



THESIS

2  
2000

MICHIGAN STATE UNIVERSITY LIBRARIES



3 1293 02048 3982

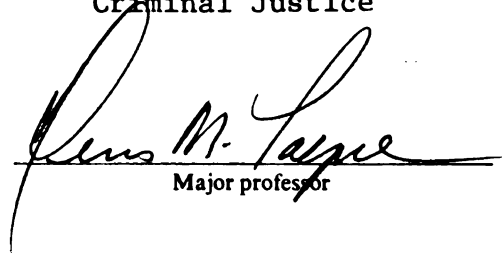
This is to certify that the  
dissertation entitled  
A CASE STUDY OF DIFFERENTIAL  
TRAFFIC ENFORCEMENT  
IN THE  
FLINT POLICE DEPARTMENT

presented by

Jude Thaddeus Rariden

has been accepted towards fulfillment  
of the requirements for

Doctorate in degree in College of Social  
Philosophy Science with a  
Concentration in  
Criminal Justice

  
Major professor

Date April 15, 2000

MSU is an Affirmative Action/Equal Opportunity Institution

O-12771

LIBRARY  
Michigan State  
University

PLACE IN RETURN BOX to remove this checkout from your record.  
 TO AVOID FINES return on or before date due.  
 MAY BE RECALLED with earlier due date if requested.

DATE DUE	DATE DUE	DATE DUE
AUG 19 2001 10 81 0 001 7		
MAR 03 2002 1 1 0 3		
SEP 25 2002		
NOV 11 2002		
12 05 02 MAR 17 2003		

AC

I

in



**A CASE STUDY OF DIFFERENTIAL  
TRAFFIC ENFORCEMENT  
IN THE  
FLINT POLICE DEPARTMENT**

**by**

**Jude Thaddeus Rariden**

**A DISSERTATION**

**Submitted to  
Michigan State University  
in partial fulfillment of the requirements  
for the degree of**

**DOCTOR OF PHILOSOPHY**

**College of Social Science  
School of Criminal Justice**

**2000**

A CAS

T

FLI

The primary purpose  
in the Flint City Police I  
enforcement. This was  
by the acknowledged fa  
principles of law enforc  
enforcement.

This study attempte  
and relied heavily on c  
of police officers was c  
enforcement" officer a

Closely linked to th  
concept was explored  
based differential traff  
viewpoints. The lega  
critical portion examin  
equilibrium.

Finally, a quantitat  
was undertaken. Spe

## **ABSTRACT**

### **A CASE STUDY OF DIFFERENTIAL TRAFFIC ENFORCEMENT IN THE FLINT POLICE DEPARTMENT**

**by**

**Jude Thaddeus Rariden**

The primary purpose of this study was to identify whether or not officers in the Flint City Police Department engaged in race based differential traffic enforcement. This was examined in light of traditional principles expounded by the acknowledged father of modern policing, Sir Robert Peel. Peel's ten principles of law enforcement are central to the issue of differential traffic enforcement.

This study attempted to examine this issue from a qualitative view point and relied heavily on classical criminal justice concepts. In this light the role of police officers was examined vis a vie the role of the police as "law enforcement" officer and "peace" officer.

Closely linked to these two paradigms is the notion of discretion. This concept was explored as to the impact that it has had on the notion of race based differential traffic enforcement from both the legal and ethical viewpoints. The legal exploration examined several court decisions while the ethical portion examined three theories: utilitarianism, Kantian and, reflective equilibrium.

Finally, a quantitative review of the Flint City's Patrol Division for 1997 was undertaken. Specific items examined included: 1) number of traffic

steps, 2) race and gender  
were issued and, 5) when  
each member of the unit  
of these data sets were the  
respect to differential traffic  
police practices. The analysis  
in differential traffic enforcement  
as a factor in differential

stops, 2) race and gender of offender, 3) race of officer) 4) whether tickets were issued and, 5) whether an arrest was made. In addition to this review, each member of the unit was given an opportunity to answer a survey. Both of these data sets were then analyzed to determine if officers motives with respect to differential traffic enforcement were based on racial attitudes or police practices. The analysis revealed that race itself was a primary factor in differential traffic enforcement, however subjective individual racism was not a factor in differential traffic enforcement.

**Copyright by  
Jude Thaddeus Rariden  
2000**

To m  
wife  
suppor

## DEDICATION

**To my mother Christine (Rariden) Darby, my  
wife Elizabeth and son Logan whose love,  
support and encouragement made this possible.**



There were a great many  
without whose help this  
Trevor Hampton, Captain  
all of the officers of the  
study.

I wish to especially thank  
his support and encouragement  
extended to Albert Cafarella  
also like to thank the other  
David Carter for their time  
Lastly, I would like to thank  
provided me with valuable

## ACKNOWLEDGMENTS

**T**here were a great many people who assisted me with this project and **without** whose help this would not have been completed. These include Chief **Trevor** Hampton, Captain Bradford Barksdale, Lieutenant Jody Matherly and **all of** the officers of the Flint City Police Department who participated in the **study**.

**I** wish to especially thank Dennis Payne, my advisor and chairperson, for his **support** and encouragement and critical review of this work. I am **indebted** to Albert Cafagna for his guidance and valued comments. I would **also** like to thank the other two committee members, Chris Vanderpool and **David** Carter for their time and effort.

**L**astly, I would like to give a special thanks to Dr. Mary Tierney who **provided** me with valued help and assistance on this project.

List of Tables-----

## CHAPTER

### I INTRODUCTION

Overview of Research

Primary Concerns

Statement of Problem

Racism-----

Racial Targeting--

Purpose of the Study

Practical and Theoretical

Attitudes-----

Legal Concerns-----

Ethical Concerns-----

Political/Social Context

Police Function-----

Discretion-----

Learned Helplessness

Just World Theory

Summary of Concepts

Hypotheses-----

Summary-----

### II REVIEW OF RESEARCH

Introduction-----

## TABLE OF CONTENTS

	Page
List of Tables-----	x
<b>CHAPTER</b>	
<b>I INTRODUCTION</b>	
Overview of Research Problem-----	1
Primary Concerns of Research-----	1
Statement of Problem-----	3
Racism-----	4
Racial Targeting-----	7
Purpose of the Study-----	9
Practical and Theoretical Concerns -----	9
Attitudes-----	9
Legal Concerns-----	11
Ethical Concerns-----	11
Political/Social Concerns-----	14
Police Function-----	14
Discretion-----	16
Learned Helplessness-----	18
Just World Theory-----	20
Summary of Concerns-----	21
Hypotheses-----	21
Summary-----	23
<b>II REVIEW OF RELATED LITERATURE</b>	
Introduction -----	24

Police-----  
Police Role: "Law  
Discretion-----  
Pretext Traffic Sto  
Learned Helplessn  
Summary-----

### III REVIEW OF SEL

Ethics-----  
Utilitarianism-----  
Kantian Ethics-----  
Reflective Equilib  
Summary-----

### IV FLINT POLICE D

Flint Police Depart  
Rationale for Gene  
Racial/Gender Ma  
Flint City Demogr  
Summary-----

### V METHODOLOGY

Preliminary Invest  
Police Officers' D  
Reasons for Traffi  
Traffic Citations--  
Citations Issued--  
Shift/Section/Name  
Race/Gender/Age  
Daily Activity Rep  
Instrumentation--  
Survey Design--  
Population--  
Sample Design--  
Sampling Frame--  
Rationale for Sam  
Sampling Error--

Police-----	24
Police Role: “Law Officer” versus “Peace Officer”-----	25
Discretion-----	36
Pretext Traffic Stops-----	50
Learned Helplessness and Just World Theory-----	59
Summary -----	62

### **III REVIEW OF SELECTED ETHICAL PARADIGMS**

Ethics-----	65
Utilitarianism-----	70
Kantian Ethics-----	83
Reflective Equilibrium-----	95
Summary-----	109

### **IV FLINT POLICE DEPARTMENT AND AREA DEMOGRAPHICS**

Flint Police Department-----	116
Rationale for General Patrol-----	118
Racial/Gender Make-up of Patrol-----	119
Flint City Demographic Information-----	120
Summary -----	125

### **V METHODOLOGY**

Preliminary Investigation-----	128
Police Officers’ Daily Activity Reports-----	130
Reasons for Traffic Stops-----	133
Traffic Citations-----	137
Citations Issued-----	139
Shift/Section/Name/Partner-----	140
Race/Gender/Age-----	141
Daily Activity Reports as Related To Questionnaire-----	142
Instrumentation-----	143
Survey Design-----	145
Population-----	146
Sample Design-----	147
Sampling Frame-----	148
Rationale for Sampling-----	148
Sampling Error-----	149

Sample Size-----  
Confidentiality and  
Analysis of Second  
Analysis of Question  
Demographic Vari  
Closed Ended Que  
Likert Scale Quest  
Open Ended Quest  
Validity-----  
Statistical Analysis  
Summary of Major

## VI ANALYSIS OF DATA

Introduction-----  
Daily Activity Rep  
Traffic Contacts--  
Traffic Tickets--  
Non-Warrant Arre  
Warrant Arrests--  
Part Two: Survey  
Attitudinal Variab  
Organizational Va  
Discussion of Hyp  
Summary-----

## VII CONCLUSIONS

Introduction-----  
Conclusions and R  
Bibliography-----

Sample Size-----	150
Confidentiality and Anonymity-----	150
Analysis of Secondary Data-----	151
Analysis of Questionnaire-----	151
Demographic Variables-----	152
Closed Ended Questions with Ordered Choices-----	152
Likert Scale Questions-----	152
Open Ended Questions-----	153
Validity-----	153
Statistical Analysis-----	154
Summary of Major Research Steps-----	155

## **VI ANALYSIS OF DATA**

Introduction-----	156
Daily Activity Report-----	157
Traffic Contacts-----	157
Traffic Tickets-----	163
Non-Warrant Arrests-----	169
Warrant Arrests-----	175
Part Two: Survey Responses-----	182
Attitudinal Variables - Race-----	182
Organizational Variables -----	191
Discussion of Hypotheses-----	205
Summary-----	207

## **VII CONCLUSIONS AND RECOMMENDATIONS**

Introduction-----	209
Conclusions and Recommendations-----	210
Bibliography-----	215



## APPENDICES

A. Transmittal Letter

B. Transmittal Letter

C. Research Instrum

<b>APPENDICES</b>	<b>Page</b>
<b>A.</b> Transmittal Letter to Flint Police Chief -----	219
<b>B.</b> Transmittal Letter to Respondents-----	221
<b>C.</b> Research Instrument-----	223

Table

4.1 Race/Gender  
4.2 1990 Race b  
4.3 Population by  
4.4 Percent of Po  
4.5 Population by  
4.6 Age-----  
5.1 Sample Size

6.1 Traffic Cont  
6.2 Traffic Cont  
6.3 Mean Numb  
6.4 Levenes Tes  
6.5 T-Test for E  
6.6 T-Test Conf  
6.7 Number of T  
6.8 Levenes Tes

## LIST OF TABLES

<u>Table</u>	<u>Page</u>
4.1 Race/Gender Flint Police Department - Patrol -----	120
4.2 1990 Race by Percentage-----	121
4.3 Population by Race-----	121
4.4 Percent of Population Mobil-----	123
4.5 Population by Gender-----	124
4.6 Age-----	125
5.1 Sample Size - Research Instrument-----	150

### Statistical Tests

6.1 Traffic Contacts by Race-----	157
6.2 Traffic Contacts by Race and Gender-----	158
6.3 Mean Number of Stops based on Officers' Race-----	158
6.4 Levenes Test for Equality of Variance - Race of Officer-----	161
6.5 T-Test for Equality of Means - Race of Officer-----	162
6.6 T-Test Confidence Interval - Race of Officer-----	163
6.7 Number of Tickets Issued by Race and Gender-----	164
6.8 Levenes Test for Equality of Variance - Race of Officer-----	166

Table

6.9	T-Test for
6.10	T-Test Co
6.11	Non-War
6.12	Levenes T
6.13	T-Test for
6.14	T-Test Co
6.15	Arrest Ov
6.16	Warrant
6.17	Levenes
6.18	T-Test fo
6.19	T-Test C
6.20	Warrant
6.21	Attitudin
6.22	Levenes
6.23	T-Test f
6.24	T-Test C
6.25	Organiza
6.26	Levenes
6.27	T-Test f
6.28	T-Test C

<u>Table</u>	<u>Page</u>
<b>6.9</b>	T-Test for Equality of Means - Race of Officer-----167
<b>6.10</b>	T-Test Confidence Interval - Race of Officer----- 168
<b>6.11</b>	Non-Warrant Arrests by Race and Gender----- 169
<b>6.12</b>	Levenes Test for Equality of Variance - Race of Officer-----171
<b>6.13</b>	T-Test for Equality of Means - Race of Officer-----172
<b>6.14</b>	T-Test Confidence Interval - Race of Officer----- 173
<b>6.15</b>	Arrest Other than Warrant - Race and Gender-----174
<b>6.16</b>	Warrant Arrest by Race and Gender----- 176
<b>6.17</b>	Levenes Test for Equality of Variance - Race of Officer-----177
<b>6.18</b>	T-Test for Equality of Means - Race of Officer -----178
<b>6.19</b>	T-Test Confidence Interval - Race of Officer ----- 179
<b>6.20</b>	Warrant Arrest by Race and Gender-----181
<b>6.21</b>	Attitudinal Variables - Race -----187
<b>6.22</b>	Levenes Test for Equality of Variance - Race of Officer-----188
<b>6.23</b>	T-Test for Equality of Means - Race of Officer-----189
<b>6.24</b>	T-Test Confidence Interval - Race of Officer-----190
<b>6.25</b>	Organizational Variables - Race -----199
<b>6.26</b>	Levenes Test for Equality of Variance - Race of Officer----- 200
<b>6.27</b>	T-Test for Equality of Means - Race of Officer----- 201
<b>6.28</b>	T-Test Confidence Interval - Race of Officer----- 203

## Overview of the Research

This research project  
specific practices that n  
officers. It is mainly fo  
disproportionately brin  
primarily because of th  
Specifically, nation wi  
population, while they  
incarcerated (Franklin.

Given this large standing in the view of the black person, police officers with a great deal of studies (Bayley and Manning, 1970; Hahn, 1971) that corrupt, unfriendly and devastating on police relations, each looking to blame the other.

### Primary Concerns of

Police department  
under the premise that

## **Chapter 1**

### **Introduction**

#### **Overview of the Research Problem**

This research project is designed to facilitate police agencies in identifying specific practices that may cause conflict between minorities and police officers. It is mainly focused on the notion that police officers frequently and disproportionately bring the powers of the state to bear upon minorities primarily because of their over representation in the criminal justice system. Specifically, nation wide blacks account for roughly 12 percent of the population, while they account for nearly 50 percent of all those that are incarcerated (Franklin: 1991).

Given this large statistical disparity police officers often, understandably, view the black person with suspicion. For their part, blacks also view police officers with a great deal of suspicion and animus. There have been many studies (Bayley and Mendelsohn, 1969; Campbell and Schuman, 1968; Jacob, 1970; Hahn, 1971) that have shown that blacks view police officers as corrupt, unfriendly and in essence as the enemy. The impact this has is devastating on police/minority relations. Neither group fully trusts the other, each looking to blame the other for the large rift and the constant upheaval in relations.

#### **Primary Concerns for Research**

Police departments often have a structured environment. They operate under the premise that officers' behavior will be consistent with departmental



policies as well as rule  
evaluation programs, w  
and require officers to  
these tasks usually incl  
other things, however  
fails to perform at the  
departmental sanctions  
reprimands, to denying  
service from the agency

In other instances  
do so because they feel  
impress management.  
defined by their police

As a consequence,  
the wisdom of evaluat  
systems that focus on  
consequence of being  
disproportionate share

The next related is  
a given person is most  
warrant out for his/her  
training and learned be  
new recruits are requir  
programs last for only  
During this time, traini

policies as well as rules of law (Lundman, 1983). Some agencies have formal evaluation programs, while others have informal programs. They all expect and require officers to perform “x” amount of activities. For patrol officers these tasks usually include conducting traffic stops and making arrests among other things, however traffic stops are the focus of this research. If an officer fails to perform at the expected level, he or she is often subject to departmental sanctions. These sanctions may range from: written reprimands, to denying a promotion, up to the most severe, termination of service from the agency.

In other instances’ officers are not “pressured” into stopping citizens, but do so because they feel that this is the most effective way to quantitatively impress management. These officers are statistically driven to excel as defined by their police departments.

As a consequence, the primary issue that these officers bring to the table is the wisdom of evaluation programs. Namely, whether or not evaluation systems that focus on an individual officer’s statistics has the unintended consequence of being unfair to minorities and others that seemingly draw a disproportionate share of attention from the police.

The next related issue deals with how officers acquire the knowledge that a given person is most likely to have either committed a crime or have a warrant out for his/her arrest. Presumably this knowledge would come from training and learned behavior. Most departments have programs in which new recruits are required to ride along with training officers. Usually these programs last for only a short period of time, normally fourteen weeks. During this time, training officers are suppose to indoctrinate new recruits not

only with department p  
informally, into the mo  
taught about ways to e

When the new recru  
patrol on their own, on  
acceptable level which  
quantitatively assessed

### Statement of Problem

Policing in a free so  
make decisions that o  
with upholding society  
expected to take a pro  
frequently this means  
not wish to comply wi  
point that law enforce  
involuntary contact is  
criminal activity, this  
agree that law breaker  
how the police determ  
attention.

The problem is not  
agree that rapists, tho  
against people ought t  
police officers arrestin

only with department policies and safety procedures but also, albeit informally, into the mores of the police community. The new recruits are then taught about ways to enhance their job performance.

When the new recruits reach a level of proficiency they are then free to patrol on their own, once on their own, they are expected to perform at an acceptable level which once off of formal probation is usually only quantitatively assessed.

### **Statement of Problem**

Policing in a free society has always been a difficult task. Police have to make decisions that often effect citizens free movement. Officers are charged with upholding society's legal mandates, moreover, police agencies are expected to take a pro-active stance with respect to the suppression of crime. Frequently this means that officers come into contact with persons who do not wish to comply within the rules that society has promulgated. It is at this point that law enforcement officials must determine if a police/citizen involuntary contact is going to be initiated. Normally, with respect to serious criminal activity, this is not a terribly difficult issue to deal with, since most agree that law breakers ought to be confronted. However, what is at issue is how the police determine which people will become the focus of their attention.

The problem is not whether the police should arrest, since most would agree that rapists, those who commit murder, robbery and other crimes against people ought to be punished, in these cases one would not object to Police officers arresting the offenders. The question is, absent knowledge of

any specific crime how  
have interaction with?  
arguably, justifiably so  
which come into quest

First, there is the is  
citizens, these are invo  
is the object of this con  
officer's choice, albeit  
both have violated the  
by a young African Am  
American, the officer  
process that is of inter

Next, there is the is  
"suspicious" circumst  
the area which they w  
old, rather worn car w  
minor traffic violation  
presents the police off  
vehicle and conduct a  
simply ignore the viol

### Racism

This leads to the ge  
when a police officer  
characteristics. With

any specific crime how do police officers determine whom they are going to have interaction with? These decisions are often subject to scrutiny and arguably, justifiably so. There are several types or classes of decisions which come into question.

First, there is the issue of police officers initiating traffic contacts with citizens, these are involuntary contacts with police officers. The person that is the object of this contact has no choice in the matter, it is the police officer's choice, albeit legal. If an officer is presented with two vehicles that both have violated the same law contemporaneously, one vehicle being driven by a young African American and the other driven by a young white American, the officer must decide which one he/she is going to stop. It is this process that is of interest.

Next, there is the issue of law enforcement officers who investigate a "suspicious" circumstance. This may include seeing a person that does not fit the area which they would normally be associated. As an example seeing an old, rather worn car with several occupants of color, that has committed a minor traffic violation, being driven in an area that is known for its affluence, presents the police officer with the dilemma of whether or not to stop the vehicle and conduct an investigation. The other option is for the officer to simply ignore the violation.

## **Racism**

This leads to the general issue of racial targeting. Racial targeting occurs when a police officer conducts a legal traffic stop based upon the offender's characteristics. With respect to traffic contacts, this is known as a pretext

traffic stop. A pretext traffic violation with the In this context, a pretext police to stop vehicles the ancillary motive. V this could lead to the c the case that the police police practices. In or is incumbent that racism context of what it mea police practices must b Wilson (1980) defini domination that reinfo assumptions of the bla What this means is tha are more crime prone segment of the popula different from the othe individual sense, in ot also structural or obje institutions policies ar themselves be racist t recipient, it matters li result is still different The general proble

traffic stop. A pretext traffic stop is when a person is stopped for a minor traffic violation with the pretext of investigating other more serious crimes. In this context, a pretext traffic stop is nothing more than a tool used by the police to stop vehicles in order to conduct investigations with the stop being the ancillary motive. When these stops are based upon the race of the driver, this could lead to the charge that the officer is racist. However, it could be the case that the police officer is simply acting in accordance with sound police practices. In order to determine this two things must be done. First, it is incumbent that racism be defined and further it must then be put it into the context of what it means to be a “racist” police officer. Secondly “sound” police practices must be identified with respect to police/citizen encounters.

Wilson (1980) defines racism as: “...norms or ideologies of racial domination that reinforce or regulate racial inequality . . . based on the assumptions of the black man’s biological and cultural inferiority” (p.9). What this means is that an officer acting upon the belief ,in this case blacks are more crime prone than whites, that he/she has universalized about a segment of the population, namely black people, treats this group in a manner different from the other groups. In this definition racism is described in the individual sense, in other words, it is subjective racism. However, there is also structural or objective racism. In this case racism is endemic within the institutions policies and procedures. It is not necessary that the officers themselves be racist to carry out racist policies. From the standpoint of the recipient, it matters little that the officers themselves are not racist as the end result is still differential treatment.

The general problem with racial targeting centers on traffic stops that are



racially motivated, but  
racist officer. On the  
behavior is merely vig  
a racially motivated tra  
A racially motivate  
police officer decides  
physical characteristic  
that the officer is given  
violations of the same  
person subsequently, t  
a text book example of  
police/citizen contact  
black.

Police may be con  
what if any moral or e  
be viewed as the diff  
as a thin moral theory  
etc." whereas a thick  
lying, prevent cheating  
moral ideal. Ethical i  
possessing the legal a  
concerned with issues  
stops.

In this way, a poli  
require action based u

racially motivated, but, legally permissible; this seemingly is indicative of a racist officer. On the other hand it simply may be the case that the officer's behavior is merely vigilant. Here it is necessary to identify what is meant by a racially motivated traffic stop.

A racially motivated traffic stop may be identified as one in which the police officer decides to stop a person or vehicle primarily based upon the physical characteristics of the person. Additionally, it is necessary to assume that the officer is given a choice on whom to stop, i.e., two contemporaneous violations of the same nature, one by a white person and the one by a black person subsequently, the black person is stopped. Prima facie, this seems like a text book example of what is meant by a racist officer, in that the police/citizen contact is primarily brought about by the fact that the citizen is black.

Police may be confronted with what legal choices of action may be and what if any moral or ethical dimensions exists with those actions. This may be viewed as the differences between a thin and thick moral theory. That is, as a thin moral theory one might confront "don't harm, don't lie, don't cheat etc." whereas a thick moral theory would recommend "prevent harm, prevent lying, prevent cheating." The difference s are between a moral rule and a moral ideal. Ethical issues are not so concerned with police officers possessing the legal authority to act in a certain manner, rather they are concerned with issues of justice and fairness in conducting these types of stops.

In this way, a police officer may be ethical in carrying out duties that require action based upon a selection of traffic targets that are racially

directed, but, could not  
upon a racist motivation  
targets, much like the  
complete a task. The  
towards any person or  
based upon the notion  
treatment is predicated  
relationship.

Lastly, racial targeting  
First, there is the stigma  
attention. This is related  
this context differentiated  
actions on the person  
action he/she chooses  
However if one chooses  
would be discriminatory  
cases be treated the same  
not be racist to use race  
race was the only or primary  
officers primarily based  
the theoretical American

### Racial Targeting

In the police context  
the use of race in the

directed, but, could never be ethical if the selection of targets were based upon a racist motivation. In the former circumstance an officers selection of targets, much like the carpenters use of a hammer, is merely a tool to complete a task. The officer would not harbor any personnel animus directed towards any person or group. However in the later, the selection of targets is based upon the notion that one group is superior to the other and that treatment is predicated upon the notion of the dominant/subordinate relationship.

