

Racial Bias and Policing

A Study Guide Prepared by the ACLU and
Plaintiffs' as part of their Advocacy for Reforms
Under the Collaborative Agreement. See:
<http://www.cincinnati-oh.gov/police/pages/-5111-/>

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I. Introduction

The Traffic Stop Study has concluded that Cincinnati Police Officers stop more African Americans than Whites; search more African Americans than Whites and detain African Americans longer than Whites once stopped. Similar studies in other cities reach the same results. Plaintiffs/ACLU offer this study guide to help the community understand the role of race in policing and in the criminal justice system generally. We also will show how implementation of the Collaborative Agreement will serve as a major step toward solving this problem.

II. Background

Numerous jurisdictions throughout the country have recently sought to understand the extent to which racial bias impacts their respective criminal justice systems. Most have discovered that the criminal justice system is fraught with racial bias from the very first contact of an individual with the police through the sentencing and subsequent parole phases of persons found guilty of a crime. The Collaborative Agreement (CA) requires the parties to endeavor to reduce the racial bias imbedded within the practices of the Cincinnati Police Department (CPD). As one result of this agreement, the City of Cincinnati, the FOP, and the plaintiffs have received a study, conducted by University of Cincinnati professors, reviewing traffic stops made by the CPD in order to determine whether racial bias impacts traffic stops. The study was released on November 14, 2003. Prior to the public release, the parties to the Collaborative reviewed and debated the results of the study and agreed on this modest statement:

**REPORT OF COLLABORATIVE PARTIES TO MONITOR
RE TRAFFIC STOP STUDY BY ECK AND LIU
October 30, 2003**

I. Introduction

Pursuant to ¶30 of the Collaborative Agreement (CA), the traffic stop report by Eck and Liu has been integrated into the overall evaluation efforts under the CA. The parties have reviewed the report and met to discuss its contents. This report does not address any questions the parties may have about the traffic stop study.

II. Conclusions Shared by the Collaborative Parties

- A. The report finds unexplained disproportionality based upon race in traffic stops in Cincinnati.*
- B. Racial disproportionality in traffic stops is a challenge to perceived legitimacy of police action.*
- C. Disproportionality by race may or may not be related to bias, preexisting conditions, and policing strategies.*
- D. The Collaborative Agreement addresses many of the issues raised by the report and its implementation will serve as the primary response by the parties to the challenges posed by the report, in particular*

1. Community Problem Oriented Policing (CPOP) ¶¶ 16-29

See First Annual Report of parties on CPOP, August 2003

2. Mutual Accountability and Evaluation ¶¶ 30-46

Parties are in final stages of selecting a vendor to provide ongoing evaluation of efforts to improve police community relations and effectiveness of police actions

3. Use of Force ¶¶47-49

Implementation is ongoing of these terms and the Memorandum of Agreement with the Justice Department

4. Bias Free Policing ¶¶51-54

Data collection and analysis shall continue for the life of the agreement.

5. Civilian Review ¶¶55-89

Credible professional, independent review of alleged police misconduct helps build credibility and acceptance of police action.

III. Conclusion

The traffic stop report is a valuable aid in our continuing effort as a collaborative and as a community to achieve a safe city through fair strategies, mutual accountability and positive engagement of the police and the citizens.

III. Review of Traffic Stop Study

Let us say from the outset that the study does indeed identify numerous areas of racial disparity in CPD stops in Cincinnati. The study reviewed approximately 7200 traffic vehicle stops made by CPD personnel between July 1, 2001 and December 31, 2001. The data analyzed for the study came from data cards filled out by the officers after making a traffic stop. As a result of their analysis, the study authors identify numerous areas of “racial disproportionality.” Racial disproportionality describes a condition where the proportion of persons (e.g., by race) stopped by CPD personnel exceeds the representation of such persons in the general population (or their representation among all persons stopped, or among all persons cited, or some other bench mark). The terms disproportionality and disparity shall be used interchangeably throughout this guide.

