion that use of drugs is cultural and that most drug offenses are committed by minorities, law enforcement officials believed that profiling, searching, arresting, prosecuting and imprisoning black and Hispanic youth are the most effective ways of fighting drugs. Hence, the declaration of war on minorities by law- enforcement establishments was justified. As police target minorities for drug search, the more they find drugs, as well as other contrabands such as firearms in a disproportionate number. As a consequence, more minority persons are arrested, prosecuted, jailed or convicted. In an economy with high unemployed youth and lack of skills among them, a revolving door system is established as more minorities came under the domain of law enforcement

agencies in one way or another – awaiting trial, under plea-bargain negotiation, under probation or in prison. This cycle eventually reinforced the narrative that criminal activity falls under the domain of minorities and that the only way to stamp out crime is to focus police activity on black and Hispanic youths. Eventually, the direct societal connection of drugs with minorities became a self-fulfilling prophecy.

Many studies, however, have shown that innocent motorists have become victims of such law enforcement practices, especially during the stops, some of which have possibly led to police searches for drugs and other contraband after the subjects of search have already been informed that they have been stopped otherwise, for other causes and pretentions, such as broken tail light, worn out tires, unclearly displayed tags or other minor traffic violations such as the absence of seatbelts.

The assumption that more minority youth are committing crime gave the police the justification to automatically target them for traffic stop, frisk, search, ticketing and eventually, arrest. In fact, race of the group did not escape this criminal brush as most law enforcement officials equated being “black and “Hispanic” as tantamount to drug use and related criminal activities.

Hence, it is not a surprise when the Mauer, Potler and Wolf of The Sentencing Project (1999) reported that 1.7 million inmates in the United States were under the supervision of the criminal justice system, either awaiting trial or actually incarcerated.; and that 400,000 of this number were charged for drug offenses. Among this population, the report notes that blacks make up 13% of all drug users; 55% of those convicted; 37% of those under arrest for drug possession, use or sale and 74% of all incarcerated drug offenders.

The Supreme Court’s Expansion of Police/ Law Enforcement Powers: Implications for Racial Profiling

The Fourth Amendment to the American constitution is the part of the Bill of Rights that guards against an individual’s unreasonable search and seizure. Under its interpretation, the amendment requires search and arrest warrants obtained from the courts and supported by probable cause. In other words, the fourth amendment protects persons from being stopped or detained by the government without evidence of involvement in criminal activity.

Under normal circumstances, the fourth amendment shields individuals from falling victim to unfair or pre-textual traffic stops, searches or seizure. A pre-

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textual traffic stops is one in which the arresting officer uses a minor infraction, such as broken tail light, worn out tire or hanging windshield wiper as a pretext to pull over a vehicular driver/ motorist, even though his/ her real and actual intent is to stop the driver for an unrelated reason, such the persons race or ethnicity.

Given the fact that probable cause means many things to different people and can be taken advantage of by law enforcement officers to stop, search and arrest whomever they want anywhere, anytime, given the confusing nature of traffic laws and the ambiguities posed by the 'probable cause' doctrine. Notwithstanding the legal outcome of any court challenges, what is clear is that courts blunt interpretation of the fourteenth amendment that has expanded the power of the police and less protective of the rights of individuals. The existence of case laws pertaining to the expansion of police powers poses huge implications for the good of the entire community, public justice and especially racial minorities with respect to racial profiling decisions and enforcement.

Traffic enforcement has posed a major constitutional problem for police departments and other law-enforcement agencies throughout the United States. In some of these cases, the courts were presented with the question of whether or not a vehicle search is constitutional even when the officer faked his real motive and intention of initiating a stop, search and arrest.

As a consequence, a myriad of lawsuits have been filed over the years challenging such biased police practices and their resulting charges and penalties. One of these cases for example, has recognized the right of citizens to a fair apprehension by the police. A case in point is the case of *Mapp V. Ohio (1961)*. It was in this case that the Supreme Court adopted the "exclusionary rule", in which illegally seized evidence could not be used in court due to procedural error in evidence gathering, even though it could prove the guilt of the accused. This decision may be interpreted to mean that police could not conduct a search on private property without a court order or warrant. Even in a public place, law enforcement agents could not arrest persons without a warrant, unless they have probable cause, in which the officer believes that a crime has been committed. Even in cases where an arrest without warrant or court permission has been made, police must present the accused before a magistrate to justify whether a probable course even existed to warrant and justify the arrest. Under this rule, Police do not have a broad right to stop and frisk people on the street or in their automobiles to make random checks or searches.

