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RACIAL PROFILING AND WISCONSIN'S MANDATORY DATA COLLECTION . . . WHO'S THE VICTIM?

by SAREN STIEGEL

In 1999, Wisconsin Governor Tommy G. Thompson created the Governor's Task Force on Racial Profiling.¹ The Task Force recommended an empirical study to measure the extent of racial bias present in traffic stops, including mandatory data collection at every stop.² Effective January 2011, every time a Wisconsin police officer stops a car, the officer is required to record the age, ZIP code, gender, and ethnicity of the driver.³

Many police officers have taken issue with the new requirements.⁴ Each traffic stop now requires more intrusive questioning and takes longer to record the required data.⁵

In February 2011, the Wisconsin Senate passed SB 15 to repeal mandatory data collection.⁶ Despite the repeal, all agencies are still required to collect and submit the data to the Office of Judicial Assistance until the bill advances through the Assembly and is signed into law by the Governor.⁷

Dr. Alex Weiss, the lead author of the Illinois Traffic Stop Studies at the University of Illinois at Chicago, emphasizes that “it is hard to imagine how an agency could address this issue without the data.”⁸ If SB 15 is signed into law, the Task Force will be unable to adequately assess the extent of racial profiling by Wisconsin law enforcement.

Many states have passed laws prohibiting racial profiling or requiring law enforcement agencies to collect racial data on traffic stops.⁹ By logging the data, law enforcement agencies are able to effectively address and appropriately respond to issues of racial profiling from the inside.¹⁰ Dr. Weiss notes that recording data allows for an objective assessment of the effects of race on police officer conduct.¹¹

The authors of the Illinois Traffic Stop Studies provided testimony about the Illinois program to the Wisconsin Traffic Stop Data Collection Advisory Committee.¹² Wisconsin recognized the positive effects brought about by data collection and adopted its mandatory data collection provision for officers in January 2011.¹³

THE USE AND RISK OF PROFILING

A shocking fifty-two percent of black men said they have experienced racial profiling by law enforcement firsthand.¹⁴

While the term “racial profiling” is of fairly recent origin, the practice is not.¹⁵ In 1974, the Drug Enforcement Administration claimed that officers were seeing a pattern in the characteristics of their suspects.¹⁶ In response, they created the drug courier profile.¹⁷

Despite its past use, profiling based on characteristics like race has come under harsh criticism in modern law enforcement. The US Department of Justice has said, “[R]acial profiling sends the dehumanizing message to our citizens that they are judged by the color of their skin.”¹⁸ The practice may lead to embarrassment, humiliation, fear, and even reluctance to call law enforcement officials in the affected populations.¹⁹

Wisconsin lawmakers are currently faced with a question of balancing. Is mandatory data collection a necessary practice to gauge the pervasiveness of racial profiling by American law enforcement? Or is the practice too intrusive for Wisconsin residents and unfair to the police officers who object to the requirement?

DATA COLLECTION IN WISCONSIN

Under the Wisconsin Administrative Code, the chief officer of an agency must require an officer making a traffic stop to record operator data, occupant data, event data, and search data.²⁰

Kenosha County Sheriff David Beth and Racine County Sheriff Christopher Schmalting argued that whether the information is handwritten or typed, the time commitment in filling out the forms was excessive.²¹ Consequently, Wisconsin police officers have ignored the order.²² After hearing the response of officers, Sen. Mary Lazich (R-New Berlin) and Sen. Van H. Wanggaard (R-Racine) pursued a bill to eliminate the requirement.²³

In addition to the hassle, officers also feel that the mandatory data collection procedures make them appear biased. A 2001 Time article asks, “[W]hat happens when cops believe they too are victims, when they become convinced they can’t do their jobs without being called racists. . . [an offense] that could get them fired?”²⁴

Dr. Weiss notes how he countered this type of officer resistance in Illinois.²⁵ “I reminded [officers] of the strong resistance to placing video cameras in police cars. At the time, everyone believed that the camera data would be manipulated and used against the police,” he said.²⁶ “What they found out was that more often than not the cameras were beneficial to the police. This is essentially what has happened with respect to data collection.”²⁷



While the effects have been beneficial in Illinois, the reach of data collection to assess racial profiling in Wisconsin may halt with the passage of SB 15. The future of data collection as a key measure in gauging the prevalence of racial profiling by Wisconsin law enforcement relies on the new governor, Scott Walker. Without the data, one is left to wonder what the Task Force will do next to address racial profiling in traffic stops.

