

**Public Policy and the Law:
An intergovernmental study of bias based policing
as it affects federal, state, and local law enforcement agencies.**

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Executive Summary

The purpose of this paper is to show how federal, state, and local law enforcement agencies are addressing the issues of “bias based policing” and how public policy and the law come together to dictate how law enforcement agencies will conduct business.

The issue of bias based policing in the criminal justice system is one of the most pressing civil rights issues of our time. It extends beyond actual victims to negatively affect all people of color, regardless of age or socioeconomic status. Due in large to the media, the civil rights community and the public have only recently begun to give criminal justices issues the attention they deserve. Thanks largely to the efforts of the American Civil Liberties Union (ACLU), racial profiling, an issue that no one was discussing a few years ago, is now the subject of widespread attention by the media, lawmakers, law enforcement officials and the public.

Racial profiling is defined in various ways, however, narrowly defined, racial profiling occurs when a law enforcement officer stops and questions, searches and/or arrests someone solely on the basis of that person’s race or ethnicity. A broader definition, encompassing officers’ use of race or ethnicity as a factor in deciding to stop, question, search or arrest someone, is more realistic. The U. S. Department of Justice (DOJ), defines bias based policing as: “any police-initiated action that relies on the race, ethnicity or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity”

Many local and federal courts have addressed bias based policing on a regular basis. In *Whren v United States*, the Supreme Court held that the matters of an officer's subjective intentions are irrelevant when the traffic stop involves actual traffic violation. The Supreme Court has eliminated the Fourth Amendment's "reasonableness test". This clearly minimizes its' ability to scrutinize unfettered police discretion. The courts did not stop dealing with this issue after the *Whren* case, several other cases dealing with police action during a traffic stop suddenly began to be litigated.

The issue of bias based policing is being raised in a variety of litigation and legislative contexts. In an attempt to right a perceived wrong, many will take their fight to the judicial system and use litigation as their choice of weapon. Litigation is often used against law enforcement agencies who violate the constitutional rights of an individual who is subjected to bias based policing. This issue has caused several key legislative acts to be initiated in the federal government. It has also prompted states to either pass, introduce, or consider drafting legislation to deal with bias based policing.

As public servants, police officers bring their own personal biases and stereotypes to their job. It is often difficult to remove these biases or to reshape them into a less problematic trait. However, many law enforcement agencies do attempt to change an individual officers biases by diversifying their agency. They hope that by interacting with officers from diverse backgrounds they will be able to learn a great deal that effect the way their officers deal will the general public.

This study evaluated three different states and examined what they have done, what they are doing, and what they are planning to do to discourage the use of bias based policing and thereby protect their law enforcement agencies from being attacked regarding the way they police their jurisdictions. These three states are New Jersey, Arkansas, and Texas.

In general, public perception of bias based policing is that it is a problem in their community. However, six of the nine law enforcement agencies that I interviewed thought that the racial minority citizens in their jurisdictions did not think bias based policing were a problem. This response was expected, but three of the nine agencies made an unexpected deviation from my expectation and stated they agreed with the majority of the public. The results of this study show that law enforcement agencies want to change that negative perception by implementing various types of community outreach programs to bridge the gap of distrust between the police and the public.

Legislation was the most effective way law enforcement agencies are dealing with issues of bias based policing. This legislation is very narrowly tailored and clearly outlines what is expected, acceptable, and what is not acceptable action by law enforcement agencies. Federal legislation must be passed in order to have a relatively high degree of compliance and to ensure that there is some level of continuity among the states.

I. INTRODUCTION

Bias based policing impacts all aspects of policing and is considered by many to be one of the most serious problems that face law enforcement today. Racial profiling, also known as “driving while black or brown” (DWB), excessive force, police misconduct and the shootings of unarmed minority suspects and undercover officers are in many cases symptoms and manifestations of bias based policing (Davis, 2001). A very specific example of this is when New Jersey State Troopers fired 11 shots at a van that was occupied by four African-American males. These young men were going to a basketball tryout at a North Carolina college in hopes of winning a scholarship. In a lawsuit against the New Jersey State Police, the state agreed to pay nearly \$13 million to settle the lawsuit.

The basic perception of our criminal justice system today is that justice is blind. This perception is distorted and sometimes damaged beyond repair in certain states, cities and communities when people in the system, namely police officers, bring their personal biases and stereotypes to the workplace. As a police officer myself, I have brought my beliefs and personal biases to my job.

The purpose of this paper is to show how federal, state, and local law enforcement agencies are addressing the issues of “bias based policing” and how public policy and the law come together to dictate how law enforcement agencies will conduct business.

The U. S. Department of Justice (DOJ), defines bias based policing as: “any police-initiated action that relies on the race, ethnicity or national origin rather than the behavior of an individual or information that leads the police to a particular

individual who has been identified as being, or having been, engaged in criminal activity” (http://www.lamberthconsulting.com/research_nation.asp, last visited August 19, 2002).