However, other land mark Supreme Court cases appear to give credence to police tactics of racial profiling in community policing. Cases in point are not far-fetched. In *Wolf V. Colorado (1949)*, the court ruled that any illegally obtained evidence did not necessarily have to be excluded from trial in all cases. In the

case of *Terry V. Ohio (1968)*, the Supreme Court established the principle that the Fourth Amendment did not prohibit the police or any other law enforcement agent from stopping a person for questioning as long as they have reasonable suspicion that the target or victim might be armed and therefore pose a danger, even when that suspicion does not equate the probable cause standard necessary for an arrest. Terry would prove to be one of the legal tools used by law enforcement agencies in defense of racial profiling practices.

In *Whren V. United States (1996)*, the court was confronted with its first major decision on the constitutionality of police traffic stops based on “virtual pretext”. The Supreme Court ruled that the temporary detention of motorists upon probable cause to believe that he has violated traffic laws does not violate the Fourth Amendment prohibition against unreasonable search and seizure, even if a reasonable law enforcement officer would not have stopped the motorist, absent some additional law enforcement objectives. In other words, a police officer who observes a minor traffic violation or offense like broken or burnt out tail light, faulty brake light, cracked windshield, failure to signal when changing lane, driving too close to cars in front, worn out tires, loose seat belt, poor exhaust emission, absence of headlight under rain, may stop the driver even if a reasonable officer would not have been motivated to stop the car by desire to enforce the traffic laws. The officer may then ask the driver questions unrelated to the purported purpose of the stop, and may attempt to secure consent to search the car.

In *Ohio V. Robinette (1996)*, the court ruled that officers are not required to inform motorists at the end of a traffic stop that they are free to go before seeking permission to search the motorist’s car. Put another way, an officer is not obligated to tell a driver that he or she can refuse an officer’s request for a search. In *Maryland V. Wilson (1997)*, the court took the position that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop. In other words, the officer is given the sweeping power, authority and discretion to order passengers out of stopped cars, irrespective of whether or not there is a reason or probable cause or an inclination that they are dangerous. In *Wyoming V. Houghton (1999)*, the Supreme Court ruled that police officers with probable cause to search a car may inspect passenger’s belongings which are found or located in the car that are capable of concealing the object of the search. Presented another way, Pursuant to the arrest of the driver of a flagged traffic, the police can search items and objects that cannot be clearly seen with a naked eye, such as closed purse of a passenger even without probable cause or a reasonable belief that a person has committed an offense. In the case of *Thornton V. United States (2004)*, the Supreme Court ruled that when a police officer

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makes a lawful custodial arrest of a vehicular occupant, he/she has the right and discretion to search the automobile passenger's compartment as a contemporaneous incident of arrest. This means that the officer may get into other related or unrelated activities, such as searching for drugs, guns or evidence of a crime while arresting the automobile's drivers or passengers. The reasoning of the court is that all the activities or events listed are extensions of each other, and that since each action happens at the same time as the others, all the issues constitute one continuum.

Racial Profiling Concerns Across the States and the Nation

Public concern over police excesses and conducts regarding racial profiling have grown over the years. As a consequence, Representatives John Conyers (D-Michigan) and Senator Frank Lautenberg (D-New jersey) introduced bill to congress that would offer incentives for police departments to generate and keep detailed records of traffic stops, including gender, race and ethnicity of the subjects of search, as well as document whether a search was initiated by the officer or/ and if any citations or warnings were issued.. A number of states, including North Carolina and Connecticut have enacted legislation mandating states and local law enforcement personnel to collect data on motorists. At the same time, others are considering to pass similar legislations. States such as New Jersey and Maryland have acceded to such requirement of collecting data on motorist stops as a result of consent decrees resulting from cases filed against them by the United States Department of Justice.

Although statistics on racial profiling is both limited and scanty, there appears to be an overwhelming evidence to suggest that in certain localities, minority drivers are stopped, interrogated and frisked much more often than white motorists. For example, Harris (1997) , based on 1, 100 videotaped traffic stops in a three- year study on I-95 of Volusia County, Florida, found that although minority (African-Americans and Hispanics) make up only about 55% of the motorists on this highway, they comprised more than 70% of the drivers stopped for suspected traffic violations and offenses. Furthermore, despite the fact that out of the 1,100 traffic stops executed, only 9 tickets involving Hispanics or African Americans were issued. On the average also, these minority drivers were detained on the average, two times as long as their white counterparts.