NOTES

- 1 Governor's Task Force on Racial Profiling: Executive Summary, 2000, available at <http://oja.state.wi.us/docview.asp?docid=15464&locid=97>.
- 2 Bryan Polcyn, *Wisconsin Racial Profiling Laws to Take Effect in 2010*, FOX6NEWS, May 17, 2010, available at <http://www.fox6now.com/news/witi-100517-profiling,0,5782182,print.story>.
- 3 *Id.*; Carrie Antifinger, *New Racial Profiling Law Ignored by Some Wisconsin Sheriff's Departments*, ASSOCIATED PRESS, Jan. 17, 2011 available at <http://www2.journalnow.com/content/2010/aug/31/critics-want-end-to-death-penalty/>.
- 4 Antifinger, *supra* note 3.
- 5 *Id.*
- 6 *Wisconsin Senate Passes Repeal of Racial Profiling Law*, NBC15.COM, Feb. 23, 2011, available at http://www.nbc15.com/state/headlines/Wisconsin_Senate_Passes_Repeal_Of_Racial_Profiling_Law_116743979.html.
- 7 WISCONSIN OFFICE OF JUSTICE ASSISTANCE, TRAFFIC STOP DATA COLLECTION UPDATE, Mar. 18, 2011, available at <http://oja.state.wi.us/section.asp?linkid=1643&locid=97>.

8 Email Interview with Dr. Alexander Weiss, Lead Author of the Illinois Traffic Stop Studies at the Center for Law and Justice, University of Illinois at Chicago (Mar. 22, 2011).

9 Floyd Weatherspoon, *Ending Racial Profiling of African-Americans in the Selective Enforcement of Laws: In Search of Viable Remedies*, 65 U. PITT. L. REV. 721, 725 (2003); Sunlen Miller, *Arizona's Gov. Brewer Signs Controversial Immigration Bill*, ABCNEWS.COM, Apr. 23, 2010, available at <http://abcnews.go.com/WN/obama-arizona-immigration-bill-misguided>.

10 Weiss, *supra* note 8.

11 *Id.*

12 Alexander Weiss & Dennis P. Rosenbaum, Illinois Traffic Stop Studies at the Center for Law and Justice, University of Ill. at Chi., available at <http://www.dot.state.il.us/travelstats/ITSS%202009%20Annual%20Report.pdf> (last visited Mar. 21, 2011).

13 Clearinghouse Rule 10-010: Proposed Order of the State of Wisconsin Office of Justice Assistance Creating Rules (Public Hearing Rule Draft) (quoted in Weiss & Rosenbaum, *supra* note 11, at 2).

14 John Cloud, *What's Race Got to Do With It?*, TIME, 2001, available at <http://www.time.com/time/covers/1101010730/>.

15 Sean P. Trende, *Why Modest Proposal Offer the Best Solution for Combating Racial Profiling*, 50 DUKE L. J. 331, 331 (2000).

16 *Id.* at 332; Reginald Stuart, *Drug Squad Tell of Success in Using Profile*, N.Y. TIMES, Mar. 28, 1983.

17 *Id.*

18 U.S. DEP'T OF JUSTICE, FACT SHEET: RACIAL PROFILING, June 17, 2003, available at http://www.justice.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf.

19 *Id.*

20 *Wis. Admin. Code OJA 1.05*, 2009 WI REG TEXT 197250 (2011).

21 Antifinger, *supra* note 3; *Wisconsin lawmakers want to repeal racial profiling law*, ASSOCIATED PRESS, Jan. 21, 2011 available at <http://lacrossetribune.com/news/local/state-and-regional.html>.

22 Antifinger, *supra* note 3.

23 *Id.*

24 Cloud, *supra* note 14.

25 Weiss, *supra* note 8.

26 *Id.*

27 *Id.*