Strictly construed, this means that contact is made with a minority for no other reason other than that person is a minority. Liberally construed, this means that contact is initiated with a minority in part because he or she is a minority and also in part because there was some infraction of law. The infraction may be as small as speeding, driving five miles over the speed limit.

Along with DOJ key organizations such as Commission of Accreditation for Law Enforcement Agencies (CALEA), National Organization of Black Law Enforcement Executive (NOBLE), International Association of Chiefs of Police (IACP), American Civil Liberties Union (ACLU), and the National Association for the Advancement of Colored People (NAACP) have defined and address bias based policing. The ACLU and NAACP created its own standards for a detailed Racial Profiling Policy.

Both of these organizations have urged all law enforcement agencies to have a “detailed written policy” prohibition racial profiling. Many agencies have not met this standard that ACLU and NAACP proposes; however, several are drafting policies, including the Arkansas State Police. The standards call for the prohibition of specific acts of racial profiling, specify official discipline taken against offending officer, create a data collection and reporting process, enable citizen complaints, and ensure public education about the complaint process.

CALEA has taken a very aggressive stance on bias based policing. It has

long held that law enforcement agencies should not endorse or condone such a practice because it is unethical and illegal. CALEA developed three standards. The standards are first to issue a policy, then a personnel early warning system to identify problem officers, and lastly to give them access to an employee assistance program to remedy these problem employees.

NOBLE considers bias based policing one of the most critical issues facing law enforcement today and that a national response is needed. It believes that when law enforcement agencies fail to deal with this issue in a timely manner, it erodes the public trust and confidence in that agency as well as the criminal justice system as a whole. The IACP defines bias based policing as unequal treatment of any person including stopping, questioning, detention, or arrest on the basis of their racial or ethnic characteristics, religion, gender, or sexual orientation.

Not only has various interest groups and organizations have taken interest in bias based policing but many local and federal courts address such issues on a regular basis. The highest court in the land has spoken on the issue of bias based policing as well. In *Whren v United States*, the Supreme Court held that the matters of an officer's subjective intentions are irrelevant when the traffic stop involves actual traffic violation. Basically, the Supreme Court has eliminated the Fourth Amendment's "reasonableness test". This clearly minimizes its' ability to scrutinize unfettered police discretion. This gave the police the limitless authority to stop and search any vehicle. By using the traffic laws and the vehicle safety requirement standards an officer can stop any vehicle he wants to by following it until a minor violation occurs. Many times the minor violation is not cited, a

warning is simply issued and the driver is either sent on his way or arrested for a more serious violation that was discovered in the pretextual search. With *Whren* and other cases like it, it appears the courts recognize that Bias based policing in itself can be a useful tool to assist law enforcement officers in carrying out their duties. When it takes a serial killer off the streets it is good police work, when a reputable black attorney is stopped and searched for no reason, it is an outrage.

Whenever you have a great number of cases with a particular theme in the judicial system, you can expect media attention and national exposure. One of the first states to be exposed to the nation regarding bias based policing is New Jersey. On October 31, 2001, the New Jersey State Police was subjected to a consent decree that required significant police management changes. Today, New Jersey has pending legislation regarding bias based policing. Like New Jersey, Texas and Arkansas has taken similar steps. Texas Governor Rick Perry signed bias based policing legislation into law on June 14, 2001. It required all law enforcement agencies to have a written policy that strictly prohibits bias based policing and to create a grievance policy for those who believe they were subject to the practice by January 01, 2002.

The Arkansas State Police is currently working on a policy that it hopes will be adopted by other agencies in the state. Agencies that are accredited, such as the Little Rock Police Department have policies in place that deal with bias based policing.

II. LITERATURE REVIEW

Public perception of bias based policing

The issue of bias based policing by police briefly grabbed the attention of the press when New Jersey Governor Christine Todd Whitman recently fired the head of the state police after he accused blacks and Hispanics of being more likely to be drug dealers and therefore deserving of heightened police scrutiny. <http://www.counterpunch.org/drivingblack.html> (last visited January 30, 2002).

As public awareness of bias based policing increases, the government must get involved to some degree. Clearly this is an important issue and across the country, government officials, civil rights advocates, academics, law enforcement executives, and members of the general public are discussing bias based policing more than ever. http://www.lamberthconsulting.com/research_nation.asp (last visited August 19, 2002). They are advocating many different types of solutions from legislation to more accountability. In 1999, President Clinton signed an Executive Order directing Attorney General Janet Reno to develop a plan that would ensure that the federal government is able to collect data. This data included things such as the race and gender of individuals the federal law enforcement agencies stopped to question and the location where the arrest was actually made. This caused the federal agencies to capture this data from forms they currently file regarding their actions during various police procedures.