Lastly, racial targeting impacts the minority community in several ways. First, there is the stigma of being wrongly selected as an object of police attention. This is related to what can be described as differential justice. In this context differential justice is when a police officer bases his/her legal actions on the person rather than the violation. If in an officer's choice of action he/she chooses relevant traits it is not wrong or racist in itself. However if one chooses one's enforcement action on irrelevant traits then it would be discriminatory. This Aristotelian viewpoint would require that like cases be treated the same and unlike cases treated differently. Thus it would not be racist to use race as a factor in stopping motorists. It would be racist if race was the only or primary factor in the decision making process. If officers primarily based these decisions on race, this would be antithetical to the theoretical American concept of justice.

## **Racial Targeting**

In the police context there are two forms of racial targeting. First, there is the use of race in the selection of traffic contacts. Second, there is the use of

race in the apprehension  
predicated on the notion  
anyone that has violated  
characteristics of the  
officers use race as a  
operating motor vehicle  
vehicles are speeding  
young black male, the  
racial targeting dictated  
stopped, merely because  
being discovered. At  
people of a certain race  
scrutiny.

In the latter instance  
in a motor vehicle. He  
justify a traffic encounter  
already committed crime  
were alerted to the fact  
sport car. The vigil  
similar vehicles side by  
the other one driven by  
white male is stopped  
that one vehicle was  
practice seems commensurate  
used because society

race in the apprehension of criminals in the non-traffic context. The former is predicated on the notion that police officers have the discretion to stop anyone that has violated the law. Officers base their actions on the characteristics of the driver rather than the violation of law. In this case officers use race as a means to detect unknown criminals whom happen to be operating motor vehicles. As an example, consider the case in which two vehicles are speeding at the same rate, one of the vehicles is occupied by a young black male, the other by a middle aged white male. The theory behind racial targeting dictates that the vehicle driven by the black male ought to be stopped, merely because of the greater likelihood of hidden criminal activity being discovered. Among the problems that this creates is that this puts people of a certain racial type under the likelihood of increased police scrutiny.

In the latter instance, officers use race to detect known criminals that are in a motor vehicle. Here officers are not looking for violations of the law to justify a traffic encounter, they are merely looking for people who have already committed criminal acts. As an example, suppose that the police were alerted to the fact that a white male robbed a bank and drove off in a red sport car. The vigilant police officer looking for the vehicle observes two similar vehicles side by side. One of the vehicles driven by a white male and the other one driven by a black male. In this case, the vehicle driven by the white male is stopped by the police; clearly this is a case of racial targeting in that one vehicle was chosen over the other because of race. This police practice seems commonsensical even though racial targeting was used, it was used because society has a vested interest in apprehending known criminals.

## Practical and Theoretical

There are several concerns which deal with and conversely, the political/social.

## Attitudes

A well-known principle is an equal and opposite context? Simply that whether it is voluntary the citizen in return de translated into an attitude perceptions are a "construct" interpret sensory stimuli world..." (p. 88). those evaluative beliefs toward some of that police officers are toward them will be inappropriate.

There are only two

## **Purpose of Study**

### **Practical and Theoretical Concerns**

There are several motivating factors for this study. There are the practical concerns which deal with the general attitude of the citizens toward the police and conversely, the police attitude toward the citizens. Then there are the theoretical concerns which can be identified as legal, ethical and political/social.

### **Attitudes**

A well-known principle in physics roughly stated is: for each action there is an equal and opposite reaction. So how does this apply in the police context? Simply that for every contact with a citizen that a police officer has, whether it is voluntary or involuntary, the officer is conveying a message and the citizen in return develops a perception of the officer, which in turn is translated into an attitude. In fact, according to Berelson and Steiner (1964), perceptions are a “complex process by which people select, organize and interpret sensory stimulation into a meaningful and coherent picture of the world . . . ” (p. 88). Homant (1989) defines an attitude as “the set of all those evaluative beliefs and other relevant cognition(s) that an individual holds toward some object or situation” (p. 54). Thus, if a person perceives that police officers are racist, then it necessarily follows that his attitude toward them will be negative providing that the receiver views racism as inappropriate.

There are only two ways in which a person can develop an attitude toward



the police. First it can  
citizen has contact with  
socialization process of  
actual encounter with  
stories about them with  
ethnocentrism which  
own particular culture

Behavioral psychology  
combination of both.  
that the major source  
drawn from our memory  
through three discrete  
selective manner in which  
memory; b) retrieval.  
judgment, in which the  
retrieved as applied to  
be applicable to the re

For the citizen the  
upon experiences or s  
enforcement officials.  
officer's race, gender  
social economic statu  
states that these demo  
a wide variety of exp  
of such a characterist

the police. First it can be formed through a personal experience and, the citizen has contact with the police. Secondly it can be developed through the socialization process of the citizen. That is, a citizen may not have had an actual encounter with the police while growing up, but, he may have heard stories about them which shape the attitude. In essence, this is akin to **ethnocentrism** which is nothing more than looking at something through one's own particular cultural biases.

Behavioral psychologists believe that it is very likely it could be a combination of both. Some theorists (Bandura, 1977; Hamilton, 1981) say that the major source of evidence for beliefs comes from relevant instances drawn from our memory. They say that the memory or belief process goes through three discrete but interrelated phases: a) encoding, which refers to the selective manner in which the events are summarized and stored into memory; b) retrieval, when the events are brought back from memory; c) judgment, in which the individual judges the event's worthiness to be retrieved as applied to the decision. To summarize this concept, belief may be applicable to the relevance of past experiences.

For the citizen then, the attitude one has for a police officer is dependant upon experiences or socialization that one has had with respect to law enforcement officials. The attitude then is not necessarily related to the officer's race, gender or age. However, for the officer, race, gender, age and social economic status are partial determinants of attitude. Homant (1989) states that these demographic variables provide a "sociological shorthand for a wide variety of experiences that individuals are more likely to have because of such a characteristic." (p. 56)

In essence then, by  
based on probability.

this a useful procedure  
to the particular thus

The type of relation  
often dictated by even  
look no farther than the  
police officers in the  
believed that the African  
justice system after so  
of a black motorist.

### Legal Concerns

The basic assumption  
prima facie legal. The  
motorist, the officer has  
assertion, much like the  
bounds of legality re  
being suggested is that  
to have acted within  
Officers are presumed  
which person they have

### Ethical Concerns

In order to assess

In essence then, by using demographic data, one can make assumptions based on probability. The major criticism of this is the very thing that makes this a useful procedure, i.e., predicting behavioral patterns from the universal to the particular thus stereotyping.

The type of relationship between the police department and the citizens is often dictated by events in the community. To illustrate this, one needs to look no farther than the riots in Los Angeles that followed the acquittal of the police officers in the Rodney King Beating Trial. In this situation, it was believed that the African-American community lost faith in the police and justice system after several white police officers were acquitted in the beating of a black motorist.

### **Legal Concerns**

The basic assumption is that each traffic stop that an officer engages in is **prima facie** legal. This is not to suggest that every time an officer stops a motorist, the officer has a legal reason to do so. This would be a ridiculous assertion, much like positing that every lawyer and judge act within the bounds of legality reference every decision they make. However, what is being suggested is that for the purpose of this study, the officers are presumed to have acted within the legal limits when they conducted a traffic stop. Officers are presumed to have had a justifiable legal reason when deciding which person they have stopped.

### **Ethical Concerns**

In order to assess the officer's decision to stop an individual based on

group characteristics

Consequential, Non-Consequential

system consists of three

1995). They are: 1) deontological

individual rights. Good

they ought to be maximized

further a goal and consequences

Duties apply to individuals

that one is obligated to

are based upon some

one's promises. When

underlying notion, such

from beating on the

uphold the law.

Rights on the other

that are essentially

against non-interference

down any street in

to interfere with people

requires that others

duties often come in

the two when they

The issue that

is ethically justified

assigned to the lot

group characteristics three different ethical systems will be examined:

Consequential, Non-Consequential and Reflective Equilibrium. Every ethical system consists of three distinct, but, interrelated components (Benjamin, 1995). They are: 1) overall social goals, 2) individual duties and, 3) individual rights. Goals are states of affairs that are good in themselves and they ought to be maximized. We can then say that an action is right if it furthers a goal and conversely, an action is wrong if it restricts the goal.

Duties apply to individuals. They require a rule of principle and are things that one is obligated to do. Basic duties are primary, while derivative duties are based upon something. For instance, a basic duty requires that one keep one's promises. While a derivative duty requires an action based upon an underlying notion, such as a police officer taking action to stop one spouse from beating on the other spouse, simply because the officer was sworn to uphold the law.

Rights on the other hand are entitlements that are possessed by individuals that are essentially claims against others. Put another way. They are claims against non-interference. As an example, person "A" has a right to walk down any street in the city, this implies that the police officer has a duty not to interfere with person "A" and his walk down the street. One person's right requires that others have a duty not to interfere. In society goals, rights and, duties often come into conflict. The problem for police officers is resolving the two when they conflict with each other.

The issue that law enforcement officers must deal with is whether or not it is ethically justifiable to stop a person merely based on characteristics assigned to the lottery of birth. The solution is dependent upon which ethical

paradigm the officer of  
relativism, then it mer  
determination of right  
imperatives, then to t  
justifiable.

The question, und  
system do they believ  
implications are at the  
operate under is relev  
While it is not what i  
system underlying the  
addressed since the i  
justice.

For instance, if it  
fairness and justice,  
detrimental to societ  
by the police, then t  
that more than 87 p  
was reported, were  
implication is that t  
upon the cooperatio  
become hampered i  
Further, if by rea  
treats people justly  
culture, it may be p

paradigm the officer operates under. If one holds to the notion of ethical relativism, then it merely depends upon which society one is in to make that determination of right and wrong. However, if one believes in categorical imperatives, then to treat a person as a means rather than an end is not justifiable.

The question, under which system do officers actually operate and which system do they believe in, is itself beyond the scope of this study, but it's implications are at the heart of the issue. The ethical system that officers operate under is relevant to the evaluation of differential traffic enforcement. While it is not what is being directly measured by the study. The ethical system underlying the practices is one of the central points that must be addressed since the implications are of utmost importance to the notion of justice.

For instance, if it is determined that officers act in ways contrary to fairness and justice, the impact on the community could be significantly detrimental to society. Arguably, if citizens are treated in an unjust manner by the police, then the community as a whole suffers. Studies have shown that more than 87 percent of citizen encounters with police, in which a crime was reported, were citizen initiated (Verdun-Jones, 1983). The obvious implication is that the police and the criminal justice system are dependant upon the cooperation of the citizenry. Without this cooperation the police become hampered in their ability to solve and prevent crimes.

Further, if by reason it can be shown that there is one ethical paradigm that treats people justly and fairly and, if the paradigm is not already part of the culture, it may be possible to inculcate it into the culture.



## Political/Social Con

There are several

action of the police fu

service (Kennedy, 19

issues involving inter

pressures come in ma

complains to the poli

pressure his comman

exert pressure upon

is by conducting tra

the officers themse

considered lazy or

one avoids this lab

level of production

are pressures to m

performance is as

Next, there are

those that are the

consequences to

stopped by the p

one of the crite

Police Function

It hardly go

## **Political/Social Concerns**

There are several concerns in both these areas. First, there is the general notion of the police function which has been described as ranging from social service (Kennedy, 1983) to crime control (Packer, 1968). There are also issues involving internal pressures placed upon officers. These types of pressures come in many forms. For example, suppose that a local politician complains to the police chief about crime in his district, the chief in turn may pressure his command staff to make arrests. The command staff may then exert pressure upon patrol officers to make arrests. One way to make arrests is by conducting traffic stops. A second kind of pressure is self imposed by the officers themselves: peer pressure. Seldom does an officer want to be considered lazy or unproductive by others, arresting people is a way in which one avoids this label. There are also pressures from superiors for a constant level of production, which in this sense means making arrests. Finally, there are pressures to make arrests since in some departments, one's past performance is assessed when promotional opportunities arrive.

Next, there are the effects that police behavior has on citizens, especially those that are the targets of police intrusion. Specifically, there are consequences to individuals whom are wrongly singled out when they are stopped by the police for suspected violations when racial profiling is used as one of the criteria.

## **Police Function**

It hardly goes without saying that a police officer's job is intrusive in

ature. Police officer

daily basis. The intru

locked out of their ho

interceding in crimina

traffic laws. In fact,

officer is the true soc

marriage counselor, a

generally the poor pe

intervene daily at the

to many disadvantag

that the police often

Packer (1968) vi

intriguing work, Pac

with respect to law

people who keep the

role should be to en

offenders those pro

that people be reaso

grosser forms of de

mission is directly c

assert that it is justi

since it would comp

offenders.

The police role a

importance. If the p

nature. Police officers are asked/required to intrude upon citizens' lives on a daily basis. The intrusion comes in many forms, from helping people who are locked out of their houses and cars to acting in a ministerial fashion, to interceding in criminal matters, to preventing criminal acts and, to enforcing traffic laws. In fact, Kennedy (1983) argues persuasively that the police officer is the true social servant agent. Often, he claims, the officer acts as a marriage counselor, a priest, procures shelter for the homeless and is generally the poor persons' psychologist. The general point is that the police intervene daily at the request of citizens, both black and white. Further, that to many disadvantaged, arguably minorities, the police role is more salient in that the police often provide more help to the least advantaged.

Packer (1968) views the police mission somewhat differently. In an intriguing work, Packer describes what he thinks the police role should be with respect to law enforcement: "Ideally, the police should be seen as the people who keep the law of the jungle from taking over. Their predominant role should be to enforce, *by prevention of offenses and detection of offenders* those proscriptions that guarantee the first requisite of social living: that people be reasonably secure in their persons and possessions against the grosser forms of depredations" (p. 28, italics added). This view of the police mission is directly on point with the issue of stops. Seemingly, Packer would assert that it is justifiable for officers to stop offenders based on probability since it would comport with the primary mission, namely, detection of offenders.

The police role and their interpretation of the role then is of central importance. If the police believe that arresting people is the primary duty of a

law enforcement officer  
public service might  
becomes more obvious  
they feel represent the  
officers stop people  
behavior, stopping people  
more than Skinnerian

### Discretion

Related to the w  
discretion. Typically  
with people. The d  
policies and law. W  
are drafted that deli  
arrest. The most no  
violence occurs or  
injury accident. Ev  
allow officers some  
albeit given substan  
Laws on the oth  
are left up to the d  
officer may arrest  
enforcement section  
arrest" appear, usu  
mandating a speci

law enforcement officer, then it is possible that other areas associated with public service might receive a lower level of police attention. Further, it then becomes more obvious that police scrutiny will be focused upon those whom they feel represent their target population, for example, criminals. The more officers stop people and have these notions reinforced, the more likely the behavior, stopping people, will be continued. This is on one level nothing more than Skinnerian behavior.

### **Discretion**

Related to the whole issue of police encounters is the notion of police **discretion**. Typically, officers are given a great deal of latitude in dealing **with** people. The discretion usually is only limited by specific departmental **policies** and law. With respect to departmental policies, it is rare that orders **are** drafted that delineate whether or not an officer can or cannot make an **arrest**. The most notable exceptions involve instances in which domestic **violence** occurs or involving an intoxicated driver at the scene of a serious **injury** accident. Even in these situations, policies are generally drafted to **allow** officers some latitude in deciding whether or not an arrest is made, **albeit** given substantial mitigating circumstances.

Laws on the other hand are usually crafted so that enforcement decisions **are** left up to the discretion of the officers. Frequently clauses like “. . . the **officer** may arrest based upon probable cause” appear throughout **enforcement** sections of laws. Seldom does the phrase “. . . the officer shall **arrest**” appear, usually this phrase is reserved for orders from the court **mandating** a specific police response.

With respect to the  
to stop offenders, fa  
departments mandat  
The application of d  
given such relative t  
are going to stop. T  
yet need quantitative  
the likelihood of an  
also would be able t  
their stops.

Bartol (1983) an  
is influenced by a n  
supervisors, peers.  
public which help  
this discretion in c  
which little discre  
robber or, murder  
some the greatest

Bartol conten  
discretion and p  
results in prosec  
their heavy case  
also risk losing  
In essence, t  
will be subject

With respect to traffic enforcement, laws governing arrests and decisions to stop offenders, fall under the former category. Seldom do any departments mandate or place restrictions on whom their officers can stop. The application of discretion to this situation should be quite obvious in that given such relative free reigns, officers arbitrarily pick and choose whom they are going to stop. The less enthusiastic officers who do not make many stops, yet need quantitative results will seemingly look for the “quality” stop where the likelihood of an arrest is greatest. The officers who are more aggressive also would be able to enhance their quantitative performance by targeting their stops.

Bartol (1983) argues that the use of police discretion in any given context is influenced by a number of factors, these include: training officers, supervisors, peers, judges, prosecutors, politicians and to some degree the public which helps set agendas for elected officials. Officers learn how to use this discretion in contextual situations. That is, there are some situations in which little discretion is afforded. Examples include, dealing with a rapist, robber or, murderer. On the other hand, traffic enforcement affords officers some the greatest amount of discretion.

Bartol contends that officers who deviate from the norm in the use of discretion and pursue minor offenders create upward system pressure that results in prosecutors and judges providing informal sanctions as they find their heavy case loads bogging down the system. In addition, these officers also risk losing support of the public whom they ostensibly serve.

In essence, the contention is that officers who improperly use discretion will be subject to both internal and external sanctions. Internal sanctions



would include a neg  
most extreme circum  
public outcry agains  
criminal prosecution

Such conditions  
stops. Police admin  
officers are often ju  
As a result, officers  
enforcing traffic reg  
this type of discreti  
usually minimal. T  
understand the pol  
police officer, exc  
discretionary pow  
government lead

### **Learned Helple**

Until now the  
reasons and just  
there is another  
by the police. I  
group character  
of this can have  
individual. Spe  
pattern namely

would include a negative evaluation from peers and supervisors and in the most extreme circumstances, dismissal. External sanctions would include public outcry against unfair or unjust practices as viewed by the public; to criminal prosecution for discretionary abuses.

Such conditions lead to the central point, the discretionary nature of traffic stops. Police administrators are seemingly driven by statistics in which officers are often judged by the number of tickets written and arrests made. As a result, officers do not get into much trouble with the administration when enforcing traffic regulations. Prosecutors and judges seldom complain about this type of discretion since the impact on the criminal justice system is usually minimal. The public, seldom happy when they receive a citation, understand the police function in this regard. All this simply means is that police officer, except under egregious circumstances, are able to utilize discretionary powers with little opposition from the community or government leaders.

### **Learned Helplessness**

Until now the focus has been mainly on police officers and the varied reasons and justifications for the targeting of a specific group. However, there is another side to this issue, namely the people that are wrongly targeted by the police. In other words, police officers stopping a vehicle because of a group characteristic, yet the occupants are law abiding citizens. The impact of this can have a tremendous impact on the psyche of the wronged individual. Specifically, individuals learn to respond to police in a given pattern namely with hopelessness and futility.

As explained in the theory was first tested putting dogs on a shock period of twenty-four again shocked, but they typically responded by lying down and

Next, a second group of four hour period, but the next day, they just

The researchers found on the second day that the dogs did not appear to receive a shock.

They did not initially succeed in contrast, the second group's reception of the shock they out-performed

Peterson and Spence apply it to human

"...when uncertainty and when the result is futile, it may be both learned and brought about by futility" (p. 1)

As explained in Peterson and Seligman, (1983) the learned helplessness theory was first tested on laboratory animals. Briefly, these tests consisted of putting dogs on a shock pad from which they cannot escape. The dogs over a period of twenty-four hours are repeatedly shocked; the next day they are again shocked, but this time they are offered an avenue of escape. The dogs typically responded to the second day of shocking by running in circles and then lying down and whimpering, not even attempting to escape.

Next, a second group of dogs were given electrical shock over a twenty-four hour period, but this group was given a means of escape. When tested the next day, they just left the area that was receiving the electrical current.

The researchers found that the first group of dogs did not “notice” on the second day that their sometimes successful response terminated the shock. The dogs did not appear to realize that they could control whether or not they received a shock. They simply gave up. When given learning tests, if they did not initially succeed, they performed poorly on the assigned tasks. In contrast, the second group of dogs, “believing” that they could control the reception of the shock, left the area; when they were given the learning tasks, they out-performed the first group of dogs.

Peterson and Seligman (1983) extrapolate the results of this study and apply it to human beings; they state:

“...when uncontrollable bad events precede helpless behavior, and when the helpless individual expects future responding to be futile, it may well be that learned helplessness is operative... both learned helplessness and victimization responses are partly brought about by a generalized belief about future response futility” (p. 107).

It seems plausible  
the minority community  
have led to a situation  
paradigm.

### Just World Theory

Closely aligned with  
theory. Briefly, the  
an individual, the in  
about the negative  
people and bad thi  
simplification of th  
the non-criminal m  
than blaming exte

What makes t  
victim, innocent  
the confrontation  
lottery of birth s

It should be n  
"fault" in the pe  
making an assur  
have an out-star  
was incorrect in  
or without a cita  
this simply beco

It seems plausible that given the storied history between the police and the minority community, that some of the responses to police intervention have led to a situation in which learned helplessness is the operative paradigm.

### **Just World Theory**

Closely aligned with the notion of learned helplessness is the just world theory. Briefly, the just world theory posits that when bad things happen to an individual, the individual must have done something to cause or bring about the negative action. Since in a just world, good things happen to good people and bad things happen to bad people. This, although an oversimplification of the just world theory, has the impact of blaming the victim, the non-criminal member of the target population, for their misfortune rather than blaming external forces which are beyond the individual's control.

What makes the just world theory problematic is that both characters, the victim, innocent motorist, and the observer, police officer, public, etc., view the confrontation as the fault of the victim rather than ascribing it to the lottery of birth such as race and socioeconomic status.

It should be noted that it is unlikely that the police officer is assigning "fault" in the pejorative sense. It is more the case that the officer is simply making an assumption based on his beliefs that the person would be likely to have an out-standing arrest warrant. When the officer determines that he/she was incorrect in this assumptions, the officer simply releases the person with or without a citation believing the matter has ended. But, for the motorist, this simply becomes another instance in which the powers of the state have

been brought down  
impression that there  
that resulted in the e

### Summary of Conco

From the police  
and apprehension of  
from the citizens pe  
importance. The qu  
accomplish this tas  
would argue that ut  
The community, es  
view point in that a  
yield just and fair  
police are allowed  
characteristics suc

### Hypotheses

To begin with  
sample from whic  
the proposed stud  
exploratory in na  
allow a generaliz  
however, it is sti  
sampling does ha

been brought down upon him. Possibly leaving the individual with the impression that there is little that can be done to change the circumstances that resulted in the encounter.

### **Summary of Concerns**

From the police perspective the essence of police work is the detection and apprehension of criminals engaged in their illicit activities. Arguably from the citizens perspective notions of fairness and justice are of the utmost importance. The question then as to what methods should be employed to accomplish this task is at the heart of this problem. The police seemingly would argue that utilizing all legal tools within their means would be just. The community, especially the minority, would probably have a different view point in that allowing the police to do what is legal does not always yield just and fair results. In fact, as a result of police officers discretion Police are allowed to legally impart differential justice to individuals based on Characteristics such as race, age and, gender.

### **Hypotheses**

To begin with, there is a specific limitation with this study, namely the sample from which it is drawn is concentrated in a specific locale. Therefore, the proposed study utilizes convenience sampling and, additionally it is exploratory in nature. In other words, although there is no basis that will allow a generalization of the findings to the police population as a whole, however, it is still valuable. According to Hy et. al. (1983) "...convenience sampling does have its place. It is particularly useful for testing theoretical



propositions. If a th  
subjects" (p. 92).  
randomly selected c  
often used in theory

The following a

1. Null

Police are not m  
majority motoris

Alternate

Police officers a  
majority motori

2. Null

Police are not r  
standard police

Alternate

Police are mor  
police practice

3. Null

Police decisio  
on imbalanced

Alternate

Police decisio  
but on imbal

propositions. If a theoretical statement is correct, it will hold for any group of subjects” (p. 92). They go on to note that it does not matter if the sample is randomly selected or not. Lastly, they note that convenience sampling is often used in theory testing and exploratory research.

The following are the hypotheses:

1. Null

Police are not more likely to stop a minority motorist rather than a majority motorist.

Alternate

Police officers are more likely to stop a minority motorist rather than a majority motorist.

2. Null

Police are not more likely to view racially unbalanced traffic stops as standard police practice based on a focus of criminal behavior.

Alternate

Police are more likely to view racially unbalanced traffic stops as standard police practice based on a focus of criminal behavior.

3. Null

Police decisions to stop people of color are based on racist attitudes, not on imbalanced statistics.

Alternate

Police decisions to stop people of color are not based on racist attitudes, but on imbalanced statistics.