In another look at the State of Maryland, Harris (1997) also found that out of 732 motorists searched by the Maryland State Police between January 1995 and June 1996, 75% of the motor vehicle searches conducted belonged to African American motorists. In another report of traffic study conducted in the city of San Diego between January 2000 and June 2000. Corder, William and Zuniga (2000) found that out of 91, 552 traffic stops conducted Hispanics and African Americans were more than their population percentages warranted, in terms of those who were stopped, searched and arrested compared with whites. For

example, the researchers found that African Americans aged 15 years or older, who comprised only 20.2% of the San Diego's population, recorded 34.9 % of equipment violation stops and 50.1% of the searches subsequent to vehicular stops. With respect to African Americans, the investigators found that residents aged 15 years and older, who made up 8% of San Diego's population, represented 14.3% of equipment violation stops and 19.5% of searches leading to vehicle stops.

Literature Review on Police Traffic Stops, Searches, Arrests, and Other Enforcements

Hernandez-Murillo and Knowles (2004) observed that state wide reports on police traffic stops and searches summarize large populations and therefore reduce them to powerful tools for identifying racial bias especially when other data, such as search outcomes are included. However, they note that when reported statistics are joined with information on searches involving different levels of police discretion, then standard tests for racial bias tend not to be applicable. While the researchers conclude that their tests reject unbiased policing as an explanation of the disparate impact of motor-vehicle searches on minorities in Missouri, they recommend a model of police search decisions that could allow for nondiscretionary searches as well as come up with tests for racial bias in data that mix different search types.

Greg Ridgeway (2006) acknowledged that in response to community demands, case settlements and state laws affecting racial profiling, police departments all over the United States are compiling data on traffic stops, but, there is no consensus method of analyzing all the data being collated. Rather, he maintains much of the focus has been on benchmarks for the race distribution of stops and searches. While noting that little empirical work has been able to advance our understanding of the influence of race in the post-stop activities of police, he proposed the *propensity score* technique as an effective and more reliable method to determine the extent to which race-bias affects citation rates, search rates and the duration of traffic stops.

Weitzer and Tuch (2006) noted that even though racial profiling by the police has become an increasing issue of great controversy in the United States, yet little is known about the breadth of the problem and the scope of public perception of the racial profiling phenomenon. On the basis of extensive analysis of recent national survey data on the attitudes of the public on racial profiling, the researchers suggested that both race and personal profiling experience are strong predictors of attitudes toward profiling. They also concluded that among African Americans, social class affected views and attitudes as well as the prevalence of

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their attitudes and acceptability toward profiling practices. They then suggested that more studies are needed to determine the extent to which class influences enforcement decisions and evaluations by the Police.

Weizer and Tuch (1999), initially operated on the premise of previous research that shows that blacks are more likely than whites to hold unfavorable opinions of the criminal justice agencies, but set to find the level at which social class affects racial profiling opinions.. Relying on national survey data on the perceptions of racial discrimination by the Police and the Criminal Justice System, the study set to find the connection between race and class in shaping citizen attitudes toward racial profiling. The findings of the study are aligned with that of 2006, that concluded that both race and class are strong predictors of racial attitudes toward racial profiling, except in the case of its conclusion that middle-class Blacks are sometimes more critical of the police and the justice system and racial profiling system than are lower-class Blacks.

Walker (2008), responding to mounting allegations of racial and ethnic discrimination in traffic stops (Racial profiling) notes that law enforcement agencies are now collecting data on traffic stops that include the racial and ethnic identity of the driver. This method, he argues is replete with all kinds of difficulties because interpreting these complex data on traffic stops that include race and the ethnicity of drivers is very complex. Using the examination of traffic stop data from the San Jose Police Department as a case study, Walker (2008) maintained that although the baselines commonly used, (such as Census data, Observation of roadway usage, Official accident data, Assessment of traffic violation behavior, Citizen surveys, and Internal departmental comparisons) were appropriate while reliance on resident population data and/ or official crime data are not adequate as baselines. The study proposed the use of police early warning system as an alternative.