Without a doubt, the media played a huge part in spreading the news regarding bias based policing. In the late 1980s, media coverage was slowly starting to incite the public and recently, we have seen it explode to being covered nearly daily by various types of news media. The media have covered lawsuits involving bias based policing to legislative action to confront or outlaw the practice.

The term “driving while black or brown” became a household name and was being discussed in many criminal justice courses. Many communities have held public debate and citizens have raised concern with their mayors and governors across the nation. The answers they have received has caused many minorities to believe they have been victims of bias based policing when in fact they may have been legitimately stopped, searched, detained, or arrested. Whether it is the practice of the police or a mistaken belief on the part of the individual, all this adds to the community distrust of the police and those in charge of the police. This distrust can cause serious repercussions and negative attitudes such as:

- Individuals are less likely to cooperate with people they do not trust and may develop questions regarding all aspects of the criminal justice system,
- Individuals with these perceptions may respond inappropriately to law enforcement officers out of a fear of being harmed, or to retaliate for past-perceived injustice
- Some law enforcement officers (if uneducated re: racial profiling) may perceive minorities to be inherently more likely to commit crimes, and may be more inclined to responded with higher degree of force, thus escalating situations unnecessarily
- Safety concerns for officers and community members may be increased in more hostile environments
- Left unchecked, mistrust towards the criminal justice system can lead to riots, looting and excessive violence. http://www.lamberthconsulting.com/research_nation.asp (last visited August 19, 2002).

The Role of the Judicial System (Courts)

The Supreme Court was moving toward a more favorable posture to law enforcement in the way it no longer strictly construed cases involving Fourth Amendment rights. These rights deal with the right to be free from unlawful and unreasonable searches and seizures (arrest). The Court was doing this while bias

based policing by law enforcement agencies was growing rapidly. What was at stake was the constitutionality of pretextual traffic stops while using minor motor vehicle infractions, alleged or otherwise, as a reason or excuse to stop, detain, and search a vehicle and its occupants. The court case that decided this very common practice in law enforcement was *Whren v. U.S.* Whether a search is constitutional if it would never have taken place had it not been for the police looking for a reason or excuse to circumvent the Fourth Amendment was the question the court was faced with in *Whren (Whren v. U.S.)*.

Despite many different organizations opposed to the practice of pretextual searches and the many different pleas various interest groups that said allowing such a practice would cause further and greater problems, the Supreme Court did not change the trend in which it was treating cases involving Fourth Amendment rights. The court stated that any traffic offense committed by a driver was a legitimate and acceptable basis for an officer to conduct a traffic stop, regardless of his or her subjective state of mind (*Whren v. U.S.*).

After the *Whren* case, several other cases dealing with police action during a traffic stop suddenly began to be litigated. In *Ohio v. Robinette*, informed consent was rejected by the court that officers seeking consent to search a car must tell the driver he is free to refuse permission and leave. In *Maryland v. Wilson*, police were given the power to order not only the driver out of the vehicle, but the passengers as well. This could be done regardless of whether or not the officer had a reason to believe the individuals were dangerous. The case of *Wyoming v. Houghton*, the court gave the police the authority to search the closed

purse of a passenger even though she had nothing to do with the alleged traffic infraction and there was nothing to suggest that she was involved in criminal activity (*Wyoming v. Houghton*). This power could be exercised only after the lawful arrest of the driver. These cases did not stop the many cases that continued to be brought against law enforcement agencies.

The issue of bias based policing is being raised in a variety of litigation and legislative contexts. In an attempt to right a perceived wrong, many will take their fight to the judicial system and use litigation as their choice of weapon. Litigation is often used against law enforcement agencies who violate the constitutional rights of an individual who is subjected to bias based policing. This is an important tool for many reasons. One reason is that it places agencies on notice and provides unwanted attention to the alleged practices of those agencies accused of such practices. Sometimes this practice can be costly for cities and states. Thousands of dollars are spent each year to defend these cases and even more is spent to pay successful plaintiff cases. Three of the claims that can be raised during litigation are a 42 U.S.C. section 1983, which is the most common type, 42 U.S.C. section 1985, and a title VI claim. A 42 U.S.C. section 1983 claim creates a remedy against state actors for their violation of rights created by the Constitution or other federal laws. A 42 U.S.C. section 1985 claim protects people against conspiracies to interfere with their federal rights. A title VI claim is a claim that states in part, “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation, and be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal

financial assistance”. Because all law enforcement agencies receive some form of federal assistance this claim is appropriate.

The judicial role as it relates to bias based policing is one of great importance. It dictates the content of many pieces of legislation and law. The previous mentioned cases, have illustrated the direction of the judiciary regarding this matter. However, with frequent demands for relief in our judicial system, we can raise public concern and put those who practice bias based policing on notice.