#### 4. Null

An enforcement  
officers to stop a

#### Alternate

An enforcement  
officers to stop a

#### **Summary**

In this chapter is  
paradigms and the c  
been explored. The  
notion of differenti  
it can be justified i  
justice. Justice is  
for society. In this  
safeguarding both  
to be answered is  
use of racial target

A related issue  
police practice of  
research does not  
determine whether  
deciding which m

#### 4. Null

An enforcement pro-active police agency is not more likely to encourage officers to stop a greater number of minority motorists.

#### Alternate

An enforcement pro-active police agency is more likely to encourage officers to stop a greater number of minority motorists.

### **Summary**

In this chapter issues involving: police discretion, police role, ethical paradigms and the consequences upon the public of police decisions have been explored. The major thrust of the arguments thus far have dealt with the notion of differential treatment of minorities by the police and whether or not it can be justified in the context of the police mission and the notion of justice. Justice is ephemeral, what is right for the individual may not be so for society. In this sense the police must perform a balancing act, safeguarding both societal and individual interests. Of course the question yet to be answered is whether or not this can be accomplished given the police use of racial targeting when involved in traffic enforcement.

A related issue deals with notion of racism and its influence with the police practice of racial targeting in the traffic enforcement context. This research does not attempt to seek causes of racism, it merely seeks to determine whether or not it is prevalent in the police officers psyche when deciding which motorist should be stopped.

## Introduction

In the following  
police mission and  
concepts are used in  
what is being argued  
although important.  
the primary function  
policing in a free so  
policing first develo

Further, when re  
officers in order to  
with principles asso  
accomplished in se  
officers own conce  
officers' ethical vie  
a framework for ho

## Police

One of the signi  
departments is the  
not be understated.

## **Chapter 2**

### **Review of Related Literature**

#### **Introduction**

In the following two chapters, a specific position is posited regarding the police mission and in general the nature of policing. As such, classic concepts are used in order to formulate a qualitative argument. Essentially, what is being argued with respect to the police mission is that crime fighting although important, has not historically been and, should not be considered the primary function of the law enforcement officer. Secondly, the nature of Policing in a free society requires that officers adhere to the principles of Policing first developed in the early part of the 19<sup>th</sup> century.

Further, when reading both chapters 2 and 3, the putative argument is that Officers in order to be responsive to community needs must act in accordance with principles associated with respect for the individual. This is accomplished in several ways, including the just use of discretion and the Officers own conception of his/her role. Another important aspect deals with Officers' ethical viewpoints. Taken together these two chapters will present a framework for how officers ought to function in a free society.

#### **Police**

One of the significant issues confronting both police officers and police departments is the establishment of an identity. The importance of this can not be understated, since officers and agencies are going to respond to the

community in ways  
placed in the context  
role the officer perceives  
particularly critical  
activity.

Police roles may  
Banton (1970) posits  
are repressive in nature  
criminal activity. In  
society's mandates  
issues of societal norms

The peace officer  
contribute to criminal  
individual responsibility  
law officers in that  
view the role as a  
It is in light of  
impact that each

### **Police Role: "Law Enforcement"**

Police are employed  
who violate social  
se and mala prohibita  
which there is general  
robbery, murder

community in ways in which they perceive that their jobs are defined. When placed in the context of how citizens are selected for traffic enforcement, the role the officer perceives that he/she has is of the utmost importance. This is particularly critical to the citizen who is the object of the enforcement activity.

Police roles may be referenced as “law officer” or a “peace officer.” Banton (1970) posits that the police activities in the law enforcement mode are repressive in nature in that they view their mission as suppression of criminal activity. In this, they are more interested in gaining compliance for society’s mandates through coercion. This means that law officers focus on issues of societal retribution versus causative factors of crime.

The peace officer on the other hand focuses on environmental factors that contribute to criminal activity. The emphasis is not placed so much on individual responsibility as on causative factors. Peace officers differ from law officers in that the former view the police role as helping and the latter view the role as adversarial.

It is in light of these two view points that the police role in society and the impact that each has on the citizenry will be discussed.

### **Police Role: “Law Officer” vs. “Peace Officer”**

Police are empowered by the rule of law to apprehend and arrest those who violate societal mandates. These mandates come in two forms: mala in se and mala prohibita. The former refer to acts that are evil in themselves, in which there is general agreement as to their wrongness. For example rape, robbery, murder are some of crimes that are considered mala in se. It is



reasonable to assume  
seek out and arrest  
criminal offenders and  
serious offenders, with  
a term in a state penitentiary.

However police officers are  
regulating the enforcement of the law.  
words, they deal with the law.  
defined as "victimless crimes."  
prohibited. They are  
forbidden. As an example,  
with a license plate number  
comport with this definition.  
have just as easily  
the vehicle. Unlike  
motor vehicle is not  
decreed wrong. So  
out and arrest persons  
crimes.

How an officer  
citizens because it  
mission. It is important  
approaches, i.e., law  
difference centers  
enforcement officers.

reasonable to assume that there is strong community support for officers who seek out and arrest these felons. Police are to be applauded when serious criminal offenders are arrested, but, mostly officers do not deal with the serious offenders, who have committed felony crimes in which punishment is a term in a state penitentiary.

However police largely deal with citizens who have violated laws regulating the enforcement of traffic, drinking, drug and sex laws. In other words, they deal with people who have gone awry of laws that have been defined as "victimless" crimes. These crimes are referred to as mala prohibita. They are crimes that are defined as evil merely because they are forbidden. As an example, the State requires one to operate a motor vehicle with a license plate attached to the outside of the automobile. If one does not comport with this dictum, one has violated the law. However, the State could have just as easily required that motor vehicle registration merely be inside of the vehicle. Unlike unjustifiable murder, the failure to properly register a motor vehicle is not intrinsically wrong, it is wrong simply because it is decreed wrong. Seemingly, there is less public support for officers who seek out and arrest persons who have committed these types of misdemeanor crimes.

How an officer views his/her mission is significant in the treatment of citizens because it is largely predicated on their paradigm of the police mission. It is important that officers realize that there is a difference in both approaches, i.e., law enforcement officer and peace officer. Primarily, the difference centers on the notion of force versus compliance. The law enforcement officer uses the might of the State to gain compliance. While the

peace officer uses the  
of law.

This distinction  
The law enforcement  
Weber (1947) "Po  
relationship will be  
regardless of the b  
conception of pow  
law enforcement c  
citizens are the re

On the other h  
Weber terms imp  
(1947) defines th  
commands) will b  
argues that this is  
hierarchy. Implic  
other words, obe  
officer based on  
with notions of ju  
biased in the adm  
cannot command  
society.

To simply ass  
enforcement offic  
be known most c

peace officer uses the willing compliance of the citizenry to enforce the rule of law.

This distinction is somewhat important and it bears a closer examination. The law enforcement officer uses “power” to gain compliance. According to Weber (1947) “Power (Macht) is the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests” (p. 152). Clearly this conception of power is within the tradition of and is congruent with that of the law enforcement officer. After all, all encounters between officers and citizens are the result of a relationship defined by the State.

On the other hand peace officers use the notion of obedience or what Weber terms imperative co-ordination to solidify compliance. Weber (1947) defines this as “...the probability that certain specific commands (or all commands) will be obeyed by a given group of people” (p. 324). Weber argues that this is done willingly and out of a sense of commitment to the hierarchy. Implicit in this is the notion of loyalty and the sense of kinship. In other words, obedience is afforded by the citizen and given to the individual officer based on the notion that the officer acts in a manner that comports with notions of justice and fairness. Conversely, if the police are seen as biased in the administration of justice and other social services, then they cannot command obedience, which after all is the lynchpin of a democratic society.

To simply assert that police officers either fall under the category of “law enforcement officer” or “peace officer” is in itself rather myopic. If the truth be known most competent police officers mix and match the two styles

depending up  
of minorities  
police officer  
should be wil  
willing to con

Officers t  
mandate mus  
portion of the  
that officers  
with varying  
non-criminal  
have indicat  
activities. A  
apprehending  
needs.

Kennedy  
services ver  
"...the atten  
"...to remed

The hum  
officer conc  
looking to a  
Peel, who fo  
1829 listed  
the police of

depending upon the situation. In this specific case, the differential treatment of minorities with respect to traffic enforcement, the two styles collide in that police officers are using the legal powers of the State upon citizens who should be willingly compliant, but, given historical realities are less than willing to comply and at best are suspicious of police motives.

Officers that believe they are destined to fulfill the law enforcement mandate must keep in mind that in reality this function occupies a small portion of their job. In fact, studies (Wilson: 1968; Reiss:1971) have shown that officers spend a small amount of their time handling criminal complaints with varying degrees of seriousness and 83% to 90% of their time handling non-criminal complaints. Although later studies (Swanson and Territo: 1996) have indicated that only about 50% of police time is used in non-criminal activities. As such, officers who view their job mainly in the context of apprehending criminals ostensibly would be less sympathetic to the public needs.

Kennedy (1983) argues that the police role should be classified as human services versus law enforcement. Kennedy describes human services as “...the attention and assistance offered to people by other helping people” and “...to remedy individual and social breakdown” (P.41).

The human service role that the police play is closely related to the peace officer conception of his role within society. That is, the peace officer is looking to aid the distressed and prevent further harm. In fact, Sir Robert Peel, who formed the first modern police department in London England in 1829 listed nine principles of law enforcement, he argued persuasively for the police officer to play a role akin to human service in society. Out of his

nine principles six  
remaining three, of  
police. Given that  
context it may be

The first one states  
to prevent crime and  
disorder by military  
28). This first principle  
foundation for the  
formed to prevent  
was inherent with  
since if law enforcement  
need for the police  
draconian measures

Peel's second principle  
duties is dependent  
behavior, and the  
(Lee: 1901; p. 28)  
nonetheless still re  
needed for the for  
validation of police  
themselves in a m  
they are isolating

The third principle  
the public in volun

nine principles six deal directly with the treatment of citizens. Out of the remaining three, only one deals directly with the law enforcement role of the police. Given that the police role can best be understood in the historical context it may be helpful to examine these principles.

The first one states that “(T)he basic mission for which the police exist is to prevent crime and disorder as an alternative to the repression of crime and disorder by military force and severity of legal punishment (Lee: 1901; p. 28).” This first principle is noteworthy for several reasons. First, it lays the foundation for the establishment of the police department. That is, it was formed to prevent crime and disorder without the associated oppression that was inherent with the military forces of the time. This is an important point since if law enforcement itself was to be a priority, then there would be little need for the police officers, as the military could with harshness and draconian measures suppress criminal activity.

Peel’s second principle states “(T)he ability of the police to perform their duties is dependent upon public approval of police existence, actions, behavior, and the ability of the police to secure and maintain public respect (Lee: 1901; p. 28).” Although this principle seems somewhat antiquated, it is nonetheless still relevant today, but, not in the sense that public approval is needed for the formation of the police, but, that public approval is needed for validation of policing decisions. In other words, if the police conduct themselves in a manner that causes them to lose the confidence of the public, they are isolating themselves from the people that they serve.

The third principle “(T)he police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and



maintain public re

Weber's notion o

ordination Weber

their authority dir

given to the offic

For society to ha

police use of pow

power's sake. T

and as society's

compliance of so

on power the mo

power society w

just manner.

Interestingly

any further than

police to interro

happened in *Mi*

(Peltason; 1982)

the confession o

rights. In the la

imprisonment, th

are the Court's

The fourth pr

secured diminish

force and comp

**ma**intain public respect (Lee: 1901; p. 28).” This principle deals directly with **We**ber’s notion of power and imperative co-ordination. By imperative co-**ord**ination Weber means a system of commands which officers by virtue of **the**ir authority direct commands and expect compliance. Compliance is then **gi**ven to the officers because they are the visible symbol of the State’s force. **For** society to have confidence in policing decisions they must believe that the **po**lice use of power is just and fair and not used arbitrarily, simply for **po**wer’s sake. The result of this confidence obviates the need for more power **and** as society’s positive attitude increases, the police in turn gain the willful **co**mpliance of society’s members. Paradoxically, the less that the police rely **on** power the more confidence they engender within society; hence the more **po**wer society willingly will cede to them if they are perceived to use it in a **ju**st manner.

Interestingly enough, this can be seen in our society, one need not look **any** further than Supreme Court decisions that have limited the abilities of the **po**lice to interrogate those taken into police custody. As an example this has **happ**ened in *Miranda v. Arizona* (1966) and *Argersinger v. Hamlin* (1972) (Peltason; 1982). In the former the Court ruled that police could not coerce the confession of a suspect without first advising him of specific enumerated rights. In the later, the right to counsel was guaranteed to all those facing imprisonment, this regardless of the person’s ability to pay. These decisions are the Court’s response to the perceived over zealousness of police.

The fourth principle “(T)he degree of cooperation of the public that can be secured diminishes, proportionately, the necessity for the use of physical force and compulsion in achieving police objectives (Lee:1901; p. 28).”

Simply, if the citizens  
turn are more likely  
assistance, but also  
been mentioned, the  
cooperation of citizens  
this would seem  
then presumably the  
apprehension of crime  
impression of incorrupt  
draconian methods  
restraint is not only

The fifth principle  
catering to public opinion  
*impartial service* to  
regard to the justice  
offering of *individual*  
*without regard to*  
good humor, and the  
preserving life (Italian)  
this one is the main  
Peel recognized the  
support of the ruling  
support of the masses  
than an army of officers  
that is often heard

**S**imply, if the citizenry has confidence that the police are not abusive, they in turn are more likely to approach the police, not only with their own pleas for assistance, but also as witnesses to other peoples crimes. As has already been mentioned, the police in the battle to suppress crime, rely on the cooperation of citizens. If members of society view the police as oppressive this would seemingly reduce the likelihood of cooperation. If it is reduced, then presumably the police would be left in the lurch with respect to the apprehension of criminals and the solving of crimes. This in turn creates an impression of incompetence which forces the police to employ even more draconian methods in order to solve crimes. Thus, for societal interest, police restraint is not only desirable, but necessary.

The fifth principle “(T)he police seek and preserve public favor, not by catering to public opinion, but by constantly demonstrating *absolutely impartial service* to the law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws; by ready offering of *individual service and friendship to all members of the society without regard to their race or social standing*; by ready exercise of friendly good humor; and by ready offering of individual sacrifice in protecting and preserving life (Italics added) (Lee: 1901; p. 28).” Of all Peel’s principles, this one is the mandate for the fair and equitable treatment of all citizens. Peel recognized that for the police to be effective, they must not only have the support of the ruling class, but, most importantly, they had to have the support of the masses. Without this support the police were nothing more than an army of occupation. Interestingly enough, this is the same complaint that is often heard in inner cities throughout contemporary United States.

This is also sal  
characteristics for  
officer obviously j  
That is, blacks acc  
whole, but, they a  
easy to see how th  
become focused o  
the criminal justice  
most important pri  
departments. Tha  
service to the law  
exactly the oppos  
person's race.

The peace offi  
community and se  
happenstance of t  
police work was  
reasonably assum  
salient then simpl  
probability of a c  
activity.

The sixth prin  
necessary to secur  
exercise of persua  
achieve police obj

This is also salient to the targeting of individuals on the basis of racial **characteristics** for differential traffic enforcement. The law enforcement **officer** obviously justifies the selective targeting on the basis of crime control. **That** is, blacks account for merely twelve percent of the population as a **whole**, but, they account for nearly fifty percent of the prison occupancy. It is **easy** to see how those preoccupied with arresting criminals could also **become** focused on the segment of the population that is over represented in **the** criminal justice system. But to do so means that they are ignoring this **most** important principle formulated by the acknowledged father of police **departments**. That is, this type of officer fails to demonstrate impartial **service** to the law regardless of the person's race. Instead, the officer does **exactly** the opposite, demonstrating partial service to the law based on the **person's** race.

The peace officer on the other hand ostensibly values service to the community and seemingly would be less apt to target a person based on the happenstance of the birth lottery. In addition if an officer's paradigm of police work was service oriented versus law enforcement, one could reasonably assume that the equitable treatment of citizens would be more salient than simply the quantity of arrests that could be made based on the probability of a certain segment of the population being involved in criminal activity.

The sixth principle "(T)he police should use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice, and warning is found to be insufficient to achieve police objectives; and police should use only the minimum degree of

physical force  
police object  
that power s  
that in fact,  
compliance  
have been l  
officers. C  
public, not

The sever  
relationship  
police are t  
members o  
are incumb  
1901; p. 28  
English tra  
when calle  
citizen pol  
Crime in th  
it's membe

Even w  
officers wh  
elements v  
to mitigate  
obviously  
the police.

**physical** force which is necessary on any particular occasion for achieving a **police** objective (Lee: 1901; p. 28).” Here again Peel is reiterating the notion **that** power should not be the primary tool of police officers. He is suggesting **that** in fact, physical power should be the last resort to gain public **compliance**. Again, if power was suppose to be the main tool, there would **have** been little reason not to have the military serve in the dual role as police **officers**. Clearly, this was unacceptable to Peel, the police were to serve the **public**, not abuse them.

The seventh principle “(T)he police at all times should maintain a **relationship** with the public that gives reality to the historic tradition that the **police** are the public and that the public are the police; the police are the only **members** of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interest of the community welfare (Lee: 1901; p. 28).” Peel is deriving this concept from the historical context of the English tradition. Every adult male had an obligation to act as a police officer when called to do so. It is important to understand that Peel’s idea of a **citizen police** force was created in the context of the industrial revolution. Crime in the cities was rampant, there was a general call for society to protect **it’s** members from those who would prey upon them.

Even with such a climate, Peel developed the concept of paid police **officers** who would be charged with protecting society from the invidious elements within England. Moreover, Peel did not want the paid police force to mitigate individual responsibility for the welfare of society. This is obviously central to the notion that the police are the public and the public are the police. The inferred meaning to this is that for the police, rights that



citizens have, that  
rights that the pol  
citizens. We can  
cautioned in turni  
to regain what one

The eighth prin  
toward their funct  
by avenging indiv  
punishing the guil  
powers of the pol  
This is important  
of the police was  
that it was impro  
Additionally he i  
both the criminal  
police have a sto  
beliefs to societa

The final prin  
an disorder, *not*  
(Italics added) (I  
expounded by P  
police departmen  
measured by the  
according to Pee  
is controlled. It

**c**itizens have, that have been granted due to excessive police powers are **r**ights that the police themselves will also have granted in their capacity as **c**itizens. We can extrapolate from this principle that the public too is **c**autioned in turning their backs on police excesses, since it is often difficult **t**o regain what one has already given up.

The eighth principle “(T)he police should always direct their actions **t**oward their functions and never appear to usurp the powers of the judiciary **b**y avenging individuals or the state, or authoritatively judging guilt or **p**unishing the guilty (Lee: 1901; p. 28).” Peel is attempting to limit the **p**owers of the police so that they will not become the sole arbiters of justice. This is important in the sense that he realized unfettered power in the hands of the police was a dangerous thing. To put it somewhat differently, he felt that it was improper for the police to act as judge, jury and executioner. Additionally he is calling for impartiality with the respect to the treatment of both the criminal and civilian populations. Further, he is suggesting that the police have a stoic reliance on the system of justice, subjecting personal beliefs to societal norms.

The final principle “(T)he test of police efficiency is the absence of crime an disorder, *not the visible evidence of police action in dealing with them* (Italics added) (Lee: 1901; p. 28).” This is one of the crucial principles expounded by Peel. Police efficiency is not measured by how many arrests a police department generates or by how many traffic stops are conducted, it is measured by the absence of crime and disorder. This is significant in that according to Peel, the mark of a good police department is one in which crime is controlled. It is not one in which public order crimes (traffic, vice, etc.)

takes precedence  
not simply be det  
officers for traffic  
prohibited for pub  
prohibited becaus

It would seem  
departmental norm  
two roles to choo  
peace." He belie  
determined by th  
that these roles a  
Ostensibly this r  
into their roles v

The role of c  
beneficial to th  
under some typ  
rational in so f  
goal, or to a s  
consistent; (b  
knowledge, a  
for police ag  
unnecessary  
departments

Accordi  
the police v

**takes** precedence over the police mission. In other words, police success can **not** simply be defined by the number of written reports generated by the **officers** for traffic arrests and other such activities. These are crimes that are **prohibited** for public order (mala prohibita); they are not crimes that are **prohibited** because they are intrinsically bad (mala in se).

It would seem that officers adjust their role conception to comport with **departmental** norms. In fact according to Misner (1969) the police officer has **two** roles to choose from, either that of a “rule enforcer” or a “guardian of **peace**.” He believes that these roles are not selected by the officers, but, are **determined** by the Chief and/or the officers immediate superiors. He feels **that** these roles are determined at an early time in an officer’s career. **Ostensibly** this means that with the proper guidance officers can be socialized into their roles whether it is an enforcer or guardian.

The role of course depends upon which is determined to be most beneficial to the agency. It can be surmised that police departments operate under some type of rational system. According to Weber (1947) “(A)n act is rational in so far as (a) it is oriented to a clearly formulated unambiguous goal, or to a set of values which are clearly formulated and logically consistent; (b) the means chosen are, according to the best available knowledge, adapted to the realization of the goal (p. 17).” The primary goal for police agencies in a democratic society is crime prevention without unnecessary oppression. However, as has been suggested, police departments have evolved into a second function, i.e., human service.

According to Goldstein (1968) the dual role of the police function causes the police to provide a wide range of services including mediating domestic

and neighborhood  
both law enforcement  
fact he asserts that  
derived from the  
they are given the  
disputes.

As has been pointed out  
with the peace keeping  
Nothing that has been  
function that the police  
administrators and  
more diverse than  
significant role than  
Radelet (1986) suggests  
given their dual role  
of both theories, we  
In practical language  
repressive and at  
to act one way or

### **Discretion**

The role of the police  
understanding the  
most important as  
officer is afforded

**and** neighborhood disputes and other miscellaneous services. He claims that **both** law enforcement and peace keeping functions are intricately related. In **fact** he asserts that the peace keeping function relies heavily on the authority **derived** from the law enforcement function. It is through this authority that **they** are given the necessary legitimacy to resolve these non-criminal **disputes**.

As has been previously noted, the police spend most of their time dealing **with** the peace keeping or human service functions of the police role. **Nothing** that has been written is intended to minimize the law enforcement **function** that the police so ably fill. However, it is incumbent upon police **administrators** and line officers alike to recognize that the police role is much **more** diverse than simply catching criminals. They must come to realize the **significant** role the peace officer plays in the law enforcement system. In fact Radelet (1986) summarizes the dilemma that officers are confronted with given their dual roles, he states “(T)he truth in general terms, proclaims a mix of both theories, varying in proportion to individual and social circumstances. In practical language, this means that the police, for instance, must at times be repressive and at times be compassionate—and be wise enough to know when to act one way or the other (p. 9).”

### **Discretion**

The role of the police officer although important, is not sufficient in understanding the dynamics of differential traffic enforcement. Probably the most important aspect of the police officers job is the discretion that the officer is afforded in everyday job decisions that he/she makes. Such

decisions include  
a traffic citation.  
Accordingly, disc  
enforcement in th  
free to either stop  
ignore the violati

In fact without  
issue since office  
eye to the violati  
police officers sto  
employ such a po  
seer.

According to  
"A police officer  
whenever effectiv  
free to make choi  
As Klockars note  
reserved for the P  
noteworthy in tha  
but, administrative  
for officers to fol

As an example  
that mandate arre  
that in these depa  
departmental poli

**decisions** include whether or not to make an arrest, to stop a vehicle, to issue **a** traffic citation, to give an intoxicated person a ride home, etcetera.

**Accordingly**, discretion is at the center of this issue, of differential traffic **enforcement** in the context of race. This must be the case since officers are **free** to either stop any given motorist for traffic violations or similarly to **ignore** the violation as if it never happened.

In fact without discretion, differential traffic enforcement would not be an **issue** since officers would be forced to either stop all violators or turn a blind **eye** to the violations. In practical terms, it is not reasonable to suggest that **police officers** stop either everyone or no one for traffic violations. To **employ** such a policy, police supervisors would have to be omniscient or a seer.

According to Davis (as cited in Klockars: 1985) discretion is defined as: “A police officer or police agency may be said to exercise discretion whenever effective limits on his, her, or its power leave the officer or agency free to make choices among possible courses of action or inaction (p. 93).” As Klockars notes, an important part of police discretion is that it is not only reserved for the police officer, but, also for the agency itself. This is noteworthy in that discretion on the street level is the province of the officers, but, administratively, the department can and arguably does set parameters for officers to follow.