The study found that African Americans were disproportionately stopped in 34 of the 52 Cincinnati neighborhoods. (p. 31). This means that in those neighborhoods, African Americans were stopped in excess of their proportion to either their numbers in these communities or the amount of driving they do in these communities. With respect to the stops themselves, the study authors found that, on average African Americans were stopped for longer periods of time than their white counterparts. (p. 40). Additionally, the study found that there were more repeat stops for African Americans than for Whites. (p.7). Although the study authors attribute this to repeat offenders, this is mere speculation. The study makes no effort to correlate the repeat stops with repeat offenses. Furthermore, the study fails to account for the probability that repeat stops could, just as

likely, have been the natural consequence of racial profiling. Racial profiling is the improper use of race to target citizens for stops.

As stated above, the data analyzed for this study came from contact cards filled out by the police officers. These cards require the officer to check one or more of six possible boxes with respect to the reason for the stop. Disturbingly, the study found officers more likely to stop African American drivers for equipment violations than White drivers. (p. 51). We find this disturbing as such violations may easily represent an effort to mask racial profiling. Also, officers were more likely to check the box “other” as an explanation of their African American driver stops compared to their White driver stops. (p. 13). Unfortunately, the study did not provide any detail regarding the explanation officers intended by checking “other”. Although the study remains inconclusive with regard to these two explanations for disparate vehicle stops, plaintiffs’ counsel believe both of these trends likely demonstrate some degree of racial profiling. Additionally, the study found that a greater percentage of the searches of African American drivers resulted in no arrest than did the searches of White driver. The study also found that stops of African American drivers more often resulted in no sanction (i.e., no search, arrest, or citation) than did stops of White drivers. (p. 51).

The above findings represent racial disparities identified in many aspects of traffic stops made by CPD officers. Although the study initially suggests racial bias as a potential explanation for these disparities, the study authors were unwilling to draw the conclusion that these disparities resulted from such racial bias. The Plaintiffs suggest that this unwillingness resulted primarily from two factors. First, the study authors made unwarranted efforts to find race-neutral explanations for the racial disproportionality

identified by the study. That is, the data collected in the study did not support these race-neutral explanations. One example of this arose in the discussion of repeat stops. As stated above, the study authors make a general statement connecting repeat stops identified in the study with the general trend that much crime is committed by repeat offenders. Of course, repeat stops are just as plausibly explained by racial profiling in certain communities and on certain streets within such communities.

Second, the study failed to analyze the data collected in a number of ways which would have allowed for a more definitive conclusion with respect to the question of the existence of racial bias in police stops. For example, the study asserts a hypothesis that the racial disproportionality in various aspects of the police stops might be attributable to racial bias either of white officers or of CPD officers generally. However, by failing to analyze any of its data with respect to the race of the officer, the study failed adequately to test for the accuracy of this hypothesis. Additionally, there were numerous other analyses, which Plaintiffs have recommended to the study authors, that would have aided in determining to what extent racial profiling underlies traffic stops made by CPD personnel. We hope that the study authors shall conduct subsequent analyses in an effort to answer more directly whether and to what extent racial bias is a factor in CPD stops in Cincinnati.

IV. Racial Bias in Other Areas of Criminal Justice System

As stated at the beginning of this report, racial profiling represents only one of the numerous areas in which racial bias impacts the criminal justice system locally and nationally. Although studies have not been conducted to measure the impact of racial bias on other aspects of the criminal justice system in Cincinnati, such studies have been

conducted statewide and in other jurisdictions that allow generalizations to be made regarding the impact of racial bias on the criminal justice system. At the end of this report, we provide a short bibliography that allows for further study of this well-documented phenomenon. Some of the other areas in which racial bias impacts the criminal justice system are: 1) Prosecutorial Discretion, 2) Sentencing, and 3) Juvenile Justice issues. It should be noted that the most glaring manifestation of racial bias in the criminal justice system arises in the context of drug crimes, although, as shall be noted, such bias is certainly not absent from other criminal contexts.

V. Racial Bias in Prosecutorial Discretion

Once a person has been arrested, it must next be determined whether or not to charge the person with a crime. The charge, however, is not itself set in stone. The prosecutor has great discretion with regard to the decision of whether or not to bring a charge and, if so, the nature of the charge to bring. In reviewing the race of victims and perpetrators on death row in Ohio, The 1999 Ohio Commission on Racial Fairness (the “commission”) asserted that where the victim was white, a homicide perpetrator “was geometrically more likely to end up on death row if the homicide victim [was] white rather than black”. (*Reviewing the Fairness of Ohio’s Legal System*, the Ohio Commission on Racial Fairness, 1999, p. 38). Furthermore, the Commission, headed by Supreme Court Chief Justice Thomas Moyer, suggested that this disparity could not easily be attributed to distinctions in the cases involving white versus black homicide victims. Before a jury can determine to sentence a person to death, however, the prosecutor has to seek the death penalty. That is, there is no death penalty option but for a prosecutor bringing such a charge. Therefore, if racial bias exists in death sentencing

(and other sentencing issues) in Ohio, it likely begins with the initial prosecutorial decision to bring such a charge.