Legislation to address bias based policing

Clearly, public policy and political pressure have caused much of the legislative action that is being passed throughout the nation concerning bias based policing. The End Racial Profiling Act of 2001 has been put before Congress. The measure would ban racial profiling by federal, state, and local law enforcement agencies and require that they (1) collect data on investigatory activities, including traffic stops, pedestrian stops, frisks, and consensual and non-consensual searches, (2) put in place procedure for receiving, investigation, and responding to complaints alleging racial profiling, and (3) have procedures to discipline law enforcement officers who engage in racial profiling (Horne, 2001, 8).

Those state and local agencies that do not meet these requirements would lose part or all of their law enforcement grant funding, including Byrne grant and local law enforcement block grant funding (Horne, 2001, 8). The bill would also authorize the U.S. Attorney General to provide grants for the development and

implementation of best policing practices, to include training to prevent racial profiling, in-car video cameras systems, procedures for receiving complaints, and management systems to ensure that supervisors are held accountable for the conduct of their subordinates (Horne, 2001, 8).

Another anti-profiling bill is H.R. Bill 1907, the Racial Profiling Prohibition Act of 2001. This measure would withhold federal funds from states that fail to adopt and enforce standards that prohibit racial profiling in the enforcement of state laws on federal aid highways (Horne, 2001, 8). This bill includes several pieces of data to be collected and will gradually increase the penalty for non-compliance in relationship to the number of years there is non-compliance. Because both of these bills rely on mandates and sanctions, the International Association of Chiefs of Police (IACP) has opposed them (Horne, 2001, 8).

The National Organization of Black Law Enforcement Executives (NOBLE) believes that bias based policing legislation is a critical thread to ending the practice. NOBLE believe that such legislation must (1) declare racial profiling illegal, (2) prescribe criminal, civil and/or administrative sanctions against violators, (3) mandate policies prohibiting racial profiling by law enforcement agencies, (4) mandate data collection and analysis reporting for agencies receiving federal funding, (5) mandate racial profiling training for all law enforcement officers and ongoing refresher training, and (6) mandate and appropriate funding for a National Task Force on Racial Profiling (“A Noble Perspective,” 2001).

The Public Administration link to Bias Based Policing

Public servant is one of the many names giving to police officers, but a

more detailed name as it applies to the bureaucracy of government is street level bureaucrats. In order to simplify her world, the street-level bureaucrat responds by creating client stereotypes based on racial and class biases (Goodsell, 1994, 55). They start implementing these biases and the result is racism and selective enforcement. An example of this would be if the police watch young black males more closely than other citizens and hence find more opportunities to arrest them by using very minor violations as a pretext for more serious violations (Goodsell, 1994, 55).

The bureaucratization of law enforcement, that is, the establishment of professionally trained and equipped police forces, was one of the monumental steps in the history of personal freedom (Goodsell, 1994, 99). It is often said that police officers are held to a higher accord than other citizens. The police are public employees who interact directly with individual citizens and have substantial discretion in providing services or imposing sanction (Bovens and Zouridis, 2002).

The inherently difficult nature of many of bureaucracy's tasks is the topic of a recent book called "Impossible Jobs in Public Management, edited by Erwin Hargrove and John Glidewell (Goodsell, 1994, 92). The argument here is that four conditions can make the work of a public servant particularly trying. The first condition is often an antisocial or non-cooperative clientele, such as convicts. The second is a conflict-ridden policy arena, as in abortion. The third is the absence of a prestigious profession such as social work. Lastly, is the popular non-acceptance of one's mission, such as tax collection and enforcement of laws when you are that individual who is being subjected to the law (Goodsell, 1994, 92).

Two areas of public service that seem to be inundated with particularly negative stereotypes are law enforcement and public welfare (Goodsell, 1994, 27). The police are often depicted as public servants who abuse their authority. From the corrupt cops of Los Angeles, New York, and New Orleans to the caught on tape beatings of citizens across the nation these incidents portray the police in a very negative way. Bias based policing is perceived by many, including the ACLU as one of those actions that lead them to believe the police are abusing their authority.

So, what can be done to alleviate this perception from our law enforcement agencies? Many believe that if we diversify the police department to mirror that of the city county and state, bias based policing will diminish, if not go away completely. Some law enforcement agencies have to be forced to diversify their departments. The most dramatic evidence of protracted resistance to diversification was in the Alabama State Police case, *United States v. Paradise* (Holden, 1996, 241). In this case, the court found that the Alabama State Police had discriminated against African Americans for many years. The court ordered the agency to set hiring quotas hire more African Americans. Having a police force that mirrors or comes close to mirroring that of your community will decrease the perception of bias based policing.

Today, agencies such as the Metro Dade Police Department (MDPD) in Florida have learned from the problem that a non-diverse department can bring. MDPD has implemented an affirmative action goal to develop a racial and ethnic mix in the police department to mirror the community. The MDPD has taken a

leadership role in seeking to elevate the sensitivity of police officers to the cultural and ethnic differences prevalent in their area (Hays & Kearney, 77).