As an example of the later, some police agencies have adopted policies that mandate arrest when responding to domestic violence calls. The result is that in these departments it is unlikely that officers would over-ride departmental policy, hence discretion in these circumstances has been



virtually eliminat

In traffic situat

However in man

and involved in a

mitigating circum

In other situation

officers are free

department's hie

Discretion go

encountering mis

immediate arrest

complaining part

Even in the case

party, they are s

incident will be

This does no

police decisions

influence on po

level) is the wis

basis for action

found that in ca

seventy-five pe

complainant di

were made in a

notes what is c

**v**irtually eliminated.

In traffic situations official policies mandating a specific response are rare. **H**owever in many departments it is expected that a driver who is intoxicated **a**nd involved in an accident will be arrested. Even then, given substantial **m**itigating circumstances an officer may choose not to arrest the individual. **I**n other situations, especially those that involve routine traffic violations, **o**fficers are free to exercise their discretion without interference from the **d**epartment's hierarchy.

Discretion goes beyond the traffic enforcement context. Officers **e**ncountering misdemeanor criminal offenses determine whether or not an **i**mmEDIATE arrest shall be made. In fact in instances in which the officer is the **c**omplaining party, they determine whether or not the crime will be reported. Even in the case of **f**elony offenses in which the officer is the complaining party, they are still given significant latitude in determining whether or not the **i**ncident will be brought before the prosecutor or for that matter reported.

This does not mean that the public does not exert pressure or influence police decisions. Klockars (1985) posits that the single most important influence on police decision making (here he is referring to the patrol officer level) is the wish of the complaining party, providing of course that legal basis for action exists. Although police have latitude in arrest situations, he found that in cases in which the citizen expressed a desire to arrest, over seventy-five percent of the time an arrest was made. In cases in which the complainant did not either express a desire for arrest nor for leniency, arrests were made in approximately two-thirds of the cases. However, Klockars notes what is of more significance is the fact that in cases in which the

complainant expr

honored over nin

influence on the c

a respectful and

Similarly, Lip

police officers (

great deal of disc

example of the us

improperly regist

officer must impo

such as the vehic

allow the offend

impound costs.

In fact, Lipsk

enormous powe

act deferentially

acquiescence of

fair and impari

especially plaus

tools to sanction

other words in

interaction, not

over the public

Notwithstanding

standards and

complainant expressed a desire that no arrest be made, his/her request was honored over ninety percent of the time. He also points out that a significant influence on the officer was whether or not the complainant treated him/her in a respectful and civil manner.

Similarly, Lipsky (1980) argues that for the system to work properly that police officers (or as he terms them, street level bureaucrats) must have a great deal of discretion to deal with problems that they encounter. As an example of the use of discretion, an officer has the authority to impound an improperly registered motor vehicle. However, this does not mean that an officer must impound the vehicle. Given sufficient mitigating circumstances such as the vehicle being the persons only means to work, the officer may allow the offender to simply park the vehicle and thus save the associated impound costs.

In fact, Lipsky argues that generally people in society realize the enormous power afforded these bureaucrats and that citizens for the most part act deferentially towards officers. Lipsky does not believe that the acquiescence of the public is due to the notion that the officers always act in a fair and impartial manner, but, it is a way of minimizing conflict. This seems especially plausible when one considers that officers have the immediate tools to sanction behavior that they believe is unwarranted or challenging. In other words in most cases, it is the police officer that dominates the interaction, not the citizen. They are the ones that are able to exert control over the public and subordinate citizen demands to ensure compliance. Notwithstanding, the police are constrained by due process, departmental standards and significantly, by social norms in how they deal with citizens.

There are specific  
play in the criminal  
objectively be, the  
Their role is rather  
prosecute nor control  
powers so they control  
criminal activities

This does not mean  
citizens are not aware  
one could quite possibly  
divisions and, actually  
role in curbing police

Citizens can also be  
attentive to their  
beset with a heavy  
desired are able to  
allocation. In other  
that the attention  
officer by taking  
exercise control

The results of  
feels that they are  
the loss of time  
pressing issues.  
in punitive sanc

There are specific limits placed upon police behavior and the role that they play in the criminal justice system. No matter how guilty a person may objectively be, the police are not allowed to exact any type of punishment. Their role is rather narrowly defined in that they have no authority to prosecute nor convict the accused; however they have broad discretionary powers so they can target those that they feel are most likely to commit criminal activities.

This does not mean that client demands are always suppressed and that citizens are not able to exert upward pressure upon police officers. In fact one could quite persuasively argue that citizen review boards, internal affair divisions and, activist groups (i.e. NAACP, ACLU, etc.) all play a significant role in curbing police abuse and/or misuse of authority.

Citizens can also exact a cost upon officers whom they do not think are attentive to their special issues. Lipsky argues that since officers are typically beset with a heavy work load, citizens who do not get the attention that is desired are able to impose a cost upon the officer in the form of time allocation. In other words, if the citizen either rightly or wrongly believes that the attention given was not sufficient, they can increase the cost to the officer by taking more time. Essentially this means that the citizen can exercise control over the officers most valuable resource, time.

The results of such a strategy, citizens taking more time than the officer feels that they are entitled to, can be costly to both parties. For the officer, the loss of time cannot be replaced and his attention is diverted from other pressing issues. For the citizen the consequences of this strategy may result in punitive sanctions or other undesirable outcomes.

Lipsky feels that the process is unidirectional. The police officer is the one who sets the rules, the strategies, as well as the outcomes. "The police officer's own management of negative evidence is especially salient to the police officer, not the police officer's citizens who deny the circumstances, but the police officer's

As an example, a traffic violation is a reason for the stop. Like Klockars, Lipsky says the person often has the discretion to make his decision upon simply asserting an attack upon his/her right to cite the violator. The police officer seeks out the police officer's quarrel to halting

Lipsky feels that the interaction of both client and server is on the whole unidirectional. That is, the bureaucrat, or in this case the police officer is the one who sets the pace, tone and, direction of the encounter. He believes that the strategies, asking the officer for more attention, imposed by the citizens are simply designed to manipulate the police officer in order to affect future outcomes. "The disadvantaged position of clients forces them to conspire in their own management in order to avoid offending the workers or providing negative evidence about their character (Lipsky: 1980; p. 59)." This is an especially salient point in that citizen/police interaction is governed by the officer, not the person that is the recipient of the service. Lipsky notes that citizens who demand service or their rights may be successful in certain circumstances, but that it is usually not a successful long term strategy.

As an example, one can imagine being stopped by a police officer for a traffic violation and in the course of the encounter, demanding to know the reason for the stop. It is perfectly legitimate to assert this position. However, like Klockars, Lipsky feels that the tone of the request and the demeanor of the person often determines the outcome of the encounter. The police officer having the discretion to either warn the violator or issue a citation, often bases his decision upon these verbal and non-verbal cues. The point being is that simply asserting rights can be costly if the officer views the assertion as an attack upon his/her integrity. It is the officers prerogative whether or not to cite the violator. Incidentally, it is often the disadvantaged person that seeks the assistance of law enforcement officials. These clients are more apt to seek out the police and utilize their services for everything from mediating a quarrel to halting criminal activity. Citizens who have had prior negative



dealings with off  
discretionary en  
perceives that hi  
encounters, view

A questionab  
traffic stops bas  
pretext to stop ca  
vehicle searched

debate. Several  
African America

*Carter v. Maryl*

*Tinicum Towns*

stopped for traf

drugs with non

notion that thes

were driving w

fashion later on

Delattre (19

He asserts that

and practice (p

nature of their

discretion, they

that discretion

adequately fun

problem with d

dealings with officers may pay a higher price in terms of being the brunt of discretionary enforcement. It is not difficult to imagine that an officer who perceives that his time is being wasted by a client, may on subsequent encounters, view the person in a negative manner.

A questionable case with respect to the police use of discretion is that of traffic stops based on a pretext. This occurs when police use traffic stops as a pretext to stop cars that often result in the occupants being questioned and the vehicle searched. This type of stop is at the heart of the police discretionary debate. Several law-suits have been successfully filed and won on behalf of African American plaintiffs, these include *Wilkins v. Maryland* (1992), *Carter v. Maryland* (1997), *Smith v. City of Carmel* (1996), *Wilson v. Tinicum Township* (1991). In each of these cases African Americans were stopped for traffic violations and had their vehicles and persons searched for drugs with none being found. The major issue in all of these cases is the notion that these individuals were stopped because in the vernacular “they were driving while black.” These cases will be discussed albeit in a truncated fashion later on.

Delattre (1989) views the use of police discretion somewhat differently. He asserts that discretion is “...the authority to make the decisions of policy and practice (p. 45).” In essence he feels that police officers by the very nature of their jobs are, and should be, given a broad range in which to utilize discretion, they determine when, why, where and how to use it. He believes that discretion is a necessary part of the job and that police officers could not adequately function without a wide ranging discretionary powers. The problem with discretion, of course, is employing it in a fair and just manner.

To this, Delattre  
comparing the d  
darkness" and "

Children of the  
qualities. He lik  
types of individu

On the other  
of the darkness.

they perceive to

According to

Children of the

desires which c

for exactly the

nor propensity

however the im

police are expe

impartial and f

mitigate its imp

and fairness be

to only appoint

right, but also t

outcome. In ot

attitude" to poli

In essence, I

justify the end.

To this, Delattre borrows an analogy from the Theologian R. Niebuhr comparing the discretion that police officers use to both “children of the darkness” and “children of the light” (p. 50).”

Children of the darkness are people who possess dark and sinister qualities. He likens these people to Nazis. In other words, he feels that these types of individuals personify what is the worst about people.

On the other hand, children of the light are the polar opposites of children of the darkness. They however have set standards and act upon them on what they perceive to be the “goodness.”

According to Delattre, neither of these types are suited for public service. Children of the darkness because they cannot be trusted to control their desires which could result in excesses. Children of the light cannot be trusted for exactly the opposite reason, that is, “they have no capacity for misconduct nor propensity to excess (p. 51).” For Delattre then, discretion is a necessity, however the implementation of it is somewhat problematic. On the one hand, police are expected to abide by the laws and make decisions that are both impartial and fair. On the other hand, they are expected to control crime and mitigate its impact on the citizenry. The problem arises when crime control and fairness become incompatible. Delattre believes that the best solution is to only appoint those to police positions who have a capacity to do what is right, but also to push the limits of conduct in order to obtain the best possible outcome. In other words, only appoint those children of the light with “an attitude” to police service.

In essence, Delattre is arguing that in some instances the means may justify the end. This is much like the famed “Dirty Harry” problem in which

the rogue police  
is objectively gu  
with the attitude  
between legal an  
of decision mak  
difference is tha  
The latter is subj  
facie principles.  
extralegal metho

Hanewicz (1

cases such as th  
laws governing  
asserts that the  
order, the huma  
relationships (K  
that person mu  
Thought, in it's  
relationships is  
roles, social in

For him, or  
necessity. Par  
except in a few  
the vagaries of  
he posits that th  
human beings a

the rogue police officer violates several rights of the killer whom he “knows” is objectively guilty. In this case Dirty Harry is in fact the child of the light with the attitude. However in doing this he has crossed the boundary between legal and moral guilt. Philosophers (Hare: 1988) refer to this type of decision making as critical moral thinking versus intuitionist thinking. The difference is that the former is based on reasoning absent human weakness. The latter is subject to human weaknesses, it relies on intuition and *prima facie* principles. In essence, sometimes just ethical outcomes require extralegal methods, the trick of course is finding the right person for the job.

Hanewicz (1985) offers another perspective on the use of discretion. Hard cases such as the “Dirty Harry” problem for him are not difficult at all, as laws governing illegal conduct are prescribed and must be followed. He asserts that the problem with discretion is “...a variation on the problem of order, the human need to have closure, in perception, thought, and relationships (Hanewicz: 1985; p. 47).” With respect to perception he feels that person must organize each cognition into a relevant experience. Thought, in its basest form replaces doubt with certainty. The need for relationships is satisfied by “...predictability in behavior, by commitments, roles, social institutions (Hanewicz: 1985; p. 47).”

For him, order is not merely a pleasantness for human beings, it is a necessity. Paradoxically, it is also something that he does not believe exists except in a few “photographs” of life. He believes this for two reasons, first the vagaries of life are often hap-hazzard and leaves one unsated. Secondly, he posits that the legal system is too rigid to account for the complexities of human beings and all of their capriciousness. As such, discretion becomes a

necessary part of

when one consid

has already be c

discretion dehur

bring about a se

representative.

dialogue takes p

the cause of poli

Hanewicz fee

the citizen and t

institutions that

of human encou

be applied to th

involve mitigat

mandates. The

as the police "

refer to the law

law and the pe

here where di

he is arguing

As he sees

"ought." He

and the "oug

through train

be reconcile

necessary part of the police profession. He feels that this is especially true when one considers that police officers are often thrust into a situation which has already be characterized by disorder. He believes that the very nature of discretion dehumanizes the encounter. This is because police, when they bring about a semblance of order do so not as a person, but as society's representative. They are constrained to act in manner in which no real dialogue takes place. They act and the citizen reacts. Discretion then is both the cause of police problems and at the same time, the solution.

Hanewicz feels that this is a significant cause of dissatisfaction for both the citizen and the officer. The problem is that society and it's legal institutions that promulgate rules are inadequate to deal with the complexities of human encounters. Thus absolutes are good for the hard cases, but, cannot be applied to the vast majority of police/citizen encounters since these often involve mitigating circumstances which are often not covered by legal mandates. The general thrust of the argument is that discretion is a necessity as the police "...do not therefore, merely *enforce the law*; rather, they must refer to the law in *handling the situation...*" "...This arena is between the law and the person; it is outside the law and therefore the law is least helpful here where discretion is born (Hanewicz: 1985; p. 49 - 50)." In other words, he is arguing that it is the law itself that provides the basis for discretion.

As he sees it, the problem with discretion is the mixing of the "is" and the "ought." Here the "is" refers to how things are in the reality of the situation; and the "ought" refers to how things should be done. He feels that it is only through training and experience that doing what is right and what is best can be reconciled. In this case "best" refers to results that taken together provide



for the most ben

what is legally r

The problem

police discretion

lottery of birth c

object of police

comes in the for

refers to mandat

is best for societ

the domestic vic

children; sibling

allows police o

form of discipl

another. In the

questionable as

society. Hanev

"best" but it re

coupled with a

It seems tha

human frailties

judgement of fa

of prejudices a

discretion? Bu

just for all peop

Obviously, t

for the most beneficial outcome for the individual and society, not necessarily what is legally mandated.

The problem is trying to link these two often competing notions so that police discretion is used positively, not punitively against those who by the lottery of birth or circumstances of poor life choices find themselves the object of police attention. The conflict between what is “right” and “best” comes in the form of the legal right and the moral best. Here the legal right refers to mandated responses as prescribed by law. This compared to what is best for society and the individual. As an example in the State of Michigan the domestic violence statute encompasses situations in which parents strike children; siblings strike one another. The literal interpretation of this law allows police officers to jail parents who employ corporal punishment as a form of discipline. It also allows police to jail teenage siblings who fight one another. In these situations, the police have the legal right to act, but, it is questionable as to whether this course of action is in the best interest of society. Hanewicz feels that the police can reconcile the “right” and the “best” but it requires that officers acknowledge their particular biases coupled with adequate training and experience.

It seems that the whole problem with discretion is that it is subject to human frailties. By its very nature, discretionary practices rely on the judgement of fallible human beings who have ingrained in them their own sets of prejudices and foibles. The question is not: How do we eliminate discretion? But, how do we ensure that discretionary practices are fair and just for all people, not simply skewed in favor of the advantaged?

Obviously, the answer does not lie in any one place. As has already been

stated, training  
use of discretion  
understand the  
that of the United  
knowledge of c  
claim is not that  
merely upon no  
population shou  
do exist and are  
majority. It is i  
individuals as p  
manner rather t  
individuals that  
case basis via c  
formulate gene  
modify them b

Thus, discr  
requires office  
judgements m  
seem somewh  
calls for instar  
types of decis  
charged with  
charged with  
life altering o

stated, training coupled with experience are necessary conditions for the just use of discretion, but they are not sufficient. Also needed are individuals who understand the complexities and diverseness of a multi-ethnic culture such as that of the United States. It is incumbent upon officers to have a working knowledge of cultural idiosyncrasies in their assigned districts. Here the claim is not that society should engage in policing practices that are based merely upon notions of cultural relativism, but, mores within a given population should not simply be ignored as if irrelevant. Cultural differences do exist and are no less relevant simply because they are not shared by a majority. It is in this vein that society should attempt to select those individuals as police officers who are able to look at problems in a casuistic manner rather than myopically. Those best suited for this position are individuals that are able to reason through demanding situations on a case by case basis via deduction. As such it is incumbent upon police officers to formulate general strategies prior to actual encounters, then have the ability to modify them based upon the particular facts surrounding the incident.

Thus, discretion should not be thought of as unidimensional, it not only requires officers to use fair and sound judgement, it also means that these judgements must be based on careful reflective reasoning. This itself may seem somewhat peculiar, especially when policing in a complex society often calls for instant decision making on the part of officers. It is precisely these types of decisions that require thoughtful contemplation. Police officers are charged with making life and death decisions. More frequently, they are charged with making decisions of a lesser magnitude, but, still significantly life altering or at least potentially so. Seemingly, society should have a

invested interest in  
with obeisance.  
reasoning.  
Hare (1988)  
ratiocination. H  
the abilities to u  
contrasts this w  
using intuitive t  
archangel and t  
provide the nex  
better term, the  
envisions all kn  
peculiar proble  
choices and arr  
position in the s  
decision would  
decision, outsid  
Hare is referring  
significant other  
be objectively r  
circumstances v  
what role each o  
The prole on  
Hare is merely a  
styles of "think

vested interest in ensuring that officers treat the awesome power of discretion with obeisance, but this can only be gained through an understanding of reasoning.

Hare (1988) discusses vexing problems such as decision making using ratiocination. He believes that in an ideal situation all would be blessed with the abilities to use reason, much like the omniscient “archangel.” He contrasts this with the Orwellian “prole” who possesses abilities to reason by using intuitive thinking. At this point one may legitimately wonder what the archangel and the prole have to do with police discretion? Simply, they provide the nexus between the reasoned use of discretion and for lack of a better term, the capricious use of discretion. By critical thinking, Hare envisions all knowing beings, who have the ability when confronted with peculiar problems to immediately assess the situation, scan all possible choices and arrive at a solution that would be acceptable regardless of his/her position in the situation. That is, regardless of the role in the encounter, the decision would stand. In addition, for the archangel when making the decision, outside influences would be of no consequence. Primarily what Hare is referring to is the notion of partiality to one’s self, friends or, any significant other. Another condition is that the archangel’s decision would be objectively right. That is, all archangels given the exact set of circumstances would themselves make the exact same decision no matter what role each occupied in the encounter.

The prole on the other hand uses intuitive thinking. By using the prole Hare is merely attempting to draw a stark contrast between the two extremes styles of “thinking.” Since unlike the archangel, the prole is only able to

"...rely on intuition  
for most of the  
or sound critical  
45)."

The point th  
thinking, but th  
fact, he believe  
the archangel, n  
associated hum  
in a vacuum, th  
essence, Hare i  
predilections an  
of any given si  
prima facie pri  
mortals are (at  
"objectively" n  
semblance of c  
course of action  
or a facsimile t  
through the can  
As an example  
that gun-locks  
that research h  
would be injur  
from an intrude

“...rely on intuitions and sound prima facie principles and good dispositions for most of the time; he is totally incapable of critical thinking (let alone safe or sound critical thinking) even when there is leisure for it (Hare: 1988; p. 45).”

The point that he is making is not that people are incapable of critical thinking, but that they are fallible and subject to individual partialities. In fact, he believes that at times people do engage in critical thinking but, unlike the archangel, most people are not able to set aside their biases and other associated human weaknesses. In other words, people do not make decisions in a vacuum, they are arrived at given the totality of circumstances. In essence, Hare is asserting that people take into account their own predilections and must somehow comport these feelings to the circumstances of any given situation. Hare believes that this is done through the notion of prima facie principles. What is meant by this is that as fallible beings, mere mortals are (at least at present) not able to deduce things that are “objectively” right or for that matter wrong. At best humans can, through a semblance of critical thinking, deduce from circumstances what the best course of action would usually be. In fact, it is only through critical thinking or a facsimile thereof that prima facie principles can be developed. It is through the careful deliberation of facts that these principles are formulated. As an example, suppose that through research, legislators have determined that gun-locks reduce the likelihood of accidents amongst children. Further, that research has shown that it is ninety-nine percent more likely that a child would be injured with a gun than it is that the home owner would be injured from an intruder had the gun been locked. The prima facie principle here is



that gu  
could  
simply  
one do  
for the  
the imp  
grind, c  
inculcat

The  
should b  
visceral  
may be l  
discretio

#### **Pretext**

A pre  
a traffic v  
violation  
vehicle.  
traffic con  
characteris  
subject to  
they are. A  
youth drivi  
people enti

that guns ought to be locked even though there is a chance that a locked gun could result in harm to a home owner from an intruder. Hare argues that simply because a chance exists that harm could come to the home owner, that one does not abandoned the principle. In fact he states: "...The principle is for the actual world. One thing, therefore, that we do *not* do is to call to mind the improbable or unusual cases that novelists, or philosophers with axes to grind, can dream up, and ask whether in *those* cases the outcome of inculcating the principle would be for the best" (Hare: 1988; p. 47).

The connection between critical thinking, intuitionism and discretion should be apparent in that use of discretion, based merely on unexamined visceral feelings ought to be viewed with great trepidation . At this point it may be helpful to look at actual case histories involving police use of discretion in the context of differential traffic enforcement.

### **Pretext Traffic Stops**

A pretext traffic stop is one in which an officer legally stops a motorist for a traffic violation, however, the officer's motives are not based upon the violation itself, but upon characteristics intrinsic to the operator of the motor vehicle. Frequently race and, often gender are determining factors in pretext traffic contacts. However as with most things, these are not the only characteristics involved in this type of encounter. Sometimes, people are subject to the pretext stop not because of *what* they are, but because of *who* they are. An example of the former would include an officer who observes a youth driving an automobile. In this example the *what* refers to the class of people entitled "youths." The important point here is that the pretext for the

stop is based on  
the historical  
official.

An example  
because of which  
solely for the purpose  
automobile to stop

The difference  
first instance, perhaps  
is focusing upon  
because they are  
officers would  
However, legal  
criminals, would  
this is not easily  
of freedom and

One of the  
are seemingly  
Constitution, the  
seizure, albeit  
exceptions. But  
officials from whom  
is at issue is the  
and what is not

In *United States*

stop is based on the characteristics of the driver, not, the violation nor even the historical significance that the person may have to the law enforcement official.

An example of the later would be an officer that stops an individual because of *who* he is, a drug courier. The stop albeit legal, is conducted solely for the purpose of giving the officer access to the traffic “violator’s” automobile to search for suspected contraband.

The difference between these two types of stops is considerable. In the first instance, pretext stops are *prima facie* discriminatory. That is, the officer is focusing upon individuals because they were born a certain color or because they are in the youthful years of life. This is seemingly unfair that officers would stop a person simply because of a happenstance of birth. However, legally stopping people because of who they are, that is known criminals, would probably be applauded by most. Of course in a free society this is not easily regulated. Society must balance the often competing values of freedom and safety, and then determine which is most important.

One of the problems with pretext traffic stops is that although legal, they are seemingly in direct violation of the fourth amendment to the United States Constitution, the guarantees the prohibition against unreasonable search and seizure, albeit the Supreme Court of the United States has carved out exceptions. Briefly, this amendment was designed to prohibit government officials from violating a person’s legitimate right to privacy. Of course, what is at issue is the Courts blurring of the difference between what is legitimate and what is not legitimate.

In *United States v. Chadwick* (1977) the Court ruled that persons are

protected, not  
of a residence.  
evidence could  
home.

With respect  
ruled that individ  
are merely a part  
of the glove box  
against the pas  
that he had pla

In *Mincey v*  
search warrant  
Court allowed  
"...probable ca  
crime, includin  
therein, search  
found inside th  
added))."

The importa  
vehicles as long  
argue that such  
laws are neces  
most people w  
police officer w  
personal safety

protected, not places. For instance, evidence resulting from the illegal search of a residence, could not be used against the home owner. However the same evidence could be used against a third party who did not have standing in the home.

With respect to automobiles the Court in *United States v. Salvucci (1980)* ruled that individuals do not have an expectation of privacy in a car that they are merely a passenger in. Here the Court stated that the warrant-less search of the glove box and the subsequent seizure of evidence was admissible against the passenger as he did not have an expectation of privacy for things that he had placed in the glove box.

In *Mincey vs. Arizona (1970)* the Court enumerated ten exceptions to the search warrant rule. One of these are searches of automobiles. Here the Court allowed the police to search a motor vehicle as long as the officer had “...probable cause to believe that an automobile is being used to commit a crime, including *traffic offenses* or *irregularities*...detain the persons found therein, search them and the passenger compartment, including any containers found inside the passenger compartment (Peltason: 1982; pp. 144-145 [italics added]).”