Dunham et al. (2005) examined the formation of police suspicion and the mental processes and decisions made by officers before traffic enforcement – stopping and questioning motorists, including the outcomes of such stops .The authors relied on observational studies of police decision making in Savannah Georgia. In their research design, the researchers put into consideration the major categories of reasons given by officer for becoming suspicious of motorists. In other words the “probable cause” factors likely to spur them into traffic enforcement stop. Among the reasons identified were appearance, information, behavior and time. The findings of the research appeared inconsistent with the study’s early assumption and speculation that major incidents of discrimination take place during the presto (high speed or tempo) stage in the Officer’s decision making process. The authors found that several stops and other decisions made by the police were unacceptable, having been based on non-behavioral criteria

(targeting). More specifically, the officers did not make some of the decisions in direct natural response or reaction to the conduct of the motorist.

Alpert et al. (2007) argues that minority communities have paid too much attention to concern over the improper use of race by law enforcement officers. Their study was designed to test and investigate the claims that the Miami-Dade Florida Police department uses racial profiling techniques in making traffic stops and conducting post-stop activities, using a complex methodological approach. The study showed mixed results. First, it found that the Officers' aggregate actions do not show any patterns of discrimination toward minority citizens during traffic stop encounters. However, it partially indicated some level of discrimination on the post-stop activities side, where some disparate treatments of minorities in comparison with the majority population were detected.

Nevertheless, the investigators went further in making policy recommendations on how to mitigate the incident of racial profiling in law enforcement. Some of the recommendations put forward include: having clear policies and directives that explain the proper use of race in decision making among police departments; using intelligence tools that rely on suspicion as opposed to the race of the motorist; training law enforcement officers on the consequences of using race as a factor in law enforcement decisions; maintaining a data-collection and analytic system to monitor the activities of officers as it pertains to the race of the motorist; the generation and preservation of a record of police-citizen encounter and interrogation for later intelligence and court processes; and the use of record checks in the field that can trigger a process that results in the detection and arrest of motorists.

Rojek et.al (2004) who detected a few consistent research findings and literature regarding the influence of race and ethnic differences in traffic stops, searches and arrests, set to find answers to the potential bias associated with the use of "baselines", such as residential population data to estimate the racial composition of drivers in a community. Using a special estimation method that computes the racial composition of drivers in a given locality based on the size and composition of nearby areas, and applying it to traffic stop data for 92 Missouri municipalities, the authors were able to produce more accurate estimates for several suburban areas ringing the city of St. Louis than those based on residential population data of racial disparity in traffic stops. The investigators concluded that there was small but persistent group difference in the probability of motorists being pulled over by the police in the 92 communities and a somewhat larger difference in the probability of drivers being searched and arrested.

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Petrocelli et.al (2003) conducted a study designed to explore whether police traffic stops, search and arrest practices differed according to racial or socioeconomic factors among selected neighborhoods. Using data collected by Richmond Virginia Police Department, and applying the “conflict theory” in their analysis, the researchers drew a number of conclusions among which are: that the total number of stops made by Richmond police were determined solely by the crime rate of the neighborhood; that there was a direct correlation between the percentage of blacks in the community and the percentage of stops that eventually resulted in traffic searches. The conclusions drawn from the study suggested that the percentage of Black population and the area crime rate primarily influenced the percentage of vehicular stops of black motorists ending in arrest/ summons.

Brian N. Williams and Michael Stahl (2008) conducted two-approach study -an analytical study of traffic stop data of two states and twenty four local police agencies during the 2001 calendar year using a focus group interviewing technique of groups of officers from five participating agencies.. The objectives of their study were to determine whether race is a significant predictor of positive search results of police officers during traffic stops; whether race was the sole determinant of whom a victim of police search really is; and to determine the perceptions of officers regarding the use of race in community law enforcement decisions. The study concluded that race did correlate with “fruitful” traffic stops.

Data Presentation:

2007 Annual Report Missouri Vehicle Stops
Table 1.

Key Indicators	Total	White	Black (African American)	Hispanic	Asian
Population	4,632,578	3,888,907	496,788	102,685	69,553
Traffic Stops	1,564,452	1,240,821	264,307	34,609	12,651
Searches	123,808	85,145	32,405	5,179	436
Arrests	89,537	61,004	24,008	3,812	299
State-wide Population %	100%	83.95%	10.72%	2.22%	1.50%
Disparity Index	--	.95	1.58	1.00	.54
Search Rate	7.91%	6.86%	12.26%	14.96%	3.45%

Contraband Hit Rate	21.17%	23.01%	17.60%	14.40%	14.68%
Arrest Rate	5.72%	4.92%	9.08%	11.01%	2.36%

Table 2: Traffic Stop Reported in Nebraska.