III. METHODOLOGY

The purpose of this paper is to show how federal, state, and local law enforcement agencies are dealing with “bias based policing” and how public policy and the law are meshed together to dictate how law enforcement agencies will conduct business. Law enforcement agencies in the past have used race, ethnicity or national origin rather than the behavior of an individual many times to make an arrest or to further investigate a crime. Today, this practice is being attacked from many different angles.

My methodology in this paper is to study three different states and evaluate what they have done, what they are doing, and what they are planning to do to discourage the use of bias based policing and thereby protect their law enforcement agencies from being attacked regarding the way they police their jurisdictions. These three states are New Jersey, Arkansas, and Texas.

I chose these three states for simple reasons. New Jersey is one of the first states to be attacked or exposed to accusations of serious bias based policing. These accusations came largely from the African-American community and were lodged against the New Jersey State Police. New Jersey has since become a pioneer in addressing the issue of bias based policing and many states, neighboring and afar, are following their lead and learning from New Jersey’s mistakes. Further, many law enforcement agencies often look to New Jersey for a sense of direction in handling their bias based policing problems or perceptions

thereof.

I chose Arkansas because I am an Arkansas State Trooper and a member of a blue ribbon committee formed to develop a bias based policing policy for the Arkansas State Police. It is the director's goal to have all law enforcement agencies in the state to adopt the policy or use the state police policy as a pilot to create one of their own I am involved in developing a policy for the Arkansas State Police that addresses bias based policing. It is believed that very few of the law enforcement agencies in Arkansas have policies addressing bias based policing and that several will probably never have such a policy. Also, Arkansas is a good state to include in the study because it has a low, but increasing minority population and it has two major interstates that run through the state.

Texas was chosen due to its large number of minorities and its many interstates and highways. Texas appears to be very forward thinking in its efforts to address bias based policing. The state legislature has passed a law that mandates all law enforcement agencies in the state to have a policy in place and various other guidelines regarding bias based policing.

I will contact all three state police agencies (New Jersey, Arkansas, and Texas) and city or county law enforcement agencies in these states to determine several things. First, I will determine whether or not the agency has a policy regarding bias based policing, has their been complaints about their agency practicing bias based policing, and what kind of training is given to officers that is effective in addressing bias based policing. By using only three of the fifty states, it is clear that the sample size used in this study is small. I sought to study in

depth three states relevant to the issue of bias based policing.

For data collection I will use interviews, document/literature reviews, and studies that have been previously conducted on the issue. Interviews will allow me to gain valuable perspectives from the policy implementers and makers of bias based policing policies in these agencies. They should be able to provide answers to questions such as if the policy was necessary and what was taking place to make it necessary (Appendix A).

An obvious strength of interview is that the use of open-ended questions usually provides a great deal of information and allow for stronger and more effective follow-up questions. A weakness of this is that the interviewee may not feel comfortable giving this kind of information out about his or her agency or the information received may be “filtered” for various reasons. Document/literature reviews will be instrumental in understanding various perspectives regarding bias based policing, to include what the current state of the law says regarding the issue. The studies will show if the policies and practices that have been implemented thus far are working or not.

IV. STUDY

The study of how federal, state, and local law enforcement agencies are addressing issues of “bias based policing” and how public policy and the law work together to dictate how law enforcement agencies will conduct business. This study starts with interviews of law enforcement agencies executives and/or administrators that deal with policy and procedures in their perspective agency. As discussed in the Methodology section above, I selected nine law enforcement

agencies, which are comprised below.

New Jersey

- New Jersey State Police
- Middlesex County Sheriff's Office

Texas

- Texas Department of Public Safety
- Dallas Police Department
- Houston Police Department
- Tarrant County Sheriff's Office

Arkansas

- Arkansas State Police
- Little Rock Police Department
- Pulaski County Sheriff's Office

New Jersey

When decided which agencies to contact in New Jersey, I chose the state police and the Middlesex County Sheriff's Office. The state police was an obvious choice due to the recent media attention they have received. The Sheriff's Office of Middlesex County was chosen because of its location, I-95 basically splits the county in half. This is the interstate that received the notorious reputation for racial profiling in the state of New Jersey.

New Jersey has had formal internal discussions of bias based policing, modified their academy and/or in-service training, modified their existing policies, developed new policies, enhanced outreach to their community on issues of race, introduced legislation, and has started collecting data on the race of citizens stopped (Peters, 2002). The legislation that they have introduced has not been signed and is still pending.

The New Jersey State Police has an in-depth policy regarding bias based policing. When asked what resources that his department needed to collect data, he stated that they had to develop a system that included a “motor vehicle traffic stop form (Peters, 2002). This form requires the trooper to come into the police headquarters to input the data he collected on the traffic stop.