The importance of these rulings are that they allow the police to search vehicles as long as they are legally detained. There are those that would argue that such a rule is perfectly acceptable since the enforcement of traffic laws are necessary for society to operate in a safe and orderly manner. In fact most people would agree with the necessity of traffic regulations. Further, police officer would claim (and rightfully so) that it is important for their own personal safety, as well as to control crime, that they be allowed to search

vehicles that t  
are important  
agree that give  
reasonable sus  
ought to be all  
Ohio (1961) s  
people for we  
for doing so.  
needs to reach  
is set rather lo  
This in itse  
concern if driv  
such as speedi  
nearly all drive  
State of Michi  
It governs eve  
depth of tire tr  
from the rear v  
to detect intox  
but, in the com  
policeman are  
dependent upo  
straddling the  
if a person has  
this too is a po

vehicles that they have legally stopped. There can be little doubt that these are important reasons. Regardless of one's position in society, most would agree that given sufficient reason, probable cause of a criminal activity or reasonable suspicion that one was happening or about to happen, an officer ought to be allowed to stop and detain a person. In fact the Court in *Terry v. Ohio (1961)* specifically allows the police, for their own safety, to search people for weapons as long as they are able to articulate reasonable reasons for doing so. As can be seen, the standard that a law enforcement officer needs to reach a level where the officer can legally invade a person's sanctity is set rather low.

This in itself, although problematic, would not be a significant cause for concern if drivers had to only concern themselves with moving violations such as speeding, disregarding traffic control devices, and so on. However, nearly all drivers violate the motor vehicle code whenever they drive. The State of Michigan's motor vehicle regulation manual is several inches thick. It governs everything from when one can operate fog lamps, bumper height, depth of tire tread, cracked tail-light lenses, to having air-fresheners hanging from the rear view mirror. Additionally, police officers are instructed on how to detect intoxicated drivers, which under most conditions is a good thing, but, in the context of a pretext stop, is subject to abuse. For instance, policeman are told that a person who is driving too slow, the speed is dependent upon the officer's perception, or who is staying within his lane, but straddling the fog line or, lane demarcation stipe, is possibly drunk. Further, if a person has not crossed either line, but goes from lane edge to lane edge, this too is a possible indicator of a drunken driver. Thus, a driver could



actually be with  
vehicle while  
occupant exit  
same time, ins  
contraband. Th  
law simply to  
challenged at s  
defend the dec  
given the polic  
them out.

In 1996 the  
*The United States*  
the opinion that  
stop any citizen  
was a legal basis  
that an officer's  
relevant, as long  
it is easy to ima  
dilapidated aut  
decision the po  
of any concern  
conducting a tr  
with the relativ  
issue involved.  
Obviously, c

actually be within the law, yet stopped on the suspicion of operating a motor vehicle while intoxicated. This allows the officer the opportunity to have the occupant exit the vehicle, ostensibly conduct a sobriety check and, at the same time, inspect the motor vehicle and operator for weapons or other contraband. This is not to give the impression that police officers violate the law simply to stop a vehicle, because surely most do not, and, if the officer is challenged at some later point in time, he/she must be able to articulate and defend the decision to stop the motorist. It is society and the courts that have given the police this authority so that they may detect law breakers and ferret them out.

In 1996 the practice of pretext traffic stops was legitimized in *Whren v. The United States* (1996). Here the United States Supreme Court proffered the opinion that a police officer, under the guise of a pretext traffic stop, may stop any citizen for any violation of the motor vehicle code, as long as there was a legal basis to do so. What is important here, is that the Court stated that an officer's motive, whether nefarious or not, in stopping the car is not relevant, as long as the traffic stop comports with the law. To illustrate this, it is easy to imagine an officer wanting to identify the occupants of a dilapidated automobile found in an affluent neighborhood. Given the *Whren* decision the police are able to do this even though traffic enforcement is not of any concern to them. The idea of an officer having a nefarious motive and conducting a traffic stop, not having any concern for the violation; coupled with the relative ease of obtaining a reason to stop a person, is exactly the issue involved.

Obviously, decisions like these affect every person, citizen or not, who is

within the bo  
minority com  
of affluent w  
everyone equ  
traffic violati  
people, basec  
Thus by allow  
stop, the Cou  
against people  
activity. The  
stopped by the  
the form of iss  
minorities are  
traffic citation.  
court imposes,  
presiding judge  
the police are a  
stop.

In the mino  
frequent focus  
impressions se  
1992 Robert W  
returning to Wa  
through Maryla  
officer asked fo

within the boundaries of this country. But, the impact is especially felt in minority communities. Certainly, the Court did not prohibit the pretext stop of affluent white males. On the contrary the Court in it's haste to treat everyone equal has allowed the police to stop everyone given the pretext of a traffic violation. Paradoxically, the impact of this decision is that it allows people, based on the officer's preference to be subjected to a pretext stop. Thus by allowing officers to pick and choose the people that they wish to stop, the Court is in essence was giving the police permission to discriminate against people that they subjectively believe *may* be involved in criminal activity. The simple laws of probability dictate that the more a person is stopped by the police, the greater the likelihood that punitive enforcement in the form of issuing a traffic citation will occur. Unfortunately, these minorities are the people who can least afford the cost associated with a traffic citation. If for any reason the person does not pay the fine that the court imposes, arrest warrants and licensing sanctions are issued by the presiding judge or magistrate. Then, the next time the individual is stopped the police are able to "find" the "criminal" thus giving credence to the pretext stop.

In the minority community, African Americans often feel that they are the frequent focus of unwarranted police attention. Interestingly, these impressions seemingly transcend the economic status of the individual. In 1992 Robert Wilkins, a Harvard trained lawyer, and family members were returning to Washington D.C. from his grandfather's funeral. While traveling through Maryland they were stopped by the State Police for speeding. The officer asked for consent to search the vehicle for contraband. When Wilkins

refused to con  
inferred that i  
vehicles was  
steadfast in hi  
detained the fa  
car looking fo  
stand out in th  
and the Wilkin  
in Federal Cou  
based profile  
*v. Maryland*

In 1996 a  
University Pro  
was retained  
respect to pol  
composition o  
racial compos  
motorists stop

Briefly, La  
violations. T  
occupants in a  
were not in vie  
the same I-95  
randomly selec

Observers n

refused to consent to the search citing the fourth amendment, the trooper inferred that innocent people had nothing to worry about and the searching of vehicles was ordinary procedure for the State Police. Wilkins remained steadfast in his refusal to allow the search. At this point the trooper simply detained the family until a narcotics trained dog arrived and went through the car looking for drugs. During this time, Wilkins and his family were forced to stand out in the rain. Upon conclusion of the search, no drugs were found and the Wilkins family was allowed to leave. Subsequently Wilkins filed suit in Federal Court claiming that he was singled out simply because of a race-based profile which targeted young black men driving rental cars (see *Wilkins v. Maryland 1991*).

In 1996 a statistical brief was filed with the Federal Court by Temple University Professor John Lamberth, Ph. D., on behalf of Wilkins. Lamberth was retained by Wilkins' legal team to design and conduct a study with respect to police searching of motorists. Specifically, he looked at the racial composition of motorists who used the corridor traveled by Wilkins; the racial composition of traffic violators; and the racial composition of all motorists stopped and searched by the State Police.

Briefly, Lamberth trained a number of observers to detect traffic violations. The observers were further instructed to tally the race of occupants in all vehicles, that is those who violated traffic laws and those that were not in violation of these laws. They were then charged with traveling the same I-95 corridor as Wilkins did; dates and times (daylight only) were randomly selected.

Observers recorded 5,741 cars. They were able to determine the race

96.8 percent of

were listed as

found that 93.1

points out, the

Lamberth

January 1995

corridor that t

were black, 71

were white mo

corridor when

of the time co

that the odds

was one in a

In Smith

State Police

Carmel whe

was in full u

because he

In the 19

four black

Pennsylv

freshener

registratio

in the sea

illegal dr

96.8 percent of the time. Out of these 16.8 percent were black, three percent were listed as minorities other than black and 74.7 percent were white. They found that 93.3 percent of all drivers were violating the law and as Lamberth points out, they were subject to being legally stopped by the police.

Lamberth using data generated by the Maryland State Police between January 1995 and September 1996 found that on the same section of the I-95 corridor that troopers searched 823 motorists. Out of this total, 72.9 percent were black, 7.6 percent were minorities other than black and, 19.7 percent were white motorists. Interestingly, Lamberth found that outside of the corridor when searches were conducted, whites were searched 63.7 percent of the time compared to thirty-two percent for blacks. Lamberth concluded that the odds of this police action randomly occurring on the I-95 corridor was one in a quintillion (a cardinal number in the U.S. followed by 18 zeros).

In *Smith v. City of Carmel* (1996) a black police sergeant with the Indiana State Police was driving an unmarked police car through the city limits of Carmel when he was pulled over by an officer. When Smith (who incidently was in full uniform) asked why he was pulled over, he was told that it was because he had three antennas on the rear of his car.

In the 1991 lawsuit of *Wilson v. Tinicum Township* (1991) Township, four black people on the way back from a church celebration were stopped in Pennsylvania on I-95 for having an obstructed rear view mirror due to an air-freshener was hanging down. After the officer examined the license and registration, other police cars along with a narcotics dog was called to assist in the search of the automobile. The results of the search did not turn up any illegal drugs. When they asked the officer why they were pulled over, they



were told that

drug traffickin

In another

I-95 corridor

narcotics train

According to

their daughter

blown to the g

being handcuf

allowed to us

Carters were

v. Maryland

These fou

hoodlums on

focus is plac

pigmentatio

traffic stops

in order to

street out o

activities.

population

becomes e

effectiven

control po

There

were told that it was because they were young, black, driving a nice car in a drug trafficking area.

In another Maryland case, an elderly black couple was pulled over on the I-95 corridor by State Troopers. Once again their vehicle was searched by narcotics trained dogs and all the contents in their vehicle were taken out. According to statements, some of their things were urinated on by the dogs, their daughter's wedding dress was placed on the hood of the car and was blown to the ground several times. The elderly lady was even threatened with being handcuffed for being uncooperative as she requested that she be allowed to use the restroom. The police did not find any drugs and the Carters were allowed to continue on their way (see *Charles and Etta Carter v. Maryland State Police et al.* 1997).

These four cases are meant to illustrate the fact that it is not simply young hoodlums or known criminals that become the focus of police scrutiny, but, focus is placed on ordinary law abiding people merely because of the pigmentation in skin color. Arguably most officers that engage in pretext traffic stops do so not because of a particular bias against an individual, but, in order to fulfill society's mandates. These include keeping drugs off of the street out of schools, reducing violence and other associated criminal activities. At issue here is whether it is best to denigrate a segment of the population in the hopes of keeping some drugs off of the streets. This becomes especially salient when one considers that the debate regarding the effectiveness with respect to society's present strategies involving drug control policies.

There are several other problems associated with pretext traffic stops.

These include  
individual sub  
respect to the  
and more insi  
deserving of t  
next section.

The forme  
of one group o  
differential tre  
not secure any  
in the followin

### **Learned Hel**

Another as  
who have bee  
a law abiding  
Looking at th  
place the "vic  
that by definit  
idea that peop  
their reality ba  
cohort group.  
of race. This i  
backgrounds h  
male or, female

These include the general notion of fairness and the impact to both the individual subjected to unfair treatment and it's impact on society. With respect to the latter, it may result in damage to one's perception of oneself and more insidiously it may cause others to look upon the individual as deserving of the unfair treatment. This will be discussed more fully in the next section.

The former, is problematic since if society allows the differential treatment of one group over another, then there is not any rights (with respect to the differential treatment) that society can secure for anyone. A right that does not secure anything, cannot said to be a right. This concept will be discussed in the following chapter.

### **Learned Helplessness and Just World Theory**

Another aspect of pretext stops deals with consequences to individuals who have been targeted, but, who have done nothing wrong. In this instance a law abiding person is unfairly stopped based upon a profile of a drug dealer. Looking at this from somewhat of a different perspective, it would be easy to place the "victim" moniker on these people. Especially when one considers that by definition a victim is one who unjustly suffers. At issue here is the idea that people subjected to differential treatment will begin to formulate their reality based upon their experiences and general experiences of their cohort group. In this case the cohort group refers specifically to the category of race. This is so because of similar treatment that blacks of all demographic backgrounds have experienced whether they were young, old, rich, poor, male or, female). In this case, it is obvious that a person who is treated

differently be

disparate treat

Of course

right to stop a

argument, afte

they did not h

course is that

that laws and

misconduct.

discretion as a

be acceptable

difference bet

acceptable. T

disparate treat

that they were

Maier and

that not havin

of subsequent

victimization a

share three thi

a catalyst or tr

in which the p

control these e

unrelated situa

difficulties.

differently because of race easily suffers from humiliation imposed by such disparate treatment, albeit psychologically.

Of course there are those that would argue that if the police have the legal right to stop a person, they are not victimizing anyone. This is a legitimate argument, after all, it would be nearly impossible for the police to operate if they did not have discretion to act or ignore violations. The problem of course is that discretion itself is subject to abuse. It has already been posited that laws and court decisions have been formulated as a result of police misconduct. The courts and the legislature have at times limited police discretion as a result of abuse. The general point is that although a tactic may be acceptable, it does not mean that it is “right.” Putatively, there is a difference between what is legally acceptable and what is morally/ethically acceptable. Thus citizens who are victimized by a system that allows for disparate treatment based on physical characteristics would seemingly learn that they were not in control of events in their lives.

Maier and Seligman (1976) substantially argue this very fact. They posit that not having control in an “...original event is crucial for the development of subsequent deficits.” “...There is an obvious parallel between responses to victimization and learned helplessness” (p. 105). They believe that both share three things in common. First, there must be some event which is either a catalyst or triggering mechanism. Second, both involve subsequent events in which the person believes that they have little power or ability to change or control these events. Third, both generalize as to their abilities to control unrelated situations, adopting an almost fatalistic attitude when encountering difficulties.

The insidi  
that perpetua  
responds, the  
accept the sit  
to control.

Franklin (C  
with blacks to  
or, any other  
the encounter  
African Ame  
authority ove  
ameliorating  
including am  
shoulders of

The infer  
the treatment  
blaming the r  
blaming the A  
police is anal  
struck by her  
problem with  
it perpetuates  
wrong to attr  
of society tha  
Of course

The insidiousness of learned helplessness is that it becomes a way of life that perpetuates itself. The individual “knows” that no matter how he/she responds, the outcome is predetermined. The coping mechanism is to simply accept the situation and tacitly acknowledge that life’s events are not subject to control.

Franklin (1991) in essence argues that some police officers use encounters with blacks to further assert their dominance. For instance, with traffic stops or, any other type of involuntary contact, the officer is the one that controls the encounter. He believes that this allows the police officer to denigrate the African American professional by detaining and asserting legitimated authority over him. Franklin further posits that society uses race as a way of ameliorating middle class whites. In this sense, race serves many purposes including among other things, placing the blame for the crime problem on the shoulders of African Americans.

The inference, is that African Americans are themselves responsible for the treatment that they receive. Interestingly enough this has the effect of blaming the recipient of the treatment for the treatment itself. For example blaming the African American for the treatment that he/she received by the police is analogous to blaming the battered spouse for allowing herself to be struck by her husband. This leads directly to two problems. The first problem with this is that it mitigates the responsibility of the actor. Secondly it perpetuates the general notion that the recipient must have done something wrong to attract police attention. This has the effect of telling other members of society that this person must have warranted police attention.

Of course with respect to racial profiling in the traffic enforcement



context, this is  
violation of the  
searched. To  
done something  
automobile.  
searched, fee  
the incident, t

### Summary

The role of  
understood in  
rule enforcer.  
of law-enforc  
capacity of en  
than this, he  
importantly, I  
public's oblig  
as being guar  
in notions of  
argued that w  
effective and

Secondly,  
policing. Pol  
mortal, police  
society. It is

context, this is exactly the issue. Minorities that are stopped for minor traffic violation often find themselves standing beside their automobile while it is searched. To the passing motorist this is indicative that the person must have done something wrong, otherwise the police would not be searching the automobile. Moreover, not only does the person, whose automobile is searched, feel like he/she was treated like a criminal, but to all that witnessed the incident, the person was a criminal.

### **Summary**

The role of the police officer in contemporary United States must be understood in the context of service to the community, rather than merely as a rule enforcer. In this sense, the police role is best defined by Peel's principles of law-enforcement. Peel simply did not conceive of officers acting in the capacity of enforcers for the State. He believed that they were much more than this, he felt that they were in the truest sense public servants. Most importantly, Peel believed that the police were the public and that it was the public's obligation to act as police. Clearly, the conception of police officers as being guardians is incomplete. Peel felt that officers who were grounded in notions of justice and fairness were essential for public support. Peel argued that without public support and approval, police officers could not be effective and at best would be nothing more than an army of occupation.

Secondly, issues involving police discretion are central to the nature of policing. Police must use discretion wisely and judiciously. However, being mortal, police officers can and do abuse the authority given to them by society. It is precisely this issue that is involved in differential traffic

enforcement.

not mean that

enforcement

usually written

written as co

this allows of

officers may

motorists to s

Discretion

enforcement.

stops, differe

use of discre

The major

police office

Intuitively th

On the surfa

wrong. How

has sanction

stop anyone

was not dis

white, red,

police wen

The im

minority P

prone in t

enforcement. Simply because one has authority to perform an action, does not mean that the person must perform the action. Rules governing traffic enforcement are written permitting officers to stop automobiles, they are usually written in the conditional form: an officer may stop... They are not written as commands: an officer must or shall stop... The difference is that this allows officers to exercise their will. The problem arises given that some officers may be predisposed to act upon their own prejudices when choosing motorists to stop.

Discretion is the nexus between the police role and differential traffic enforcement. Since, if officers did not have the discretion to conduct traffic stops, differential traffic enforcement would not be an issue. The nature and use of discretion is essential to understanding this problem.

The major problem with differential traffic enforcement is that it allows police officers to target minorities simply because they are minorities. Intuitively this seems to be little more than discrimination in its basic form. On the surface, most would acknowledge that discrimination based on race is wrong. However, what makes this problem vexing is that the Supreme Court has sanctioned this behavior. In the Court's rulings they permit officers to stop anyone committing a traffic violation. In their haste, they said that this was not discriminatory since the police were free to stop any person, black, white, red, etc. that had committed a violation. The reality meant that the police were also free to stop whomever they pleased.

The impact of racial profiling in traffic enforcement is normally felt on the minority population. Specifically, minorities are thought to be more crime prone in that they are over represented in prison populations. However,

Franklin (199

enforcement i

population is

result that ste

that the police

often learned

enforcement.

response over

nothing that c

The other

person stoppe

the focus of p

can lower the

seemingly vie

Franklin (1991) argues that this is merely the result of differential traffic enforcement in the first place. In addition, he believes that the prison population is also affected by disparate sentencing policies. In any event one result that stems from this is the notion that people get what they deserve and that the police usually deal with criminals. This being the case the result is often learned helplessness on the part of those selected for differential traffic enforcement. It is thought that if some action is repeatedly done, then the response over a period of time to the action becomes resignation: "there is nothing that can be done about being stopped by the police."

The other half of this problem is that the on-lookers now perceive that the person stopped and searched must have done something wrong, since they are the focus of police scrutiny. This perpetuates the cycle and in some instances can lower the self worth of the person stopped. While to the public they seemingly view the minority with more suspicion.

## Ethics

In the context of an officer operating the Whren doctrine, an officer who observes a traffic infraction will stop a vehicle of that type. In this particular problem, society's moral

The ethical question is whether or not an officer who stops a vehicle because of a traffic infraction, even if the officer believes the vehicle is involved in a crime, is acting ethically. This is distinct from the obvious distinction between an officer who may stop a vehicle because of a traffic infraction and an officer who may stop a vehicle because of a crime. In our society, an officer who stops a vehicle because of a traffic infraction has the right to do so. Here not only does the officer have the right to stop a vehicle

## Chapter 3

### Review of Selected Ethical Paradigms

#### Ethics

In the context of differential traffic enforcement the ethical paradigm that an officer operates under is of the utmost importance. As has been shown in the Whren decision, officer may ostensibly stop a person for a minor traffic infraction with the real motive being that the driver was of a particular racial type. In this sense it is important that officers are made aware of their particular prejudices so that they can act in a manner compatible with society's mandate of equal justice under the law.

The ethical issue involved with differential traffic enforcement is whether or not an officer *should* stop an individual based on racial type or what the officer believes is a person's propensity to be involved in criminal activity. This is distinguished from whether an officer *may* legally stop a person because of racial type or propensity to be involved in criminal activity. The obvious distinction is that the United States Court has ruled that an officer may stop an individual upon the commission of a traffic violation regardless of any other motive that the officer may harbor. Simply because an officer has the right to do action "A" does not mean that the right must be exercised. In our society there are many rights that the courts have enumerated yet are not acted upon. One example in the non-police context is the right to vote. Here not only courts, but, also legislative bodies have intervened and granted the right to vote to everyone (with minor exceptions) over seventeen years of



age. In fact  
voting is mo  
right to stop  
person is luc

The poin  
it has to be e  
to vote, it is  
that a signifi  
has been ext  
nutrients, alt  
again very fe  
not solve our  
do something

The polic  
He is charge  
society from  
the officer, a  
criminal act  
type of form  
involved in c  
about officer  
feeling about  
the same set  
of the facts i  
In a way

age. In fact in a democratic society there are those that would argue that **voting** is more than a right it is an obligation. Another example involves the **right** to stop feeding oneself. Here, courts have rule that as long as the **person** is lucid and wishes to stop feeding, they have a right to do so.

**The** point being, is that simply because a right exists it does not mean that it **has** to be exercised in all or even most instances. In the first case, the right to **vote**, it is obvious to even the most casual observers of American elections that **a** significant portion the voting public chooses not to exercise a right that has **been** extended to them. In the second case, the right to cease taking **nutrients**, although more extreme has also been afforded to the individual, **again** very few individuals actively exercising this right. However, this does not **solve** our problem, this merely acknowledges that simply because one can do **something**, does not mean that one must.

**The** police officer is confronted with several different competing values. He is **charged** with protection of both individual liberties and safeguarding of **society** from the criminal element. These two often come into conflict when the **officer**, albeit subjectively, believes that a person is responsible for a **criminal** act yet is unable to prove that the person is culpable without some type of **formal** intervention. This is often the case with officers who are **involved** in drug interdiction programs. Differential traffic enforcement is about **officers** and their subjective beliefs. In other words, it is an officers feeling **about** a person in a given situation. Here two officers could observe the **same** set of facts and arrive at different conclusions as the interpretation of the **facts** is dependant upon the officers life experiences.

In a way this is like ethical nihilism. Briefly, Harman (1977) has define

ethical nihil

and no mora

such thing a

could not sa

people, let a

asserted tha

operating u

is nothing n

term "ethic

presuppose

that relativ

vagaries of

express a n

which one

With et

judged, ba

there does

right or wr

visceral rea

without ap

relativism

disagree or

people, eth

imagine the

banned in n

ethical nihilism as “the doctrine that there are no moral facts, no moral truths, and no moral knowledge (p. 11).” Basically, nihilists believe that there is no such thing as right or wrong, there are simply acts. In the extreme, a nihilist could not say the torture of a suspect is wrong nor is the killing of innocent people, let alone allowing an officer to conduct a pretext stop. It is not being asserted that police officers are ethical nihilists, however, they may be operating under a system using similar notions, that is ethical relativism which is nothing more than ethics being determined by cultural predilections. The term “ethical relativism” may seem to be an oxymoron in that ethics presupposes a pattern of behavior based on what is right and obligatory and that relativism assumes that what is right and obligatory is subject to the vagaries of any particular culture; however it is merely a convenient way to express a notion that some believe that ethics is dependant upon the culture in which one resides.

With ethical relativism right and wrong are culturally dependant. Acts are judged, based on mores within the culture. It is appealing in that presently there does not seem to be anyway in which an ethical belief can be proven right or wrong. As an example, abortion, although most people have a visceral reaction to its appropriateness, cannot be said to be morally wrong without appealing to some higher authority, e.g., god. In fact ethical relativism seems almost reasonable with issues that rational people could disagree on. However, with other issues involving the disparate treatment of people, ethical relativism is not so appealing. For instance it is difficult to imagine the system of slavery that once flourished in the United States while banned in most other societies as being deemed acceptable based on the

principles  
that this is  
slavery con  
exploitation  
they are as  
declares. S  
incomplete  
abstract ex  
beliefs. Cl  
citizens is  
standard or  
to incomple  
this case st

The cha  
citizen with  
that society  
three speci  
each of wh  
theories inc  
only are ea  
prevalent in  
the legislati  
democracy  
rule. Clear  
majority is

principles of cultural relativism. In fact Arras and Steinbach (1995) argue that this is one of the criticism of ethical relativism. That is, an act like slavery could be considered “just” when its components (cruelty and exploitation) are what the term “unjust” is comprised of. In essence, what they are asserting is that “right” is independent of what a specific culture declares. Seemingly then ethical nihilism and ethical relativism are incomplete ethical theories as the former denies that ethics even in the abstract exists. While the latter predicates “just” ethical standards on cultural beliefs. Clearly in a pluralistic democratic society the treatment of it’s citizens is of great importance. As such the mere denial of any ethical standard or the assumption that ethics is merely culturally specific are simply to incomplete for the purposes of differential traffic enforcement as applied in this case study.