With respect to drug cases, the impact of racial bias is even more pronounced. In these cases, alleged perpetrators are subject not only to the bias inherent in the prosecutorial discretion but additionally to the biased determination of whether the charges are pursued in federal rather than state court. The discretion lies with federal prosecutors to determine whether the evidence supports a federal charge. Pursuit of these charges in federal court subjects defendants to a maze of potential mandatory minimum sentencing guidelines that carry far harsher penalties than similar state court charges. Additionally, prosecutors have largely unrestricted discretion with respect to issues related to bail and plea-bargaining. Various studies conducted around the country have demonstrated the extent to which each area of prosecutorial discretion results in the disparate treatment of minorities.

VI. Racial Bias in Sentencing

Although racial bias in sentencing has already been discussed in conjunction with prosecutorial discretion, some additional discussion is merited. Notably, the move, over the past two decades, of sentencing from the discretion of a judge to the legislative arena has had tremendous negative impact for minorities. Some minority activists initially lobbied in favor of legislated sentencing as a way to mitigate the impact of racially biased judges. Unfortunately, the legislation, at the federal and state level, has resulted in as much if not more racial bias. Instead of individually biased judges being the problem, there now exists an entire legislation scheme infected with racial bias over which conscientious judges have little discretion.

In Ohio alone, African Americans are ten times more likely to spend time in prison than Whites. Nationally, an African American male born in 1991 has a 29% chance of spending time in prison while his White counterpart has only a 4% chance of doing so. A study conducted in 1994 found that, at any point in time during that year, 30.2% of African American men between the age of 20 and 29 were under some form of criminal justice supervision (i.e., in prison, jail, probation, or parole). None of these figures can sufficiently be explained by either the proportion of black men in the general population or their proportion among the population of persons arrested for some crime.

This fact is most vividly evidenced in the well-documented and familiar debate surrounding the disparate sentencing with respect to crack/free-base cocaine versus powder cocaine. The federal sentencing guidelines (mirrored by numerous state laws) mandated punishments that, in effect, are 100 times as harsh for crack cocaine as for powder cocaine. This means, for example, that one has to be in possession of one hundred times the amount of powder cocaine in order to receive the same punishment as that meted out for possession of crack cocaine. There are, however, no criminological justifications for this huge sentencing disparity as has been documented by numerous studies and agencies. The only plausible explanation for this sentencing disparity is racial animus attributable to the stereotype that users and sellers of crack are African Americans. In fact, we know both that crack users are more likely to be White and that persons generally purchase drugs from other persons of the same race, suggesting a significant likelihood that more crack sellers are White as well. The important distinction between White and African American crack users and sellers is where they conduct their business. Whites are in homes; African Americans, more often in public.

It should be noted, however, that the increased penalties and focus on drug-related crime over the past two decades has had a hugely disproportionate impact upon minorities even though, again, it is well documented that minorities neither use nor traffic in drugs to a greater degree than Whites. This disparity results from a combination of factors: a) policing tactics that focus aggressive policing upon urban drug trafficking; b) the provision of treatment and other non-incarceration centered alternatives to middle class non-minority drug users and low-level dealers, and c) the absence of such alternatives for poorer minority users and low-level dealers. Plaintiffs are eager to see whether the Drug Court in Hamilton County addresses any of these disparities and, if so, whether these efforts can be expanded.