Racial/ Ethnic Group Category	2002	2003	2004	2005	2006	2007	2002- 2007 Total
	# (%)	# (%)	# (%)	# (%)	# (%)	# (%)	# (%)
Asian/Pacific Islander	4,490 (0.8%)	4,484 (0.9%)	4,844 (1.0%)	5,082 (1.0%)	4,790 (1.0%)	4,801 (0.9%)	27,985 (0.9%)
Black (African American)	26,239 (5.0%)	23,331 (4.7%)	23,143 (4.7%)	24,572 (5.0%)	23,530 (5.1%)	23,671 (5.1%)	144,309 (4.9%)
Hispanic	32,241 (6.7%)	34,303 (6.9%)	33,301 (6.8%)	33,371 (6.8%)	30,763 (6.7%)	32,253 (7.0%)	199,891 (6.7%)
Native American/ Alaskan	3,960 (0.7%)	3,651 (0.7%)	3,911 (0.8%)	3,859 (0.8%)	3,906 (0.8%)	3,918 (0.8%)	22,886 (0.8%)
Other	2,951 (0.6%)	2,956 (0.6%)	3,110 (0.6%)	3,688 (0.8%)	4,276 (0.9%)	4,273 (0.9%)	20,855 (0.7%)
White	455,414 (86.2%)	426,615 (86.1%)	420,413 (86.0%)	417,678 (85.5%)	394,589 (85.4%)	394,215 (85.1%)	2,546,359 (86.0%)
TOTAL	528,295 (100%)	495,340 (100%)	488,722 (100%)	488,220 (100%)	461,854 (100%)	463,131 (100%)	2,962,285 (100%)

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Table 3: Reason for the Stop in Nebraska– 2002-2007.								
Racial/ Ethnic Group Category	Traffic Code Violation		Criminal Code Violation		Other		Unknown	
	#	%	#	%	#	%	#	%
Asian/Pacific Islander	27,105	96.9	341	1.2	501	1.8	38	0.1
Black (African American)	136,271	94.4	3,167	2.2	4,839	3.4	32	0.0
Hispanic	187,751	93.9	4,425	2.2	7,492	3.7	224	0.1
Native American/Alaskan	19,806	86.5	811	3.5	2,169	9.5	100	0.4
Other	19,295	92.5	319	1.5	1,152	5.5	89	0.4
White	2,427,703	95.3	31,546	1.2	81,002	3.2	6,108	0.2
TOTAL	2,817,931	95.1	40,609	1.4	97,155	3.3	6,591	0.2

Table 4: Disposition of the Traffic Stop (Outcome) in Nebraska– 2002-2007.

	Custodial Arrest		Ticket		Verbal Warning		Written Warning		Defect Card		No Action		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Asian/Pacific Islander	726	2.6	11,148	39.8	2,747	9.8	10,477	37.4	1,965	7.0	807	2.9	115	0.4
Black (African American)	26,955	18.7	53,057	36.8	17,304	12.0	32,035	22.2	7,625	5.3	6,314	4.4	1,019	0.7
Hispanic	16,411	8.2	80,865	40.5	19,682	9.8	56,108	28.1	18,227	9.1	7,260	3.6	1,338	0.7
Native American/Alaskan	2,150	9.4	8,563	37.4	1,910	8.3	6,417	28.0	2,587	11.3	1,130	4.9	129	0.6
Other	2,458	11.8	7,269	34.9	3,647	17.5	5,376	25.8	566	2.7	1,435	6.9	104	0.5
White	75,078	2.9	887,407	34.9	175,845	6.9	1,058,504	41.6	244,449	9.6	93,869	3.7	11,207	0.4
TOTAL	123,778	4.2	1,048,309	35.4	221,135	7.5	1,169,817	39.5	275,419	9.3	110,825	3.7	13,912	0.5

Table 5: Searches Conducted as part of a Traffic Stop in Nebraska.
Percentages are % of race of total stops made.