The challenge is finding a particular ethical strategy that will treat the citizen with compassion and at the same time take into account the demands that society has placed on it’s police officers. With this in mind there are three specific and often competing ethical theories that will be examined, each of which are recognizable in different aspects of our society. These theories include: Kantian, utilitarianism and, reflective equilibrium. Not only are each of these theories represented in society at large, but they are prevalent in our jurisprudence and legislative government. As an example, the legislative branch operates under the notion of a representative democracy, more specifically, they operate under the premise of majority rule. Clearly this has utilitarian overtones, that is what is good for the simple majority is what rules the House of Representatives.

On the  
What is im  
people not  
overtone  
an end, but  
Reflect.

that is use  
branch. B  
evaluative  
play that is  
either char  
dissonant  
defendants  
upper and

The ma  
science the  
that heat ri  
experiment  
all situation  
Adherents  
to tell a lie  
find themse  
unlike the  
mean that  
order to pro

On the other hand the judicial system is predicated on individual rights. What is important for the judiciary is the safeguarding of these rights for all people not simply the majority of people. Clearly, the judiciary has Kantian overtones in that they believe that people ought not be treated as a means to an end, but as an end in and of themselves.

Reflective equilibrium enters into the picture as a compromise strategy that is used primarily in intra-negotiations whether in the legislative or judicial branch. Briefly, reflective equilibrium allows one to hold a set of pre-evaluative beliefs that are prima facie valid. When a cognition comes into play that is dissonant from a pre-evaluative belief, the person is required to either change the belief so that it is consonant or simply live with the dissonant belief. This is illustrated in court room negotiations where defendants plea bargain or between intra-legislative negotiations between the upper and lower houses.

The main stumbling block with ethics of course is that unlike natural science there are not any proofs to any ethical claim. For instance it is known that heat rises in relation to the ground. This can easily be verified through experiments and once proven through the laws of physics it is known that in all situations heat will rise. Unfortunately the same cannot be said for ethics. Adherents to utilitarian, Kantian and reflective equilibrium would assert that to tell a lie is wrong. However given mitigating circumstances each could find themselves willingly purporting an untruth. In this sense then ethics unlike the hard sciences is fluid and is situationally dependant. This does not mean that one can simply manipulate the ethical rules so as to fit the case in order to provide the best personal outcome (although surely this does occur).



It simply  
behavior)  
circumsta  
shown in

## Utilitaria

Utilita  
greatest a  
words, th  
notion tha  
utilities. I  
versus gro  
discernab  
valued wh  
avoided.  
rightness a

Arras a  
features th  
of actions  
consequen  
Secondly,  
simply dep  
of unhappi  
measurable  
problems h

It simply means that ethics is part of a changing universe (universe of behavior) that the topic cannot be treated as if it were monolithic, since as circumstances change, so do ethical decisions. This is what it is hoped is shown in the following discussion as these three theories are outlined.

## **Utilitarianism**

Utilitarianism is grounded in the notion that society ought to promote the greatest amount of happiness for the greatest number of people. In other words, this is a view of the maximin calculation. That is, it is centered on the notion that one should maximize positive utilities and minimize negative utilities. In practice this results with a contrast between individual benefits versus group benefits. As such, it is merely a calculus that in theory is easily discernable. Those acts that produce happiness (positive utility) are to be valued while those that produce unhappiness (negative utility) are to be avoided. Utilitarianism then is a form of consequentialism in that the rightness and wrongness of an act is outcome based.

Arras and Steinbock (1995) argue that there are several advantages and features that make utilitarianism attractive. First the rightness and wrongness of actions are judged by the consequences they produce and similarly, the consequences in the absence of an action is also judged if not performed. Secondly, in theory it is easy to decide what course of action to take as it simply depends on the amount of happiness produced relative to the amount of unhappiness caused. Third, they assert that happiness is empirical, measurable and comparable. Seemingly this would mean that societal problems have definitive answers which tell one how to act. Lastly

utilitarianism  
not depend  
for the com  
the calculus  
everyone is  
utilitarians a  
will be show

The hap  
vacuum. Th  
isolated eve  
example, th  
of a suspect  
wrongness.  
good and sh  
person's rig  
action that i  
mistreatment  
most tolerab  
murderer fre  
unfettered re  
the guilt of t  
would be ap

John Stu  
that the indi  
group. Mil

utilitarianism is impartial in that the rightness or wrongness of any given act is not dependant upon how much good it produces for the individual, but rather for the community. This means that the happiness of the person performing the calculus is not to be given anymore weight then any other person. Hence everyone is assigned the same value in the overall equation, which means that utilitarians are seemingly committed to the notion of equality. However, as will be shown this notion is somewhat misguided in a large complex society.

The happiness/unhappiness calculus is itself not to be considered in a vacuum. That is, happiness that an action causes is not to be viewed as an isolated event. It is to be viewed in context with other events in society. For example, the police officer who illegally obtains evidence that proves the guilt of a suspected murderer has produced both conditions of rightness and wrongness. On the one hand, the officer has identified a murderer. This is good and should be lauded. On the other hand the officer has violated a person's rights that are protected by constitutional guarantees. This is an action that is wrong in that it puts all members of society at risk for mistreatment by the police. For the utilitarian the question is which action is most tolerable? The calculus then would weigh the consequences of setting a murderer free compared to the consequences of allowing police officers unfettered reign to violate constitutional rights as long as officials believed in the guilt of the suspect. In this case the utilitarian must act as if the rule would be applied to all members of society, not simply as a casuist.

John Stuart Mill (1858) one of the founding fathers of utilitarianism argues that the individual must subordinate his or her particular desires to that of the group. Mill flatly rejects the notion of a social contract in which rights and

obligations  
arguing that  
means that  
Although he  
"return a be  
protections  
a social ob  
significant.  
virtue of bi  
return for t  
does not er  
subordinate

Howeve  
individual g  
mankind be  
ways so lo  
infallible; t  
comparison  
but a good.  
welcome d  
the issue is  
An exan  
should not t  
enters a cou  
particular c

obligations are derived. This notion is important because essentially he is arguing that rights and obligations are fluid within a given society. Which means that rights and duties are in some sense culturally dependant.

Although he readily acknowledges that each member of society has a duty to “return a benefit (p. 75),” simply because each individual enjoys certain protections that society offers. The distinction between a social contract and a social obligation would seem slight, but the implication is really somewhat significant. In the former, one symbolically enters into an agreement by virtue of birth within any given society and gives up specific natural rights in return for the protection that society affords the individual. In the latter, one does not enter into a hypothetical agreement upon birth, but, agrees to subordinate particular desires for the benefit of society, not the self.

However he offers a caveat in that he is unwilling to merely sacrifice individual goals merely for the sake of public opinion. In fact he argues that mankind being imperfect should be able to express themselves in a variety of ways so long as there is no harm to others. He states “(T)hat mankind are not infallible; that unity of opinion, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good... (p. 57).” What is meant is that Mill believes that society should welcome differing opinions, but, once adjudicated via the happiness calculus the issue is closed pending a societal shift.

An example deals with the notion of lying, which most people would agree should not be tolerated. One can imagine a situation in which a police officer enters a court room and takes an oath to tell the truth about how evidence in a particular criminal matter was seized. All present expect that the officer

would test  
the officer  
would be  
utilitarians  
compelled  
would be  
faith in the  
responsib  
of whatev  
controlled  
interferen  
guilty of r  
officer to  
Osten  
in which  
whereabo  
would be  
case the p  
inclined t  
unnecess  
utilitarian  
concept c  
An ob  
calculus f  
daily life.

would testify truthfully about the matter at hand. However, also imagine that the officer obtained the evidence illegally and by telling the truth the suspect would be freed because his constitutional rights were violated. In this case, utilitarians as well as most other people would assert that the officer is compelled to tell the truth because if not the credibility of the judicial system would be put in peril. The calculus for the utilitarian centers on the notion of faith in the system. Mill argues strongly for this point when he discusses the responsibility of individuals in relationship to society. He states that “(A)cts, of whatever kind, which, without justifiable cause, do harm to others, may be, controlled by unfavourable sentiments, and, when needful, by the active interference of mankind (p. 56).” Here the damage in releasing a person guilty of murder is not as great as the harm done to society in permitting the officer to lie.

Ostensibly in certain situations, lying would be permissible. Take the case in which a band of criminals looking for an individual ask another about his whereabouts. If the person tells the criminals the location, the individual would be harmed. If the person lied, no harm would befall anyone. In this case the prohibition against lying is less certain and the utilitarian would be inclined to excuse the untruth. At this point it should be mentioned that it is unnecessary to further refine the concept of utilitarianism between act-utilitarianism and rule-utilitarianism since what is at issue is the general concept of utility of which both share common ground.

An objection to utilitarianism involves the belief that the cost/benefit calculus for happiness would be too cumbersome when applied to a person's daily life. Mill did not envision this as an insurmountable problem. Because



what he be  
situation,  
described  
between t  
cover spe  
For instan  
in gambli  
circumsta  
individual  
should ap  
with pers  
commun  
behavior  
of course  
of such a

Seco

unreason  
action th  
that for  
practice  
guide ou  
occasion  
Testame  
namely,  
appeal is

what he believed was that utility did not have to be calculated for each situation, as this would be nearly impossible, he believed in what is best described as “social utility” as opposed to “personal utility.” The difference between the two is that social utility relies upon the legislature to pass laws to cover specific situations, where as personal utility is used in every day life. For instance personal utility would govern whether or not one should engage in gambling. This would be an individual decision based upon one’s own circumstances. Social utility would not ask the question of whether or not individual gambling is permissible, it would ask whether or not the State should approve of gambling houses. This is an important distinction in that with personal, utility individual choices, as long as they did not affect the community at large are permissible. However, social utility cannot promote behavior that on the balance causes more suffering than not, keeping in mind of course that this calculation must take into consideration the future impact of such an activity.

Secondly, Mill asserts that it would not only be unnecessary, but, also unreasonable to calculate the cost/benefit of each decision previous to each action that one undertakes. He believes that there is value in precedent and that for the most part in day to day matters issue are settled based on past practice. In fact he states “...as if any one were to say that it is impossible to guide our conduct by Christianity, because there is not time, on every occasion on which any thing has to be done, to read through the Old and New Testaments. The answer to this object is that there has been ample time, namely, the whole past duration of the human species (p. 531).” Clearly the appeal is that for certain issues past experience has settled the notion of how

one  
the n  
state  
requ  
with  
any  
cou  
wit  
is a  
con  
are  
den  
enj  
pri  
dis  
wo  
de  
sin  
ca  
(I  
ag  
ha  
gr  
If

one should conduct oneself. Mill even goes a bit farther when he discusses the notion of “fundamental” principles and “subordinate” principles. He states “(W)hatever we adopt as the fundamental principle of morality, we require subordinate principles to apply it by; the impossibility of doing without them, being common to all systems, can afford no argument against any one in particular; but gravely to argue as if no such secondary principles could be had, as if mankind had remained till now and always must remain without drawing any general conclusions from the experience of human life, is as high a pitch, I think as absurdity has ever reached in philosophical controversy (p. 532).” The clear implication of this is that primary principles are what the initial calculus was about and that secondary principles are derivative from primary principle. For instance, the notion that all persons enjoy equal protection under the law would be considered a primary principle. A derivative or secondary principle would prohibit the courts from disparate sentencing of criminals based upon racial characteristics as this would violate the primary principle. Further derivative principles are deduced from primary principles and a cost /benefit analysis is not needed since the primary principle has already been decided beforehand.

Another criticism that utilitarians encounter is how units of happiness are calculated. For instance, suppose that action “A” involves several people (10) each of whom are ambivalent towards the action, but are in general agreement that it should be carried out. Further that the increase in units of happiness for the group is a plus 12. However, there is one person in the group that is very passionate in his beliefs that action “A” should not be done. If done, the decrease in his units of happiness are minus 20. The question

then becom

ten people

course is t

come dow

the most.

person he

almost all

irrespective

desirable

acquainte

though kn

would not

capable of

superiority

comparisc

to count t

This of co

quest for

leverage i

A final

responsibi

much who

utilitarian

responsibi

results. M

then becomes whether or not the group should continue with the action when ten people would benefit and one passionate person lose? The problem of course is that the utilitarian when conducting the cost/benefit calculus must come down on the side in which the overall level of happiness is increased the most. Mill (1981) in fact does come down on the side of the passionate person he asserts that "(O)f two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality so far outweighing quantity, as to render it, in comparison, of small account (p. 524)." Clearly then, utilitarianism is inclined to count the passionate person more so than the dispassionate or ambivalent. This of course leads to one major stumbling block for utilitarians in their quest for equality, since in the utilitarian equation, the passionate enjoy more leverage in the calculus than do those inclined to ambivalent ways.

A final criticism of utilitarianism involves the notion of individual responsibility. The utilitarian is outcome driven in that what matters is not so much who caused the result, but, that the result occurred. In this sense utilitarianism treats the individual as a means rather than an end and thus the responsibility of the individual is mitigated by the societal outcome that results. Mill is not persuaded that this is wrong. In fact he states that "(T)he

utilitarian

as an end

Clearly th

the sake

develop n

communi

member.

Now

member

reducing

sacrifice

on utilita

individua

one could

would be

The p

answer th

communi

out in con

never be

Unfortuna

going to p

evidence o

constraine

stake and t

utilitarian doctrine is that happiness is desirable, and the only thing desirable, as an end, all other things being only desirable as means to that end (p. 537).” Clearly this doctrine is premised on the subordination of individual rights for the sake of community happiness. The problem with this is that one could develop many scenarios in which individual liberties are curtailed so that the community’s happiness would be increased at the expense of a particular member.

Now the utilitarian response would assuredly center on the fact that if a member were harmed unjustly, the community itself would be harmed thus reducing the overall level of happiness within society. In addition, the sacrifice of an individual for the sake of the community could not be justified on utilitarian grounds since one could ever be sure that one would not be the individual sacrificed. This being the case, if one lived in perpetual fear that one could be sacrificed for the community, the overall level of happiness would be diminished due to this uncertainty.

The problem with this line of thinking of course is that it still does not answer the objection that an individual could be sacrificed for the good of the community. The response offers a mitigation if an act could not be carried out in complete secrecy. Utilitarians then hope that innocent people could never be convicted of a crime without the real culprit being discovered. Unfortunately there have been many documented cases of innocent people going to prison for crimes they did not commit as well as police planting evidence on suspects in order to secure convictions. Still, the utilitarian is constrained to agree with the notion that if the community’s interest is at stake and the sacrifice of one innocent person is necessary providing that no



one (but t  
and provi  
harm caus  
Of cou  
that the d  
accomplis  
level of h  
situations  
bad acts  
utilitarian  
This mus  
that one  
course is  
shown to  
innocent  
may resu  
affirmati  
discrimin  
at the ex  
action la  
support f  
them to b  
course th  
that a gro  
playing fi

one (but the framer) would ever know that an innocent person was framed and providing that the overall units of happiness increase compared to the harm caused to the individual.

Of course, the utilitarian response to this is that no one could be certain that the deed would go undetected and if detected the level of utility accomplished by such an act would have the opposite effect and decrease the level of happiness in the community. As such they state that hypothetical situations like this are unlikely to dissuade them since one can not be sure that bad acts will never be discovered. Of course this is true, but, then the utilitarian if believing this (which they must) would be paralyzed by inaction. This must be the case since the utilitarian bases his/her objection on the fact that one can never be sure that an evil deed will be discovered. Which of course is true, but, one can never be sure that any course of action will not be shown to be faulty and thus suffer the same consequence of framing an innocent individual. The utilitarian would be forced to inaction since action may result in the future decrease of utility. An example of this is the affirmative action law. It was commonly thought that based upon centuries of discrimination that one class of citizens should receive preferential treatment at the expense of the class accused of mistreatment. Initially affirmative action laws were passed by the Congress of the United States and received support from the Supreme Court. Both bodies reviewed the laws and deemed them to be appropriate and in the best interest of the country. This meant of course that one segment of the population would be discriminated against so that a group of people that had long suffered could operate on the same playing field. However, less than thirty years later affirmative action

programs

from it ha

both the

wrong he

utilitarian

made dur

calculus

happines

cannot ch

constrain

person is

from the

Looki

can be se

already b

for societ

calculus r

comfortab

American

out crimin

Arguat

especially

mentioned

characteris

encounter.

programs have begun to dismantle. This is not because those that benefit from it have declared that the conditions of play are now even, it is because both the Supreme Court and Congress have decided that the notion was wrong headed, that discrimination against anyone is de jure wrong. The utilitarian would be constrained to acknowledge that either a mistake was made during it's implementation or during it's dismantling. Either way, the calculus was wrong at some point and decreased the overall level of happiness for society. Thus, just because a mistake could be or was made, cannot change the fact that given the right conditions utilitarians are constrained to acknowledge that at times the unjust sacrifice of an innocent person is permissible for the sake of perceived good that society receives from the sacrifice.

Looking at utilitarianism in the context of differential traffic enforcement it can be seen that this paradigm offers several attractive features. First, as has already been stated, it's primary concern is increasing the overall happiness for society. Further, it is not concerned with individual rights as long as the calculus remains tilted in favor of society. As such utilitarians are comfortable with treating individuals as means rather than an end. Ostensibly American society would be served by a police force that pro-actively sought out criminals and reduced the burden that they place on society.

Arguably, the Supreme Court has taken a more utilitarian point of view especially with respect to pretext traffic stops. As has already been mentioned, the Court allows police officers to stop a person based on racial characteristics as long as there is a traffic violation to substantiate the encounter. In this instance, the Court's ruling allows officers to stop the

individual

involved

to determine

Clearly, t

in examining

allow po

character

hole in a

time the

be that th

This wo

well as f

impact o

race bas

Even

ability to

State Po

on a pre

pretext s

is proven

Seco

amendm

opposed

contract

repudiatio

individual based upon group characteristics of those most likely to be involved in criminal activity. The rationale is that an officer can use a profile to determine who he wants to stop as long as the traffic stop itself is legal. Clearly, this is a case of minimizing the individual in relation to society. But, in examining the entire issue, it can be seen that the Court did not intend to allow police officers to discriminate against individuals based upon racial characteristics, more likely the Court was merely attempting to close a loop hole in a potential criminal defense argument. Namely that each and every time the police arrested a minority based upon a traffic stop the claim would be that the person was stopped simply because they fit a specific profile. This would have done nothing but clog an already overburden court system as well as free those objectively guilty of a crime. However, the unintended impact of the Court's ruling is that by default it allows officers to conduct race based differential traffic enforcement.

Even with the Supreme Court's ruling, the police do not have unfettered ability to only stop minorities. In fact civil litigation against the Maryland State Police has in effect limited the ability of police to stop a person solely on a pretext stop. As has been discussed, several courts have posited that pretext stop albeit legal can still subject the departments to civil damages if it is proven that the stops were racially motivated.

Secondly, a reading of the United States Constitution, particularly the amendments, will readily reveal that it is premised upon individual rights as opposed to group rights. This is of significant importance in that it is the contract upon which our government is based. In essence, this is a formal repudiation of utilitarianism in the American context. In fact to bolster this

assertion

published

"Publius"

federalist

democrat

writes of

so as not

organized

to a major

common

citizens,

1961; p.

factional

the effect

Madison

factions.

basically

This is so

States wa

it's infan

remove th

were una

effects of

democrac

so fearful

assertion one needs to look no farther than the Federalist Papers first published in 1787. In Federalist 10, James Madison under the pseudonym “Publius” published arguably one of the most important essays in defense of a federalist style government. In it Madison specifically argues against a pure democratic form of government in favor of a representative one. Madison writes of factions that whether in the minority or majority must be controlled so as not to ride roughshod over the rights of other factions that may not be so organized. For him a faction is “...a number of citizens, whether amounting to a majority or minority of the whole, who are united or actuated by some common interest or passion, or of interest, adverse to the rights of other citizens, or to the permanent aggregate interests of the community (Madison: 1961; p. 78).” He felt that there were only two ways in which to deal with factious majorities (or minorities). First remove the causes or, second control the effects of the factions.

Madison felt that there were only two ways to remove the causes of factions. The first was to have a monolithic society in which everyone would basically agree on the basic principles. He realized that this was impractical. This is somewhat interesting when one considers that 19<sup>th</sup> century United States was relatively homogenous and if it could not be accomplished during it’s infancy, it could probably never be accomplished. The second way to remove the causes of factions was to reduce individual liberty. Both of these were unacceptable to our founding fathers, so they chose to try to control the effects of factions. It is in this light that representative a bicameral democracy was formed. In fact, Madison and the other founding fathers were so fearful of a factious majority subverting the fledgling union that they



delibera  
those of  
majority  
majority  
society,  
of the C  
popular  
passions  
secure ti  
faction..

The p  
individu  
knew th  
majority  
happenin  
be subje  
majority  
governm  
a mediu  
true inte  
least like

Since  
expense  
principle  
been cou

deliberately built safeguards into the system to protect individual rights above those of the group. Madison writes "(I)f a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. ...it may convulse the society, but it will be unable to execute and mask its violence under the form of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passions or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction... (Madison: 1961; p.80)."

The general point being is that the framers of our country decided that individual rights and freedoms were more important than group desires. They knew that once a group obtained power that with a simple calculus of majority rule tyranny would not be far behind. In fact the fear of this happening was of great concern, not so much that the framers felt they would be subjected to tyranny themselves since at the time they were the in the majority, but, for future generations. Madison felt that the republican form of government was the best to ensure individual freedom. He wrote "...through a medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations (p. 82)."

Since utilitarianism requires the maximization of group happiness at the expense of the individual, it appears to be in direct contradiction with the principles that the United States was founded upon. Although there have been court decisions that have limited the scope of individual rights there are

still prin  
such prin  
mistaken  
Principle  
its stron  
limited b  
enforcem  
that valu

## Kantian

Kant  
universe  
meant b  
regardle  
instance  
this was  
then all  
could e  
not func  
corner s  
univers  
maintain  
In es  
is predic  
individu

still principles that are sacrosanct within the criminal justice system. One such principle roughly stated is that it is better for ten guilty people to be mistakenly set free than it is to mistakenly imprison one innocent person. Principles like this seemingly would not comport with the notion of utility and its strong group emphasis. As such, utilitarianism although appealing on a limited basis, does not seem to be a reasonable paradigm under which law enforcement officials should operate. This is especially so in an environment that values individuality.

### **Kantian Ethics**

Kantian theory is predicated on the notion that there are things in our universe that can be said to be universally prescribed or proscribed. What is meant by this is that there are certain acts or actions that are right or wrong regardless of what positive law or norms within the culture decree. For instance, Kant believed that truth telling was one such principle. He felt that this was universal in that it was prescribed for everyone since if one could lie then all could lie. This would break down the fabric of society in that no one could ever trust another if lying was permissible. Without trust society could not function with any type of stability. In fact, it can be said that trust is a corner stone in any long lasting society. It can be said then for a Kantian, universal prescribed behavior is not simply a luxury but a necessity for a well maintained society.

In essence (although somewhat of an over simplification), Kantian theory is predicated on the notion that there is a contract between society and the individual. The contract places both conditions and responsibilities on



society and the individual. The former is constrained to treat the individual as an end in and of himself; while the latter must adhere to certain precepts, or put somewhat differently, categorical imperatives. What this all means of course is that there are certain duties and obligations that are required of each. In other words, a categorical imperative is nothing more than a principle of conduct which Kant believed applied to all people due to their “nature as a free and rational being (Rawls: 1971; p. 253).”

Of particular interest is the notion that these principles are applied to rational beings. The implication of course is that these principles are the result of a rational choice. The problem of course is determining what principles are to be followed especially when proving objective principles is beyond what is known to be possible. In fact Kant asserts that “...the objective reality of these concepts (viz., that they are not mere chimeras) and also the truth or falsity of metaphysical assertions cannot be discovered or confirmed by any experience (Kant: 1977a; p. 69).”