VII. Racial Bias in Juvenile Justice System

Nationally, the juvenile justice system reflects all of the same biases and trends of the adult system with one wrinkle. Because minorities disproportionately do not benefit from diversion programs, they are disproportionately represented among states' juvenile offender populations. Moreover, minority offenders' cases are substantially more likely to result in detention than their white counterparts. Additionally, the trend to subject juvenile offenders to the adult criminal justice system has disproportionately affected minority offenders. A study of Los Angeles county juvenile justice trends conducted by the Justice Policy Institute found that minority youth were between 4 and 19 times more likely (4.5 Asian, 7.3 Hispanic, and 18.4 Black) to be sentenced by an adult court than their white counterparts who had committed equivalent crimes. A 1993 study reported by Bowling Green State University similarly found disproportionality with respect to detention rates for minorities in Ohio. Furthermore, that report asserted that the disparity

could not be attributed to disparities either in the nature of the offense committed or in the number of prior referrals (in fact, according to the report, white males had more prior Department of Youth Services referrals than did their minority counterparts). Notably, however, the Lighthouse Youth program, recently started by the CPD, may help reduce this disparity.

VIII. Conclusion

In conclusion, it should be clear that although the recently released study regarding racial profiling by the CPD may represent the latest evidence of racial bias in the criminal justice system locally, it certainly does not represent the only evidence of such. In fact, through implementation teams of the Commission on Racial Fairness, efforts are underway statewide to reduce racial disparities and racial bias. In addition, various aspects of the Collaborative Agreement are targeted at bias in our local criminal justice system. These include: 1) implementation of a new policing strategy based upon community problem oriented policing, 2) the creation of the Police Community Partnering Center, 3) the creation of the new Citizen Complaint Authority which will help uncover and eliminate biased officers, 4) a requirement that use of force incidences be tracked by race of the suspect and CPD personnel, 5) implementation of an evaluation protocol to measure the parties satisfaction of their obligations under the Collaborative Agreement, 6) tracking of information relevant to crime solving so as to discover any racial bias in policing, and other measures as well.

Notwithstanding these efforts, the plaintiffs/ACLU desire to increase awareness in this community of all of the numerous manifestations of racial bias in the criminal justice system in order that our community may adequately respond to this issue and, ultimately,

recapture much of the legitimacy that the criminal justice system has lost over the past two decades. The Collaborative Agreement can be viewed by going to <http://www.cincinnati-oh.gov/police/pages/-5111-/> and clicking on “Collaborative Agreement”.

IX. Contact Plaintiffs

Plaintiffs represent a class that includes all black persons who reside in or travel through the city of Cincinnati and all persons of any race subject to a use of force by members of the CPD. Do you want to help? Do you have questions? Contact us. The class representative is the ACLU of Ohio (website <http://www.acluohio.org/>). Plaintiffs’ class counsel is Kenneth Lawson (345-5000), Alphonse Gerhardstein (621-9100), and Scott Greenwood, (943-4200).

Further Reading:

Police Vehicle Stops in Cincinnati: July 1 – December 31, 2001, John E. Eck, PhD., et al., (2003).

For additional information on Data Collection regarding racial bias in policing, see North Eastern University’s Data Collection Resource Center at:

http://www.racialprofilinganalysis.neu.edu/article.php?article_type=intro ; also see the

Department of Justice website regarding racial profiling data collection at:

<http://www.ncjrs.org/pdffiles1/bja/184768.pdf> .

The Ohio Commission on Racial Fairness, “Reviewing the Fairness of Ohio’s Legal System”, p. 38 (1999).

Angela J. Davis, “Prosecution and Race: The Power and Privilege of Discretion,” 67 Fordham L. Rev. 13, 27 (1998) (“Prosecution and Race”).

See generally Kate Stith & Steve Y. Koh, “The Politics of Sentencing Reform: The Legislative History of the Federal Sentencing Guidelines,” 28 Wake Forest L. Rev. 223 (1993).

Marc Maurer and Tracy Huling, “Young Black Americans and the Criminal Justice System: Five Years Later”, The Sentencing Project (October 1995).

See, K. Jack Riley, “Crack, Powder Cocaine, and Heroin: Drug Purchase and Use patterns in Six U.S. Cities,” National Institute of Justice, United States Department of Justice (Dec. 1997) p. 15-16.

See Justice on Trial: Racial Disparities in the American Criminal Justice System on the web at (<http://www.civilrights.org/publications/cj/index.html>).

Sentencing Project @ www.sentencingproject.org.

United States Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy (February 1995).

Mike Males & Dan Macallair, “The Color of Justice: An Analysis of Juvenile Adult Court Transfers in California,” Justice Policy Institute (February 2000) (The Color of Justice), pp. 3-4.

Bowling Green State University Report: Race and Juvenile Justice in Ohio (June 1993).