Lieutenant Peters stated that the New Jersey State Police had to “overhaul” its entire academy due to a federal consent decree that was a result of bias based policing. In order to alleviate some of the tension between the state police and the citizens of New Jersey, the Superintendent has implemented a “Community Outreach Program” (Peters, 2002). Lt. Peters believes that the current relationship between his department and the racial minority in his state is in the middle of a very negative/very positive scale. Overall, he does not feel that it is a serious problem.

In order to deal with either the incidence of bias based policing or the community perception thereof, Lt. Peters believe that surveys are needed to poll the citizens stopped by troopers to find out if the experience was favorable or unfavorable. He further believes that there should be major changes in supervisory system, recruiting, and selection criteria for troopers. Further, the tragic events of September 11, 2001 caused the New Jersey State Police to re-examine its bias based policing policy because of its’ growing Arabic community.

The Middlesex County Sheriff’s Office has done considerably less in the way of the heightened scrutiny of bias based policing. Investigator John Rodriquez of the Middlesex County Sheriff’s Office works in the Prosecutor’s

Office. He stated that his department has only had formal internal discussions of bias based policing and has enhanced their community outreach on issues of race. The uniform crime reports from the state police is used by the Sheriff's Office to collect its data regarding bias based policing (Rodriquez, 2002).

According to Rodriquez, bias based policing is not a problem in his jurisdiction and the current relationship between his department and the racial minority citizens/community is positive. Middlesex County does have an officer available to the public 24 hours a day and seven (7) days a week to work with the public on this issue (Rodriquez, 2002).

Texas

The first agency I contacted in Texas was the Texas Department of Public Safety (DPS). There, I spoke with Major David G. Baker, Commander of the Traffic Law Enforcement Division. Major Baker stated that the DPS has done several things to address bias based policing in their department. One of the key things that Texas has done to address bias based policing is the introduction of legislation. This legislation was passed in June of 2001 and mandated that all law enforcement agencies in the state of Texas "adopt a detailed written policy on racial profiling".

The DPS uses their re-vamped citation to record the necessary data needed to be in compliance with the state law (Baker, 2002). In service training and recruiting has been changed along with "in-house development courses" to effectively address the issues of bias based policing in the DPS (Baker, 2002). Baker feels that the ability to gather and collect data, in conjunction with in-car

video cameras is essential in helping departments deal with incidences of bias based policing.

Like the Texas DPS, Sergeant Rick Watson, Legislative Coordinator for the Dallas Police Department believes his agency has done a lot to combat the problems of bias based policing; including help write the bill that is now law in the state of Texas. The Dallas P. D. uses written forms, which are an additional report and a “Scantron” sheet of traffic stops to collect and analyze data (Watson, 2002). Informing the citizens of Dallas that they have a right to report complaints of bias based policing and helping them with the process has helped the relationship between the community and the police department (Watson, 2002).

Sergeant Watson also stated that their officers are very concerned with the data collection process because they do not want to be labeled a racist or a racial profiler. Some officers feel that this collection of data from their traffic stops will be used against them (Watson, 2002).

The Houston Police Department seems to be very aggressive in its approach to combat bias based policing. It has publicly affirmed that “racial profiling” should not exist within its department and it has developed an ongoing data collection system to prevent profiling of this type (Oettmeir, 2002). Houston has a database software program, mobile data terminals with data links to a central server to help in its’ data collection and analysis. To make the citizens of Houston feel comfortable with the complaint process, the police department has minority representation on the citizen review board, which reviews police misconduct.

Acting Chief T. N. Oettmeir believes that departments need to have good

data collection/analysis equipment, training, prompt and thorough investigation of allegations of racial bias, and community programs to help deal with either both the incidence of bias based policing and the community perception of it.

I interviewed Leon Flowers, Chief Deputy of the Patrol Division for the Tarrant County Sheriff's Office about his agency policy and stance on bias based policing. Chief Deputy Flowers state that they have a strong policy regarding the matter and that their data collection is reviewed monthly. He believes that a computerized database is the key to collection of the necessary data to track bias based policing and that multicultural training is a must (Flowers, 2002).

Arkansas

The Arkansas State Police is in the process of developing and implementing a bias based policing policy. According to Captain Carl Kirkland, Troop A Commander, he feels that scan cards will be need to collect data about the race of the individuals stopped and searched. Sensitivity training for officers and the utilization of the Community Oriented Policing Programs more effectively in neighborhoods will reduce the incidences of bias based policing (Kirkland, 2002).

At the Little Rock Police Department (LRPD), I interviewed Sergeant James Sloan of the Internal Affairs Division. Sergeant Sloan has worked on the bias based policy for the LRPD. He stated that their department are in the progress of modifying their policy on the subject and hope to implement the use of data cards, citation changes and computer software as well as hardware to aid in their data collection and analysis. The Little Rock Police Department is an accredited law

enforcement agency with CALEA and their policy changed because CALEA has changed its requirements regarding bias based policing (Sloan, 2002).