The question then becomes what principles of conduct ought to be followed? Kant (1977b) believed that for an action to have moral worth, it must be done from a sense of duty. For instance, Kant felt it was a duty to “maintain one’s life (1977b; p. 177)” however he felt that the maxim as applied to most people is empty of moral worth in most cases because although people preserve their lives “*as duty requires* (p. 177),” they do not do so “*because duty requires* (p. 177).” On the other hand, Kant felt that the person who albeit despondent and willing to take his own life but does not from the notion of duty has exhibited moral worth. Clearly, for Kant simply adhering to a principle does not give it moral worth, it must have intrinsic

value.

Seco

comple

have to

worth o

attemp

withou

stands

spring

by som

volition

princip

This

law (K

person

duty in

duty n

scrupu

It i

imper

will th

To tes

imagin

hypoth

repayr

value.

Secondly, the moral worth of the principle is not derived from the completion of a specific action, it is from the maxim itself. The act does not have to be completed, however it must be done voluntarily. For Kant, the worth of an action is not affected by its completion, but by its legitimate attempt. He states “(I)t cannot lie anywhere but in the *principle of the will* without regard to the ends which can be attained by the action. For the will stands between it’s *a priori* principle, which is formal, and it’s *a posteriori* spring, which is material, as between two roads, and as it must be determined by something, it follows that it must be determined by the formal principle of volition when an action is done from duty, in which case every material principle has been withdrawn from it (Kant: 1977b; p. 179).”

Third, Kant views duty as “...the necessity of acting from respect for the law (Kant: 1977b; p. 179).” In other words, duty is done irrespective of personal inclinations. In fact, duty is done despite these inclinations. When duty involves a choice between personal inclinations and to obedience of law, duty requires that the former does not enter into the calculus and the latter is scrupulously obeyed.

It is from this conception of duty that Kant formulates the categorical imperative which states “I am never to act otherwise than so *that I could also will that my maxim should become a universal law* (Kant: 1977b; p. 180).” To test this principle Kant poses the hypothetical situation in which one is to imagine that one is in distress and the only way out is to lie. In his hypothetical the person asks another to lend money based on the promise of repayment, however circumstances as they are, the borrower has no intention



of r  
ord  
ack  
nee  
ans  
ext  
uni  
my  
dif  
18  
(te  
un  
is  
th  
Th  
un  
  
of  
w  
ca  
di  
ca  
ex  
di  
at

of repaying the loan. The question then is: Is it permissible to tell a lie in order to get out of a bad situation? Kant clearly does not think so although he acknowledges that one may have alleviated the situation (in which money needed to be borrowed), he has failed to fulfill his duty to society. Kant answers the question with a question: "Should I be content that my maxim (to extricate myself from difficulty by a false promise) should hold good as a universal law, for myself as well as for others; and should I be able to say to myself, "(E)veryone may make a deceitful promise when he finds himself in a difficulty from which he cannot otherwise extricate himself (Kant: 1977b; p. 180)?" Basically he is saying that in this situation what is personally prudent (telling the lie) is socially imprudent. Because by telling the lie, one cannot universalize this behavior. That is, one cannot make the argument that lying is permissible in situations which one finds to be personally prudent, since this would lead to consequences in which no one could trust another. Therefore according to Kant, any maxim that permitted lying would collapse under its own weight.

Indeed, Kant's theory does not require anyone to be adroit in the matters of philosophy to discern what is morally good, one need only ask himself whether or not the maxim one is operating under can be universalized. If it cannot, Kant states that "...it must be rejected, and that not because of a disadvantage accruing from it to myself or even to others, but because it cannot enter as a principle into a possible universal legislation, and reason extorts from me immediate respect for such legislation. I do not indeed as yet *discern* on what this respect is based (this the philosopher may inquire), but at least I understand this—that it is an estimation of the worth which outweighs

all wo

acting

which

being

1977

imper

the p

as an

a me

K

comm

categ

actua

they

purpe

(Kan

impe

hypo

being

N

creat

man

world

In fac

mora

all worth of what is recommended by inclination, and that the necessity of acting from *pure* respect for the practical law is what constitutes duty to which every other motive must give place because it is the condition of a will being good *in itself*, and the worth of such a will is above everything...(Kant: 1977b; pp. 180-181)." Clearly he is positing that following the categorical imperative is necessary for ethical behavior. By adhering to it one enhances the prospect that one shall never treat another merely as a means, but always as an end. This in turn increases one's own prospects of not being treated as a means to an end, but as an end in oneself.

Kant argues this very point when he discusses the notion of imperative commands. He classifies imperatives as either hypothetically or categorically. The former refers to things that are good due to a possible or actual purpose. The latter refers to things that are good in and of themselves they declare "...an action to be necessary in itself without reference to any purpose, that is without other end, is valid as an *apodictic* (practical) principle (Kant: 1977b: p. 182)." What this means of course is that categorical imperatives express necessary truths that are absolutely certain. Where as hypothetical imperatives look at an action myopically in terms of an action being good only as a means to something else.

Now for Kant being rational is what separates man from the lower ordered creatures. In fact, he argues that rationality is a condition that is unique to man and it is what makes man distinctive from the other creatures of the world. It is this rationality that allows man to discover principles of morality. In fact he believes that rationality is the key to discerning principles of morality. In the past he felt that the discovery of these principles failed in

part because man believed that he was bound to duty by laws but did not recognize the fact that man was the author of these laws. This meant that man looked at himself as a subject of law not as an actor with responsibility for its consequences. In other words the duty was to follow the law simply because it was the law, not to follow the law because it had some intrinsic worth. In this sense man did not follow a moral command, but simply obeyed a system of laws due further one's own parochial vantage. Kant describes the former concept as autonomy of will and the latter concept as heteronomy of will.

Kant felt that autonomy of will was the supreme principle of morality and that heteronomy was its antithesis. Kant describes the principle of autonomy of will as "(A)lways so to choose that the same volition shall comprehend the maxims of our choice as a universal law...that the principle of autonomy in question is the sole principle of morals can be readily shown by mere analysis of the conceptions of morality. For by this analysis we find its principle must be a categorical imperative, and that what this commands is neither more nor less than this very autonomy (Kant:1977b; p. 193)." Of course this means that the individual must be self regulating in the sphere of morals. That is, the person must not simply accept the principle due to some inclination, but because it is intrinsically right.

Heteronomy of will on the other hand is nothing more than the uncritical acceptance of a rule believing that one does not have control over moral development, further it is the acceptance of the hypothetical imperative. It is merely acquiescing to one's particular inclinations. In this sense heteronomy treats duty as a means to some other end rather than an end in itself. For

inst

for

ord

"ki

so

thi

me

ea

en

po

ca

so

ne

m

w

H

b

a

l

u

t

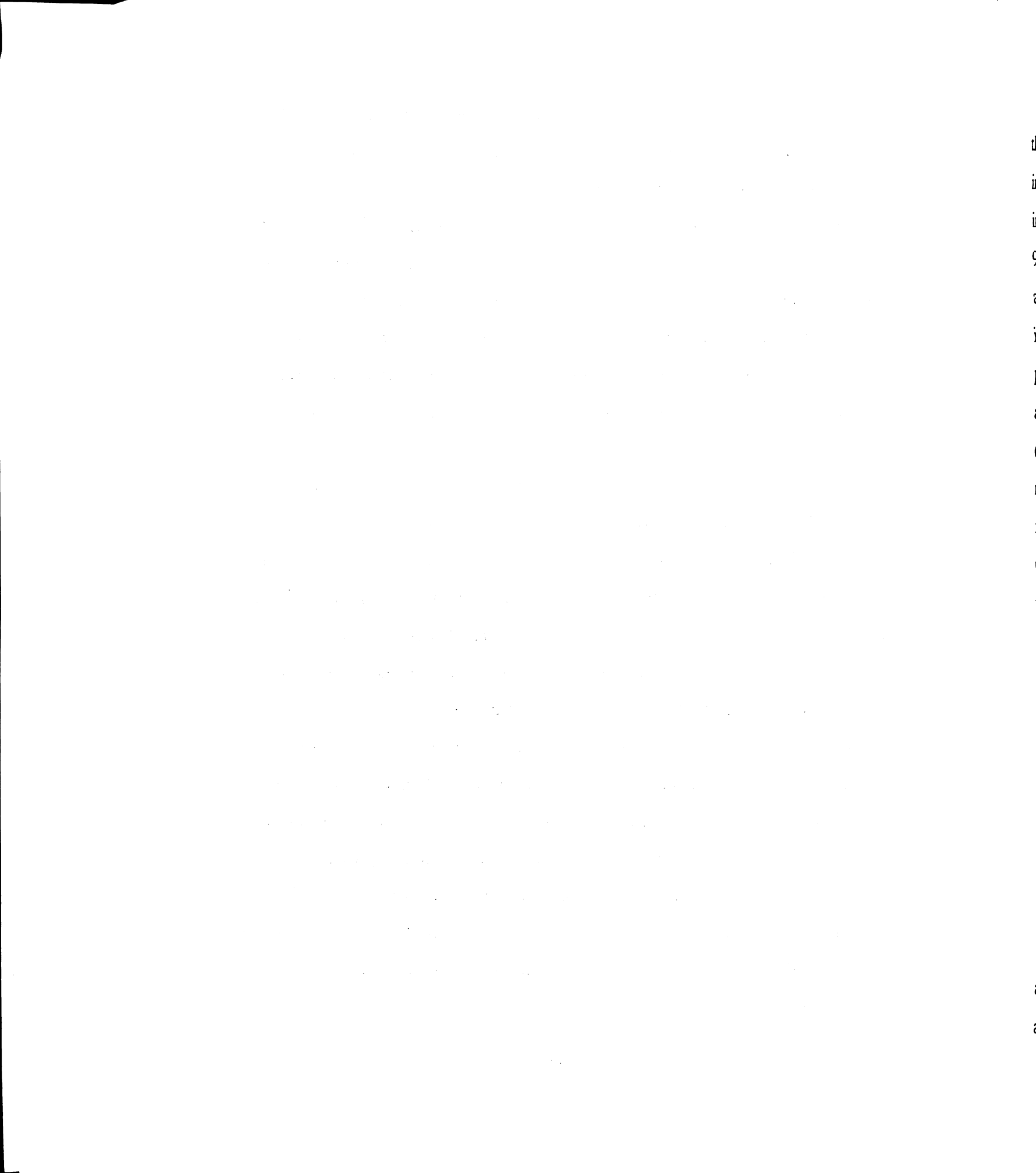
a

instance promoting truth telling in an instance for pecuniary gain rather than for the fact that truth telling is necessary for the maintenance of a well ordered society is an heteronomous act.

It is through the autonomy of will that man evolves and is able to enter the “kingdom of ends.” The kingdom of ends is merely Kant’s terminology for a society comprised of rational beings sharing a system of common laws. In this society people act on principles through notions of rationality, duty and, morality. He felt that all rational beings in the kingdom of ends must treat each other “*never merely as means, but in every case at the same time as ends in themselves* (Kant: 1977b; p. 191).”

Importantly, Kant believed that in the kingdom of ends each person potentially has the capacity to act both as a member and a sovereign. In the capacity of member, he must abide by the imperatives and laws; while as a sovereign he must be able to promulgate laws. However, he did not believe it necessary that each person serve as sovereign. Kant was attempting to mitigate the power that sovereigns enjoyed and as such he asserted that there were limits on their abilities to promulgate unjust rules.

Kant believed that morality is what makes the kingdom of ends possible. He felt that “legislation” (categorical imperatives) exists in every rational being. The means that each person in the kingdom of ends must possess an autonomous will. The autonomous will can never act contrary to a universal law and remain autonomous. In this sense the will is duty bound to follow universal maxims as well as objective principles. If not, Kant did not believe that it could be conceived as an end in itself, hence it could not be considered autonomous.





Putting Kantian ethics in the context of differential traffic enforcement in the United States seems rather straight forward. Since in this country individual freedoms and choices are valued and considered prima facie irrefutable. For instance, several amendments (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 26<sup>th</sup>) to the United States Constitution guarantee a plethora of rights to all individuals. These are granted irrespective of their impact upon society. As an example, the 4<sup>th</sup> amendment guarantees protection from unreasonable search and seizure by the government. If an agent of the government believes that a given person committed a crime (murder, robbery, burglary, etc.) and illegally gains entry into that person's residence; finds evidence that establishes guilt, that evidence is not admissible in court because the search was conducted in violation of the 4<sup>th</sup> amendment. Clearly the intent of these provisions is to protect the individual from a potentially unscrupulous government with significant resources.

In Kantian terms, the agent of the government has treated the person as merely a means to an end rather than an end in and of himself. This is because the officer was more interested in solving the crime rather than safeguarding the rights of the individual. Remembering the categorical imperative "act only on the maxim where one can will that the action itself become a universal law" it is easy to see that the officer treated the person as a means rather than an end. Especially since the results of the officers action would dictate that the maxim read as follows: Violating a persons rights is acceptable as long as an officer believes that the person may have committed a crime. The results of such a maxim would in effect negate the 4<sup>th</sup> amendment. Since it could not guarantee unwarranted searches by police

0

2

W

0

U

2

0

0

A

A

1

1

S

S

A

S

S

S

S

S

S

S

S

S

S

S

S

S

officers. Clearly if police were allow to freely interpret the Constitution and apply maxims because of a perceived societal interest, then the Constitution would become meaningless. As such we can see that the United States operates under a type of Kantian system.

The problem of course is that law enforcement officers rarely operate under conditions that are ideal and often do not consider whether or not their actions comport with maxims. Police officer simply respond to situations and often ad lib as they go. When considering differential traffic enforcement, officers ostensibly use the rationale that proportionately more African Americans are in prison than non-African Americans, therefore African Americans are responsible for a disproportionate percentage of crime. The truth or falsity of such an allegation is of little importance for a Kantian, in that the issue is whether or not a maxim could be developed to treat those subjected to differential traffic enforcement in a way that would treat them as an end in themselves rather merely as a means. In this case the maxim would have to be stated something like this: It is permissible to conduct a legal traffic stop on a person simply because of racial characteristics.

Remembering of course that this maxim must be universalized to be of autonomous value, otherwise it would be heteronomous and as such would look after one's parochial interests. The results of this maxim is that it would be permissible for police officers to stop people simply because of racial characteristics. If this were the case, this would mean that officers would be treating people solely based on racial characteristics in order to accomplish a societal goal: the reduction of criminal activity. This necessarily means that the officers would not be treating those subjected to differential traffic

enfr

offi

dur

col

tha

min

dec

dis

one

law

inte

rig

As

dif

wa

exp

un

as

sai

me

put

pro

at t

enforcement as an end in themselves. In Kantian terms this means that these officials would be acting immorally in that they would be circumventing their duty to universalize treatment of individuals and instead treat them as a collective group. Further, the danger of promoting a maxim such as this is that people presently in the majority, may suffer the same treatment as minorities if their numbers relative to the rest of the population were to decrease, they could easily find themselves in the minority. Then this disparate treatment may be thrust upon those who formulated the maxim.

A question that arises is: What happens when two ends compete, requiring one to be treated as merely a means and the other as an end in himself? In law enforcement this question is often a reality. Very often competing interests arise that cause consternation. For instance, public interest and the rights of the individual often must be weighed in developing public policy. As has already been discussed, when the Supreme Court sanctioned differential traffic enforcement the argument centered on the notion of whether it was fair to handicap police officers in combating criminal activity at the expense of equality. The Court did address the notion of equal treatment under the law, it said that members of the majority could be targeted as well as members of the minority. However the implication is that the Court has said that it is alright for the law enforcement officers to treat all persons as a means rather than an end in of themselves. In this case the Court sided with public interest versus individual rights.

Kant addresses this notion. In fact he would not disagree with this procedure of ranking maxims, since in his kingdom of ends he recognizes that at times maxims conflict with each other. When they do, he posits that a

maxim may be replaced by another maxim as long as it is of equal value. The problem of course is when value cannot be placed on a maxim. In these cases, Kant would argue “that which constitutes the condition under which alone anything can be an end in itself, this has not merely a relative worth, that is, value, but an intrinsic worth, that is, *dignity* (Kant: 1977b; p. 192).”

What this means is that there are certain maxims that cannot be compromised, although he does not state which ones, it is fair to assume that those involving human rights and equality under the law would fit the criteria. This must be the case since all rational beings must consider the issuance of maxims in the context of universalization. In other words, once the maxim is promulgated it must be applicable for all people, not simply those that are in a disadvantaged position. Since if we simply considered what was in the best interest of society, rather than the individual, this would be little more than a subterfuge for a utilitarian philosophy.

The question of whether or not a Kantian paradigm is practical for police officers to operate under given the complexities of their job in a multi-ethnic environment seems to be nothing more than a tautology. Kantian ethics require the universalization of treatment for all people, therefore the police ought to treat all people the same, this reasoning is circular. That is not to say that all people ought not be treated the same, but it minimizes the vagaries of law enforcement. In fact, Kantian ethics is most appealing when considered in light of utilitarianism in that it treats the individual as sacrosanct. In a democratic society this is of the utmost importance, since if liberty is allowed to be sacrificed in one instance, then, it could be reduced in other instances.

The problem of course with the Kantian paradigm is that it is too rigid in



its application. If police officers were required to universalize every action, treating everyone the same, this would lead to inaction. This must be the case since it would be impossible to treat all people in a like fashion, especially considering the many diverse personalities that officers encounter each day. This is not to say that police officers should be allowed to simply violate the Constitutional rights of the citizenry, to the contrary, they should scrupulously uphold its precepts. However, each and every decision should be considered in the context of a fluid society with needs that are ever changing. To this end the notion of categorical imperatives are somewhat antiquated in that what was once considered right, may in fact be misguided. For instance, Kant's maxim that one ought not tell a lie is seemingly reasonable. However through reflective reasoning one can imagine situations in which telling a lie would save a life. Would it be unreasonable then to lie? Imagine that a person knows that another is going to kill his wife for an infidelity, should this person who knows the location of the would be murderers wife divulge her location when asked? The Kantian may respond by saying that yes and then develop a maxim like this: In cases where another is going to be killed it is alright to lie.

Very well, now imagine that this person knows that another did commit a murder of which he is on trial for and if found guilty, the murderer would receive the death penalty. This person also knows that if he provides an alibi for the murderer then this person would not be convicted or would at the most receive a prison term (how this person knows this is of little importance). According to the maxim, the person ought to lie in court after swearing to tell the truth.





Of course the Kantian would then wish to modify his maxim now to exclude lying in cases dealing with murderers. So the maxim would now read something like this: In cases where another is going to be unjustly killed it is alright to lie in order to protect that person. However, assume that one is the brother of the murderer and that one does not think it just that his brother be executed. Then this person lies for his brother feeling that he is justified in saving a life that will be unjustly taken.

The problem of course is that once there are cracks in these maxims, they quickly become fodder for anyone wishing to justify anything. As such Kantian ethics suffer from the fact that they cannot be empirically proven or deduced. This although not fatal in the theoretical sense is somewhat terminal in the practical sense, since if principles cannot be deduced, only inferentially so, officers can not be expected to always make the nexus between what is right for the individual and what is right for society. In essence, officers are forced to precariously balance societal and individual interests.

However, it should be realized that Kantian ethics does provide a framework for officers to follow. It provides general rules of conduct that form a basis for the treatment of the citizenry. In this way, it is very helpful, but its rigidity is its downfall. This leads directly to the next ethical theory, reflective equilibrium.

### **Reflective Equilibrium**

Although there are many other ethical theories the purpose is not to put forth an anthology of them. It is of course to outline what is believed are the

major precepts under which ethical theory in the United States operates. Some of these have already been mentioned, these include notions of justice and fairness. The problem is that both justice and fairness seem to be relatively elusive concepts depending upon which ethical theory one subscribes with. In the American context, justice is seemingly predicated on the treatment of the individual. However there is always the notion of the state and its predominance over the individual given sufficient mitigating circumstances. For both Kantian and utilitarians this is exactly the problem, whether individual interests should predominate over societal interests or vice versa. To this end Rawls (1971) offers somewhat of a hybrid theory which he terms reflective equilibrium. In essence his solution is a melding of both theories.

Rawls attempts to reconcile both individual and societal interests with his simile of justice as fairness. He has delineated two principles of justice which he states as follows:

*“First Principle* – Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

*Second Principle* – Social and economic inequalities are to be arranged so that both:

(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and

(b) attached to offices and positions open to all under conditions of fair equality of opportunity (p. 302).”

Importantly, for Rawls these principles are ranked by order so that liberty



is valued first and foremost. Rawls like Kant believes that the only way that liberty can be restricted is for the sake of another liberty. He states that it can only be restricted providing that:

“(a) a less extensive liberty must strengthen the total system of liberty shared by all;

(b) a less than equal liberty must be acceptable to those with the lesser liberty (p. 302).”

As can be seen reflective equilibrium requires that society honor the notion of individual liberty, further, that it is prior to social good.

Rawls second principle of justice posits that fair opportunity is to be given priority over efficiency and welfare. That if there is to be inequality of opportunity, it can be so only if it “...enhances the opportunity of those with the lesser opportunity...(p. 303).” This is important in that Rawls is outlining ways in which differential treatment of individuals would be allowable in society. However, differential treatment is not allowable at the expense of liberty, only at the expense of social advantages. In fact Rawls makes this clear when he combines both of these principles into what he calls the general conception, he states that this is: “All social primary goods – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored (p. 303).” What is important to note here is that Rawls is not making an argument for individual treatment, but for the application of these principles in what he calls the basic structure. In other words he is setting up what he believes are *prima facie* principles, indeed, basic principles for society. Interestingly enough, Rawls suggests

that these principles are immutable. He posits that "...the original agreement is final and made in perpetuity, there is no second chance. ...Thus the parties must weigh with care whether they will be able to stick by their commitment in all circumstances (p. 176)."

The question then is how does Rawls determine which sets of liberties are to be meted out to individuals within a given society? Rawls in the spirit of social contract theorist, does this through a hypothetical state which he calls the "original position."

In the original position there are certain constraints placed upon individuals. That is Rawls keeps each actor in a state of "unknowing." This state simply means that each person is unaware of his position in life relative to any decision that is made. Rawls calls this the "veil of ignorance." Simply put, in the veil of ignorance, people "...do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations (p. 136-137)." He assumes that no one knows his place in society. This means that the actor in the original position under the veil of ignorance is unaware of his class position or social status, "...nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology... (p. 137)." These are important constraints for Rawls as he believes that this will produce a fair outcome when choices are made by rational people in the original position.

For Rawls this means that the person would want more primary social

good rather than less, further, that the rational person would tend to maximize his position relative to any possible loss. Rawls refers to this as the “maximin” position. This should be viewed in context of Rawls and his ties to game theory. What he is suggesting here is that people in the original position line up all the possible outcomes and then choose the result that provides the most gain while limiting losses. He believes that it is necessary that people in the original position act in such a manner since they do not have any knowledge of their true station in life. In this way Rawls believes that man enhances his opportunity to obtain the best possible outcome. He acknowledges that once principles are chosen some may be unhappy when the veil is lifted, however, he believes that if they were chosen rationally, the person must simply accept the proverbial roll of the die.

Importantly Rawls sees the veil of ignorance as a way to provide the best chance at social equality but he believes that it provides absolute political equality. In this sense he is arguing the fact that all people enjoy certain liberties and that these are not subject to the caprice of any social structure. Accordingly, the primary principle of justice is the principle of liberty.

Rawls recognized that there are times in which conflict within a society would erupt with respect to liberties. Rawls developed a mechanism to deal with this conflict. First, he felt that when principles are chosen they should be general in nature. This is because no one knows exactly one’s position in society. Thus, liberties can not be tailored to the particular individual. This insures that individuals can not stack the liberties in favor of a particular group.

Second, the application of the principles must be universal. That is Rawls

in the Kantian manner assumes that principles can only be chosen with the assumption of full compliance. In other words he is ruling out principles that if followed by everyone would be contradictory. Here he is essentially referring to instances like the maxim that would allow one to tell a lie for one's parochial interests. This has the effect of treating all persons as an end in themselves and minimizes the possibility of treating them merely as a means.

Third, he assumes that all principles chosen are known to all. This must be true with respect to the original position since here all people are given the opportunity to have input into the formulation of laws. Rawls felt that this was also desirable in that the awareness of principles would further facilitate "stability and social cooperation (p. 133)." More importantly the publicity principle allows each party to evaluate general principles in context of the impact that they have on the social and moral life. Once again at issue here is the notion of liberty placed in the political context. The publicity principle insures that society will not pass a law under the cloak of darkness that would infringe upon personal liberties. Further if such a law were passed it would be done so with full public scrutiny.