Racial/ Ethnic Group Category	2002	2003	2004	2005	2006	2007	2002-2007 Total
	# (%)	# (%)	# (%)	# (%)	# (%)	# (%)	# (%)
Asian/Pacific Islander	139 (3.1%)	96 (2.1%)	105 (2.2%)	87 (1.7%)	106 (2.2%)	106 (2.2%)	625 (2.2%)
Black (African American)	1,472 (5.6%)	1,079 (4.6%)	1,066 (4.6%)	999 (4.0%)	1,211 (5.1%)	1,211 (5.1%)	6,977 (4.8%)
Hispanic	2,428 (6.9%)	2,351 (6.9%)	2,027 (6.1%)	1,876 (5.6%)	2,151 (6.7%)	21,151 (6.7%)	13,208 (6.6%)
Native American/ Alaskan	191 (4.8%)	208 (5.7%)	297 (7.6%)	314 (8.1%)	297 (7.6%)	297 (7.6%)	1,534 (6.7%)
Other	169 (5.7%)	61 (2.1%)	69 (2.2%)	96 (2.2%)	113 (2.6%)	113 (2.6%)	611 (2.9%)
White	14,899 (3.3%)	13,691 (3.2%)	12,981 (3.1%)	12,888 (3.0%)	12,074 (3.0%)	12,074 (3.1%)	78,349 (3.1%)
TOTAL	19,298 (3.7%)	17,486 (3.5%)	16,545 (3.4%)	16,260 (3.3%)	15,952 (3.4%)	15,952 (3.4%)	101,304 (3.4%)

Data Analyses

Table 1: The 2007 Annual Report of the Missouri Vehicle Stops issued by the Missouri Attorney General Jay Nixon indicated in table above showed impressive results. With respect to “*search rate*,” (the % of stops in which a search is conducted), one of the indexes used to measure racial- profiling, the search rate for all motorists was 7.91%. The search rate for white motorists was 6.86; 12.26% for Blacks; 14.96 for Hispanics, 3.45% for Asians and 10.83% for American Indians. In comparison, the search rate for Hispanic motorists was the highest, followed by those of blacks, American Indians and then Whites, while that of Asians was the least.

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With respect to *disparity index*, which is the proportion of stops/ proportion of population, the disparity index for Whites is .95, Blacks (1.58), Hispanics (1.00), Asians (.54), and American Indians (.18). This means that blacks with a disparity index >1 are overrepresented in the search, while the disparity indexes of Whites, Asians, and American Indians, which are < 1 indicate underrepresentation in search rate; while Hispanics with a disparity index of 1.00 indicate no disparity.

In terms of *contraband hit rate* (searches in which contraband are found), of the overall percentage contraband hit rate of 21.17%, the rate for White motorists is 23.01%, Blacks (17.60%), Hispanics (14.40%), Asians (14.68%), and American Indians (24.38%).

With regard to *arrest rate* (Arrests made within the number of traffic stops), of the total arrest rate for all motorists of 5.72%, the White rate was 4.92%, Blacks (9.08%), Hispanics (11.01%), Asians (2.36%) and American Indians (7.37%). The data here also suggest that the probability/ chances of arrest vary across ethnic and racial groups.

Table 2: Analysis shows that the total traffic stops reported between 2002 and 2007 was highest among whites (86%) followed by distant second, Hispanics (6.7%) and a distant Third, Blacks (4.9%). All other racial categories, Asian Pacific Islander (0.9%), Native America/Alaskan (0.8%) were stopped throughout this period at a total rate of less than 1%.

Table 3: With respect to data, the reasons for traffic stop show that the officer were presented with numerous options on which to charge potential violators, including traffic code violation (speeding, expired license plate, worn out tires, broken tail lights and exhaust smoke etc.). The officer could also initiate a traffic stop on the basis of criminal code violation, such as driving a stolen vehicle, having a standing court warrant, driving without license, driving with expired license, unpaid ticket, and carrying contraband – drugs and/ or firearm. These violations would fetch a motorist custodial arrest. From 2002 and 2007, the overwhelming majority of all stops (95.1%) were for traffic code violation. However, there was no significant disparity among the various racial/ ethnic groups when broken down. Each registered a high percentage score ranging from 86.5% to 96.9%. In terms of criminal code violation, a small or meager total percentage of stops (1.4%) were made under criminal code rationales. Native Americans/ Alaskans registered the highest total (3.5%), while Whites and Asian/Pacific Islander recorded the least (1.2%). The total rate of stop among Blacks and Hispanics were equal (2.2%).