I interview Sergeant Scott Stubenrauch, Professional Standards Division of the Pulaski County Sheriff's Office. The Sheriff's Office does not have a policy on bias based policing, but uses its codes of conduct that says you cannot discriminate on the bases of race as a general or blanket policy on the matter.

V. ANALYSIS

The public perception of bias based policing is very important. Six of the nine law enforcement agencies that I interviewed thought that the racial minority citizens in their jurisdictions did not think bias based policing were a problem. This is a response that I felt I would get from all the agencies. Three of the nine made an unexpected deviation from my expectation. Lt. Peters of New Jersey had a quite different response. He stated that the minority citizens felt there was a very serious problem regarding bias based policing in his jurisdiction. Both the Arkansas State Police and the Little Rock Police agreed with Lt. Peters and said that their minority citizens believe it is a problem as well.

In my study, I found that the majority of the agencies I interviewed were very much concerned about public perception. Houston Police Department ensured that their citizen review board had members of the minority community as members of the board. Other Agencies such as the New Jersey State Police has implemented various types of community outreach programs to bridge the gap of distrust between the police and the public (Peters, 2002).

The Role of the Judicial System regarding bias based policing has led many

law enforcement agencies to take the first step in correcting any deficiencies in its policy or procedure without the slightest nudge from the courts. I found that most agencies have used a combination of *Whren v. U. S.*, federal mandates, state laws and accrediting agencies to form sound policies. While most agencies still operate under the protection of *Whren*, many have forced their officers to go a step further. These agencies want their officers to articulate in writing and to record why they took the action that they did in reference to a traffic stop. The Arkansas State Police intend to place a video camera in every highway patrol vehicle in its fleet to document exactly what occurs during the interaction between the officer and the citizen while on a traffic stop.

Of course, previous to the media publicity given to bias based policing incidents across the United States, many law enforcement agencies did not have policies addressing this issue. In this study, I found that only one of the three agencies in the state of Arkansas had a policy that addressed bias based policing. The Arkansas State Police hopes to adopt a policy for bias based policing and to introduce legislation that mandates all other law enforcement agencies to have such policies for their organizations.

As the literature review points out, having a racial diversity mix of officers is essential in solving racial differences in these law enforcement agencies jurisdictions. New Jersey State Police opted to change its recruiting and selection process of its troopers in hopes to minimize the chances of hiring troopers who would profile using race (Peters, 2002). The Arkansas State Police believes that implementing a sensitivity course for its troopers would give its trooper's greater

understanding and appreciation for differences between the various races.

The state of New Jersey has yet to pass its proposed legislation to mandate all law enforcement agencies to adopt a bias based policing policy. The state of Texas has had a policy in place since June of 2001. The state of Arkansas is hoping to have a draft of a bill to send to the next legislative session. It is clear that intergovernmental relations have put pressure on states and law enforcement agencies to adopt either a law or a policy regarding bias based policing.

It is clear that the federal government will start withholding monies from states that fail to adopt and enforce standards that prohibit racial profiling in the enforcement of state laws on federal aid highways. Because of this, states such as Arkansas, have started to seriously look at not being one of those states that is affected by such measures. If the legislation that New Jersey introduced passes, they will become one of less than half the states to be in compliance prior to the implementation of the federal mandates. For the most part, these three states and their law enforcement agencies are clearly in different stages of addressing the issues regarding bias based policing.

VI. CONCLUSION and RECOMMENDATIONS

The purpose of this paper was to show how federal, state, and local law enforcement agencies are dealing with “bias based policing”. Further, to show how public policy and the law work together to dictate how law enforcement agencies will conduct business. The courts have spoken on the matter and many of their decisions have been in favor of law enforcement. In *Whren v. U. S.*, the Supreme Court held that the matter of an officer’s subjective intentions is irrelevant

when the traffic stop involves an actual traffic violation. This clearly minimizes its ability to scrutinize unfettered police discretion. *Ohio v. Robinette*, allowed police officers who were seeking consent to search a car the discretion on whether or not they told the driver he was free to refuse permission and leave. Other cases such as *Maryland v. Wilson* and *Wyoming v. Houghton* also expanded rather than reduced police power.

Legislation on bias based policing seems to be the answer for those organizations that are monitoring the police actions. The ACLU, NOBLE, and NAACP all are keeping a watchful eye on this matter. In 2001 bias based policing and/or racial profiling received a lot of attention in the 107th Congress. In the first session, several bills dealing with bias based policing were drafted. One of the bills was H.R. Bill 1907, the Racial Profiling Prohibition Act of 2001. Like the other bills, the tragic events of September 11, 2001 caused these types of bills to take a back seat to the war on terror.

Many states are moving towards introducing legislation that directly addresses the issue of bias based policing. The three states used in this study, New Jersey, Arkansas, and Texas, represent the three stages that the rest of the states are in. Some states are like Arkansas and have few or no law enforcement agencies with a policy regarding bias based policing. These states find themselves desperate for some guidance on the matter before a serious lawsuit strikes their agency. States that are like New Jersey, are those that have experienced lawsuits regarding profiling and are moving very slowly and meticulously towards a policy that would appease those that are monitoring them.

Like New Jersey, these states have pending legislation and this legislation is expected to pass in the very near future. For those states that are like Texas, their legislation has been in place for about a year and they are concentrating on ensuring that all the law enforcement agencies in the state are dealing seriously with bias based policing. These states also are moving on to other areas to help deal with this issue. They are putting measures in place that will allow them to collect and store data, properly train their officers, recruit officers who are not prone to bias behavior, and restore or build the relationship they experience with the public. These things are very important to a law enforcement agencies success in dealing with such sensitive issues.

The results of this paper illustrate the importance of intergovernmental relations as it deals with effecting policy and procedure. Federal government agencies wish to reduce the number of civil violation lawsuits and at the same time deal with an issue the public believes is a problem. The use of House of Representatives Bill 1907 (H.R. 1907) and others like it, allows the government to suggest corrective behavior in states without actually mandating them to take such measures.

So, with all the media attention, litigation, and legislation that have been given to bias based policing, the one thing that tends to have made the most impact on the way law enforcement agencies deal with bias based policing is legislation. Certainly, legislation alone will not remedy incidents of bias based policing by itself. I would recommend that legislation be a stage in this process of

reducing and hopefully ending bias based policing. The stages that I feel this be addressed are as follows:

- **First Stage** – This is where I feel legislation needs to be handed down from the federal government. I say this because it allows those states that have not started to address the issues of bias based policing to have a baseline or starting point in implementing their policies to combat this problem. For those agencies that have already took many of the proposed measures found in the End racial Profiling Act of 2001, they will obviously be able move more quickly in addressing this issue.
- **Second Stage** – This stage is were we get department heads to start implementing various types of community programs that help bridge the gap between their agencies and the community agencies, much like what the New Jersey State Police and other agencies are doing. This “buy-in” approach will eventually trickle down to the street level bureaucrats or the patrol officers. As Sergeant Watson of the Dallas Police Department mentioned, officers may feel that they may be labeled as a racist or a racial profiler if data is collected on whom they stop, search, cite, and arrest. To rectify this, the department heads need to explain the rational behind such measures very clearly and allow feedback from their officers. After this stage, department head need to equip their officers and their department with the knowledge and tools it needs.

- **Third Stage** – This stage comes in the form of recruiting and training. Law enforcement agencies should follow Metro Dade County Florida Police Department in trying to obtain a diversity mix that represents the make-up of their jurisdiction. I believe this will help curtail the perception of bias based policing that some citizens currently have. Applicants should be carefully screened to ensure as much as possible to identify those that may be prone to such discriminatory practices. Also in this stage is the training of current officers. The training they should receive is one that gives them an education on the cultures of all citizens, especially the various ethnic backgrounds that are in their jurisdiction.

As you can see many different things needs to occur before we can reduce or end bias based policing, but I feel it is possible to do in a staged, step or timed approach, such as the one I mentioned. States or local law enforcement agencies do not want to lose millions of federal funds by simply not putting measures in place to ensure the public that they are not being bias in their enforcement of laws. As soon as the 108th Congress is in place, I'm sure that bills such as H.R. 1907 will be revisited and many of the states will be ready to show they are in compliance.

Incidents of bias based policing attacks the racial, religious and ethic heritage of our country, important elements of our history, and our future. Closely linked to our heritage are our individual values, beliefs, and identities. Incidents of

bias based policing undermine these foundations of freedom whether perceived or a reality.

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Appendix A

Questionnaire

1. Have the current events related to bias based policing led directly to any of the following activities in your department? Check all that apply.

- Formal internal discussions of bias based policing.
- Modifications to academy and/or in-service training.
- Modifications to existing policies.
- Development of new policies.
- Enhanced outreach to the community on issues of race.
- Introduction of legislation.
- Data collection on race of citizens stopped.
- Other:

2. Does your department have a written policy that specifically addresses bias based policing upon race?

- Yes. May I have a copy of it?
- No.

3. Does your department have a written policy that specifies when race can be used as one factor among several to make policing decisions (e.g., such as decisions to stop, question, search)?

- Yes. May I have a copy of it? (If different from the one previously identified).
- No.

4. What resources did you need or would you need for data collection/analysis?

5. Do you know of any academy or in-service training curricula that are particularly effective in addressing the issues of bias based policing in law enforcement?