Table 4: The analysis of disposition of the traffic stop outcomes from 2002 to 2007 shows that Black motorists have the highest likelihood (18.7%) to be arrested and detained (*custodial arrest*). A custodian arrest could be triggered not only by a traffic arrest, but by other serious violations and infractions that include – Driving Under Influence/ Intoxication, driving without license or with expired one or having a pending court arrest warrant. The Asian/Pacific Islander is the least likely group at (2.6%), followed by Whites (2.9%) to come under custodial arrest. Blacks were arrested at a rate of approximately six times as whites (18.7% to 2.9%). As regards *ticketing*, Hispanics receive the highest percentage of tickets (40.5%) followed by Asian/Pacific Islander

(39.8%) and then Blacks (36.8%). Whites at (34.9%) are prone to receive the least percentage of tickets, next to Blacks (36.8%). With respect to *verbal warning*, Blacks received the most (12%), followed by Hispanics and Asian/Pacific Islander at 12% each. In contrast, Whites received the least (6.9%), followed by Native American/Alaskan (8.3%).

Whites and Asian/Pacific Islander most commonly received written warning (41.6 : 37.4%), followed by Hispanic and Native American/ Alaskan groups who received about the same amount of written warnings (28.1% : 28%), and then Blacks at (22.2%).

Table 5: The examination of data on searches conducted by law enforcement following a traffic stop from 2001 to 2007 reveal that members of Native American/ Alaskan, Hispanic and Black groups were more often searched (6.7% : 6.6% : 4.85) than the larger population at the rate of (3.4%).

That means that vehicular stops involving Native Americans/ Alaskan, Hispanic and Black groups are more likely to lead to searches being conducted in relation to stops (3.4%) among all drivers. Also, aggregate data from 2002 to 2007 show that stops involving Hispanic (6.6%) and Native American/ Alaskan people (6.7%) were almost two times as likely to result in searches compared to the general population (3.4%). On the other hand, stops involving persons of white (3.1%) and Asian/Pacific Islander (2.2%) groups are less likely to degenerate into searches relative to the entire population (3.4%).

Conclusion and Recommendations

Allegations of racial profiling are hard to prove. This is because of differing perceptions and interpretations of police actions. Individual perceptions of police actions can be construed based on many factors such as cultural factors, environment, physical surrounding, time of day, and danger. Some actions may be interpreted in different ways based on expectations of restraint, courtesy and excessive use of force. Others may be misinterpreted because law enforcement decisions and actions by the police are products of 'reasonable suspicion' by the police, such as whether reasonable suspicion exists; whether the suspect fits the description of the offender; whether there is an attempt on the part of the suspect to escape; whether the suspect is responsive to the officer's questioning; whether the suspect has prior criminal record; whether the suspect was seen around the crime scene; whether the suspect was supposed to be in the area at the time the crime was committed or reported; and whether the suspects' conducts and behaviors mimic the pattern or modus operandi used by law enforcement.

These factors often drive police responses, rather than actual proof regarding the commission of the crime. Although the courts have grappled with the complexity of the issue, they appear to lean in favor of the law enforcement through their decisions in a series of high-profile cases that include but not limited to: *Mapp V. Ohio* (1961); *Wolf V. Colorado* (1949); *Terry V. Ohio* (1968); *Whren V. United States* (1996); *Maryland V. Wilson* (1997); *Wyoming V. Houghton* (1999) and *Thornton V. United States* (2004).

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Nevertheless, in order to strike a balance between the law enforcement need to fight crime and protect society, and the right of citizens to reasonable constitutional protection, the following recommendations are being proposed:

- Initiating reforms in police training and policing, such as police-community policing
- Instituting community-police control groups to diffuse conflicts surrounding police brutality, excessive use of force and racial profiling.
- Promote public education on the problem of racial profiling, using seminars and workshops
- Implementing a computerized system of storing and retrieving information on police activities such as audio-visual aids like cameras for permanent record keeping.
- Instituting sensitivity training for inexperienced officers and those whose record show “cause” for concern
- Establishing hotline and toll-free numbers to make it easy for citizens to file or report complaints
- Requiring police agencies and the Attorney Generals’ offices to issue periodic/ annual reports on the state of policing in the states.
- Making sure that minorities make up “critical mass” of recruits and officers’ ranks in order to promote diversity in law enforcement, and boost public ownership and confidence in the police and law enforcement establishments.
- Establishing a taskforces and/or citizen review boards to investigate and recommend disciplinary measures and actions against officers implicated in bias-policing.

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