Fourth, he argues that when liberties do collide that the highest order liberty should prevail. This is done so "...to avoid the appeal to force and cunning that the principles of right and justice are accepted (p. 134)." This is essential to the conception of justice since to do otherwise would be nothing less than a Hegalian style argument of "might makes right." Clearly in societies that purport to value civil rights the imposition of laws by force and cunning is unacceptable.





Rawls does offer some insight into what he believes are the basic liberties. He states that “(T)he basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; *freedom from arbitrary arrest and seizure as defined by the concept of law* italics added (p.61).” The point of course is that Rawls is making the argument that some liberties are of greater value than others. That if it is necessary to circumvent one set of liberties for another, the one affording the greatest range of liberty ought to prevail over the one offering the least amount of liberty.

The last condition is that of finality. Again it is important to remember that finality occurs in the original position where no one knows his own particular circumstances. In this way the rational person makes a choice as to which sets of rules ought to be followed. Doing so in a way that maximizes positive outcomes while minimizing negative results. It is also important to recognize that Rawls believes that all people in the original position would necessarily choose the same set of rules, so in this case there would be unanimous agreement. This is the case since he feels that everyone, being rational, would opt to maximize the gains while insuring the least amount of losses, thus using the maximin rule, each choice would be serially ordered and every rational person, which in the original position everyone is assumed to be, would by definition make the same choice.

With respect to reflective equilibrium, Rawls felt that once the general principles are settled, they are settled for all time. However he recognized



that societies are fluid and that from time to time issues would arise that may not have been initially dealt with in the original position. He did not view this as problematic, he felt that people had the capacity to put themselves in the original position. Of course this does not mean that it is necessary for all members of society to place themselves in this state, and then arrive at the same conclusion vis-a-vis the maximin formula. What is meant is that people place themselves in this position in order to create new laws.

The question then is how is this possible? Clearly what he is asserting is that people charged with legislating and adjudicating laws place themselves in the original position when deciding outcomes. In contemporary United States, this burden falls upon the elected and judicial officials. In this sense Rawls is asserting that jurist and legislators act as if oblivious to their own stations in life when crafting and adjudicating laws.

Having outlined reflective equilibrium it can now be applied to the case of differential traffic enforcement. As can be seen, reflective equilibrium requires that society's first order of business is to secure liberty for all. Secondly it is to arrange social goods to benefit the least advantaged. The implication is that discrimination is acceptable with respect to the distribution of goods, but, that it is never acceptable as applied to liberties.

It may seem counter-intuitive that discrimination in any form would be acceptable, but one should remember that as applied to social goods discrimination is a necessary result of liberty. Because Rawls himself would be constrained to admit that owning property is a form of liberty when applied to rights and freedoms. This means that person "A" who wills his lot to person "B" is in effect discriminating, or at least differentiating against

person “C” whom he leaves nothing. Here “B” receives the benefit of “A’s” discriminating. To deny “A” the right to discriminate against “C” would deprive “A” of a right to his property and dispose of it as he sees fit. In fact to deny anyone the right to dispose of property as he sees fit would diminish the notion of rights as Rawls conceives of them in his two principles.

This must be the case since the first principle of Rawls is his most important in that it secures liberty. As has already been mentioned, liberty is prior to social considerations. Thus social institutions must conform to the liberty principle and not vice versa. Therefore discrimination based on the distribution of social goods is permissible because otherwise the right to property (or to dispose of property as one wishes) would hold no tangible value. The right to property would be meaningless and as such would not secure a right to anything, it would be self-contradictory.

It is seen discrimination is not *prima facie* wrong with respect to the distribution of goods, however it is wrong with respect to liberty. Rawls posits that in the original position, discrimination would not occur since they would not have any motive to make up pointless distinctions considering that their own station is unknown. For instance in the original position, it would not make sense for anyone to “...urge that special privileges be given to those exactly six feet tall or born on a sunny day. Nor would anyone put forward the principle that basic rights should depend on the color of one’s skin or the texture of one’s hair (p. 149).” He argues that people in the original position would act rationally and as such this would guarantee that ethical principles would be chosen. This of course would eliminate any possibility of racist principles being chosen since they would be both unjust and irrational.

This is directly on point with the notion of differential traffic enforcement. Here what is required is that people in the original position must actively choose to select a segment of the population for differential treatment. Remember of course that in the original position no one knows his particular race or gender, however what is known is the general racial composition of society. Also known are other relative factors such as overall poverty levels and the general distribution of goods as well as the social and legal structure as reflective equilibrium assumes knowledge of all but one's personal position and the effects of rules directly on oneself. This would mean that in contemporary United States one would have approximately a one out of eight chance of being an African American and nearly four chances out of ten of being a minority of any kind.

Looking at differential traffic enforcement from this perspective it would hardly seem reasonable to permit the practice based on the considerable probability of one's self being a minority. Since rules that are made in the original position are final, one cannot simply assert that differential treatment based on race is acceptable and then when the veil of ignorance is lifted one cannot then maintain that the rule is unfair upon discovering that one is a member of a minority group. Given that four chances out of ten, one could end up as a minority and be discriminated against, the likelihood of adopting such a rule would be nil.

However imagine since all aspects of society are known one would also know the rates of drug dealers amongst the particular races. Further imagine that the race of green people were **all** known to be drug dealers and that green people comprised .0001% of the population. Would it then be wrong to



institute a policy of differential traffic enforcement against green people? Arguably no. In fact reflective equilibrium requires that the criminal impact of actions on society be weighed as a factor in deciding restrictions on liberty. Remember of course that liberty cannot be limited unless there is a liberty of equal or greater value competing with the liberty in question. In this case, the calculus centers on the notion of liberty of the masses to conduct everyday business without fear of being victimized by the criminal element. Remember it is known that green people comprise  $1/10,000^{\text{th}}$  of the population. Rational people in the original position would then compute the odds and determine whether or not the restriction of liberty on such a small segment of the population would be justified in comparison with the benefit received, i.e., elimination of the drug dealing population. Having made the decision, the result is final and simply because after the veil of ignorance is lifted and one finds himself a green person, necessarily means that one must accept the consequences of differential traffic enforcement.

On the other hand, imagine that the race of green people once again comprised  $1/10,000^{\text{th}}$  of the population and that all drug dealers were green people (note that this is different than all green people being drug dealers). However in this instance only one out of ten green people are drug dealers. The question at hand is whether or not it would be permissible to allow differential traffic enforcement in this case. Here the calculus is somewhat different in that only 10-percent of green people are involved in criminal activity. To allow differential traffic enforcement activities on the basis of a small minority's (relative to the whole minority) participation in illicit activities would have the impact of treating all green people as a means to an



end, not merely as an end in themselves. This would be in direct violation to the principles in the conception of right. In that one could not rightfully universalize a principle that allowed all green people, especially the innocent, to be stopped by police officers. Additionally, this principle could not be formulated in a general way. That is, the principle would necessarily refer to a racial characteristic. Clearly this is wrong since to discriminate on the basis of race is irrational and, in the original position, rationality is the presumed state of being. In this case reflective equilibrium demands that green people be treated like all others and hence, not be subject to differential traffic enforcement.

In the former example Rawls employs a decidedly utilitarian model in that those in the original position act to maximize benefit for the greatest number of people. However, in the earlier calculus involving a minority that comprised 40% of the population Rawls is decidedly not utilitarian. Since here the calculus centers not merely on what the majority wants, but, on the probability of being in the minority. Clearly Rawls does not want to limit the liberty prospects of a large segment of the population.

In the latter example, Rawls adopts a Kantian system to arrive at the conclusion. Here, even though the populations are equivalent, the actors in the original position are constrained to treat green people in a way that respects their right to liberty. This of course is due to the circumstances in which the restriction of liberty for drug dealers (a small portion of the green population) would come at the expense of the larger segment of the green people. Reflective equilibrium does not allow this, as liberty cannot be sacrificed for expediency.



The point is that reflective equilibrium requires that decisions be made in context of societal goals providing that justice in the form of liberty is enhanced and fairness in the form of distribution of societal resources is accomplished in compliance with Rawls two principles.

Differential traffic enforcement must then be thought of as the restriction of liberty for the purpose of reducing criminal activity. In the Rawlsian paradigm this means that people in the original position must actively choose the restriction of liberty. Of course this is antithetical to the principle of justice, as such it would be irrational. In the Rawlsian model, one of the necessary assumptions is that by definition all people in the original position are rational beings. As such, they could not choose the restriction of liberty for a segment of society merely as a precautionary measure against possible criminal activity.

Interestingly enough, Rawls does not believe that reflective equilibrium applies to individuals. It is his contention that it applies to the basic structure of society. This of course is especially important to the notion of differential traffic enforcement in that it places the onus for ethical behavior on society rather than the individual. This means that in essence the notion of ethical treatment is not intrinsic to the officer, but, that it must necessarily be codified. Considering the Kantian paradigm this is a strange assertion in that seemingly officers would act ethically because of the law as oppose to acting ethically because of something within oneself. Reflective equilibrium requires that ethical choices be made in the original position and that they are based on notions of justice and fairness. This decisions dictate how the basic structures (police, courts, legislatures) in society treat the individual. In turn,

since the basic structures are comprised of people, they provide a road map on the ethical treatment of individuals by representatives of these structures.

However this does not mean that people are not capable of ethical behavior on their own. To the contrary all rational people are able to act ethical, but outside of the original position it is not required that they do so. In fact this is precisely why there is a veil of ignorance in the original position. Since all rational beings will each try to advance their own interests, outside of the original position, without set parameters, the rational individual would try to increase his position relative to others in society.

This leads to a rather startling conclusion. Namely that differential traffic enforcement or any behavior that requires ethical decision making ought not to be left up to the caprices of the individual officer. This type of behavior ought to be codified so that there are specific rules in which officers must follow instead of allowing officers to formulate their own ethical paradigms in a hap hazzard fashion.

In fact, taking this one step farther, reflective equilibrium requires that ethical decisions remain the sole province of the legislature. This must be the case since Rawls requires that those making legislative decision place themselves in the original position, formulate, contemplate and, implement laws governing behavior (justice and fairness) as if they were behind the veil of ignorance. In this way, individuals within society are not subject to the vagaries of eclectic law enforcement policies. This would limit police discretion with respect to differential traffic enforcement. It would place the burden and justification of these types of stops where it belongs, on the legislative and to some extent judicial bodies.



Now there are those that will argue that such laws do exist in that police officers must have a traffic violation prior to stopping any individual, that this has come as a result of thoughtful reflection on the part of legislators and jurists. To which must be admitted is partially true. However there are two issues, first and foremost is whether or not these rulings and laws were contemplated (reflected upon) from the standpoint of justice for the individual or from a notion of broadly defined societal interest. Secondly there is the issue of whether or not a disproportionate number of minorities are selected for traffic enforcement versus their relative numbers in the general population. If this is shown to be the case, the practice of differential traffic enforcement must cease.

### **Summary**

The preceding discussion has focused on the issue of ethical responsibility. Three different ethical paradigms were examined. Those were: utilitarian, Kantian and, reflective equilibrium. It was shown that the utilitarian model although appealing in certain aspects was deficient in that in a democratic society, like contemporary United States, individual freedoms suffer to the benefit of the group. The problem of course is that this leads directly to a person being treated as a means to an end rather than an end in itself. Putting it somewhat differently the problem that utilitarians experience is comports the happiness principle with individual liberty. Utilitarians are constrained to admit that in all cases societal interests must weigh greater than individual concerns.

This means that it is entirely possible that an entire segment of the



population, albeit not a majority, could suffer discrimination if on the whole the discrimination created more happiness than unhappiness. This reduces ethics to a mere calculus: if action “A” results in 10 units of happiness and the absence of action “A” results in a decrease in 1 unit of happiness then, action “A” ought to be done.

Another problem with utilitarianism is that it places the responsibility for ethical behavior on the actor. Although arguably, this is not necessarily wrong, it does place a strong emphasis on the individual and his interpretation of the good. In the case of race based differential traffic enforcement the officer finds himself denigrating a person simply because of racial characteristics. Seemingly this is done with the motive of creating a better living environment for society as a whole. However what is conspicuously absent are the nefarious motives of some officers. For instance, an officer acting under the auspices of utilitarian motives in fact could discriminate against a person, violating his rights as a human being. Utilitarianism does not and cannot address this possibility since what is right is fluid within a given society. In other words, the concept of right is judged on a case by case basis meaning that an officer’s motivation for conducting a stop or his treatment of individuals is unimportant as long as the general notion of utility is satisfied. The result of this is that ethical behavior in the context of utilitarianism is somewhat unimportant when confronted with the enhancing the perceived happiness of society. This seems to be clearly misguided, additionally, it is questionable whether or not that this is in the truest sense an ethical theory or merely a form of ethical nihilism masquerading in the cloak of ethics.



Kantian ethics on the other hand provides several answers to the objections that result from utilitarianism, including an answer to the critical means/ends question. First the principle of utility is soundly rejected in favor of the categorical imperative which simply stated is that act not lest you could will that your action be universally adopted. In other words the Kantian is required to formulate maxims that are universal. If this is the case the means/ends question is resolved in favor of the individual. This requires that neither society nor its agents are allowed to treat any individual as a means to and end, rather they must always treat the person as an end in himself. To fail to do this would necessarily cause the categorical imperative to implode upon itself.

It is easy to see that Kantian ethics and differential traffic enforcement are incompatible. This is the case since with respect to differential traffic enforcement the police officer necessarily treats a group of people as a means to an end. This is so because the whole purpose of this type of enforcement is to reduce some activity (drug dealing, armed robbery, burglary or any other type of criminal enterprise) by stopping people because they fit a certain racial profile. This has the impact discriminating against a person simply because of the triviality of skin color, which is nothing more than a happenstance of birth. Clearly this activity has the effect of treating a person as a means to and end and not as an end in himself. Secondly, Kantian ethics require that the maxim of differential traffic enforcement be applied equally across the board. However, this concept is logically impossible since one cannot both at the same time espouse treating people differently and yet treat people the same. As such, the maxim with respect to differential traffic



enforcement implodes upon itself and thus is not allowable.

A problem with Kantian ethics more so than utilitarian theory is that the onus for behavior is placed upon the individual. Which means that the person determines whether or not to act in a given situation. In the case of an unethical police officer his actions can be judged as they comport with laws relative to the legal system; since if the officer does not violate the law there is no cause for concern. However if officers do violate the law they can then be dealt with in accordance with the penalties that are set forth. Seemingly then, this is not a big concern since there are safeguards to insure punishment of offending officers and secondly, the laws in theory apply to all equally. However, in a system in which a wide range of discretion is given to officers in their treatment of the public, the ethical vulnerability of an officer is always at question. Simply, because bad officers can use the laws to differentially treat people on the basis of race and or gender, not to serve a societal goal but, to satisfy their own particular desires. It follows then that good officers can also use the law to treat people of different races and gender differentially, simply because a good officer uses a law does not make the law itself good. The law must stand the test of the categorical imperative. If it can not, then from the Kantian perspective, it must be deficient.

Kantian theory asks that society's agents treat people as an end in themselves. However, with modern day policing this is exactly the problem. Officers are not required to treat people as individuals since the rule of law has somewhat obfuscated the line demarcating the individual and society. In this way Kantian ethics fails within the policing context. The remedy of course may seem counter-intuitive, it is not to give the police more discretion,



which incidently would allow them to ignore violations, but to give them less discretion. This would mean that they would in fact move in the direction of the categorical imperative and treat all people alike. Since if everyone was being stopped, then no one could complain that they were discriminated against.

One final problem to mention with respect to Kantian ethics is the result of reducing police discretion; if discretion is reduced the law is seemingly unbending in the treatment of people. This of course in a highly fluid society makes the Kantian paradigm ever problematic.

This leads to the hybrid theory of reflective equilibrium. As has been discussed reflective equilibrium applies specifically to the basic structure of society, not to particular individuals within the society. This means that it is society's responsibility to guarantee that all people are treated in a just manner comporting with the primary principle of liberty. This is accomplished by rational people in the original position selecting principles so as to maximize gains of all people while minimizing their losses. Rawls refers to this as the maximin principle. It is important to realize that all rational people in the original position know the basic structure of society. They all know the relative poverty levels of each group of people as well as knowing the general social and political environment. This is central to the notion of reflective equilibrium in that only through knowledge can people make just rules that are fair to all.

According to Rawls, liberty is the primary aim of society, given that there are sufficient resources to provide sustenance for all. He believes that liberty would be chosen by all rational persons since through it all other desires can



be accomplished. Thus every principle chosen in the original position must comport with the notion of liberty. The only way that a liberty can be restricted is for the sake of a liberty of equal or greater value. Essentially this means that a person's liberty cannot be infringed upon to promote a societal value, unless of course the infringement occurs to all people alike.

In this sense reflective equilibrium is Kantian in nature, since like treatment for all people is prescribed. It is also similar in that once rules are set, they are settled in perpetuity. This is an important feature in that once the veil of ignorance is lifted and one knows his station in life, one cannot claim that the selection of rules was unfair since ostensibly everyone in the original position selected these rules as rational beings.

However it is also utilitarian in that rules are adopted based on a consensus of people within the original position, keeping in mind that the rules must comport with liberty. Moreover once the basic structure of society is settled and the veil of ignorance is lifted, people are expected to abide by laws that may seem to be against their own interests, simply for the good of society. As an example, considered Rawls second principle and the distribution of goods. Here he clearly asserts that for the good of society and the notion of fairness; the distribution of resources ought to be so that the least advantaged increases his lot relative to that of the more advantaged.

Differential traffic enforcement poses a problem for Rawls and reflective equilibrium in that in the original position, one would have to assume that rational beings choose to discriminate against people on the basis of race. Clearly this is an irrational position, especially when one considers that in the original position one would not know if he were a minority. In the American





context, this would mean that forty-percent of the time one would find himself part of the minority class. Using the maximin principle this would be unacceptable.

What is appealing about reflective equilibrium is the notion that it is applied to the basic structure of society, not specifically to individuals. Of course one may posit that this is really a distinction without a difference in that individuals are the ones that develop the basic structure. This is true, however once the basic structure is settled, individuals must comport with its principles. This means that once the veil of ignorance is lifted individuals are dependent upon the settled precepts and must act accordingly. The importance of this is that in theory this reduces the amount of differential treatment that is allowed. Which in turn ought to reduce discretion. Which ought to reduce the incidence of discriminatory practices currently allowable under the judicial and legislative rules.

It is easy to place blame upon the police and criticize them for practicing differential traffic enforcement. It is easy to call into question their ethics, however, the blame (or some might argue credit) for this practice must lie with the people that have given the officers the latitude to do this, i.e., the judiciary and the legislature. To use an analogy, police officers simply play the hand that is dealt to them. They are charged with enforcing the law, but they do not make the law. Utilitarian and Kantian ethics place responsibility for the treatment of the people on the level of the officer, where as reflective equilibrium places the responsibility up one level, on both the judiciary and the legislature. Reflective equilibrium does not mandate that an officer know that he is acting ethical, however it does mandate that the officer act justly.



## **Chapter 4**

### **Flint Police Department and Area Demographics**

#### **Flint Police Department**

The Flint Police Department has approximately 325 sworn officers. Like most police departments it's size, Flint has several divisions which include: 1) general patrol division, 2) traffic division, 3) precinct officers (these are also known as community policing officers), 4) support services (K-9 officers and tactical team, 5) detective bureau and 6) crime scene units (comprised of non-sworn personnel). The largest section of the department is the general patrol division and in 1997 it accounted for 145 of the sworn patrol officers. Not included in this total are the number of sergeants and lieutenants assigned to supervise these officers.

The Flint Police Department makes a distinction between it's three uniformed divisions, i.e., patrol bureau, traffic division and, precinct officers. Although all of the officers can and do enforce criminal and traffic laws, they each have a specific function within the police department. Officers assigned to the patrol bureau are expected to handle emergency and non-emergency calls in their assigned districts. They are also expected to take enforcement action when they deem it necessary. These officers are given their district assignments on a daily basis. In fact they may work any part of the city.

Traffic unit officers, which number approximately 25, are specifically assigned to work traffic enforcement. They are responsible for investigating

all accidents. In fact, if a general patrol car or a precinct car comes across an accident, they are instructed to wait for a traffic car and allow them to investigate the accident. When traffic units are not investigating accidents, they are expected to enforce traffic regulations, this includes writing of traffic citations. In short their primary function is simply traffic control. However it should be noted that these officers do respond to emergency calls, just like the patrol and precinct officers, they turn the crime scene over to the appropriate units when they arrive.

Precinct officers, of which there are approximately 62, are assigned special districts to patrol. These are generally small areas within the precinct. Once assigned to a precinct the officer generally remains there for a minimum of six months. This is done so that it gives the officer a chance to become familiar with the community. While on duty, they are responsible for all calls in their district, both emergency and non-emergency. However, if a precinct officer is not available then a general patrol car handles the call for service. They are also allotted time to conduct problem solving activities. This ranges from assisting senior citizens to the removal of blight in their area. Precinct officers can and do issue tickets, however, they do this almost exclusively in the area that they are assigned to work.

The other divisions within the police department, although important to the running of the operation are not essential to this study. As such any explanation of these functions would be rather meaningless. Suffice it to say that they are an integral part of the police operations, but, at best, tangentially related to this issue.

### **Rationale for General Patrol**

Out of the three patrol divisions, traffic, precinct and, general patrol, only one was selected for inclusion in the study. That division was general patrol. The precinct division was not included for several reasons. First and of primary importance was the fact that unlike general patrol officers, precinct officers were assigned to specific districts. These officers were not allowed to leave their assignments to conduct traffic stops in other parts of the City. This meant that if an officer was assigned to the north end of the City, an area which is almost exclusively low income black, it would stand to reason that most of their traffic contacts would have to be African Americans. Conversely, officers assigned to the east side of the City primarily deal with low income whites.

Of course the implication is that officers assigned to a predominantly black area or predominantly white area are mainly stopping the people in their area. As such, this would have little impact on the subject of differential traffic enforcement since if an officer's traffic stops are ninety percent white in a white area, this would not mean that an officer is necessarily discriminating against white people. This of course would hold true if the if the stops and population were ninety percent black.

Secondly, precinct officers primary responsibility is to act as problem solving agents within their districts. In other words, they are expected to have more interaction with the community on a continual basis than are the other two patrol divisions. This means that precinct officers have less time for other enforcement activities.

The traffic division was not included because of the nature of their

assignment, that is, strict traffic enforcement. According to a former member and supervisor in this unit, traffic enforcement contacts were the driving force of their unit. That is, this unit was and is driven quantitatively. Officers assigned to this division are numbers oriented, traffic stops and citations are what keep officers in their assignments. If these officers do not produce, they are not long for the traffic division.

The inference in this philosophy is that stops in this section are driven by statistics. The more stops, the better the officer looks to his superiors. Thus given this paradigm, i.e., the stop itself being important, it was felt that this group of officers by default placed more emphasis on the violation than on the violator.

This left the general patrol section. This group does not have the pressures associated with the other two sections. They are not driven by traffic numbers (stops) nor are they subject to pressure from the community (at least to a lesser extent than precinct officers). As such it was felt that the motivations of officers not assigned to any special detail would be relevant in determining if there is a racial motivation in the selection of traffic offenders on the part of police officers.

### **Racial/Gender Makeup of Patrol Division**

The proverbial backbone of the Flint Police Department much like that of other law enforcement agencies is the patrol division. It is the largest single division in the organization. This however is not unusual since patrol divisions have historically been the backbone of police organizations. The entire patrol division is made up of 233 sworn officers (this total does not



include sergeants, lieutenants or, captains assigned to manage the officers).

According to the Flint Police Department Personnel Listing (1997), the patrol bureau is comprised of 39% black officers. Out of this percentage, 31% are male and 8% are female. White officers, again both male and female comprised 61% of the patrol bureau. It should be noted that there were only a few Hispanic officers on the police force and that they were counted in the percentage of white officers. White male officers comprised 53% of the patrol division, while white women accounted for 8% of the division (see table 4.1).

<b>Table 4.1: Race/Gender Flint Police Department - Patrol</b>		
<b>N = 233</b>	<b>Percent</b>	<b>Number</b>
<b>White male</b>	<b>53%</b>	<b>123</b>
<b>Black male</b>	<b>31%</b>	<b>72</b>
<b>White female</b>	<b>8%</b>	<b>19</b>
<b>Black female</b>	<b>8%</b>	<b>19</b>

Source: Flint Police Department Personnel Records, 1997.

### **Flint City Demographic Information**

Flint City like many other urban areas throughout the country has a large minority population. According to the 1990 United States Census Bureau the African American population comprised 47.9% of the total and the white population was slightly higher at 49.6%. When this is compared with the data from 1980 United States Census Bureau it is seen that the black population increased 6.8% up from 41.7%. While on the other hand, the



census data shows that the white population has decreased 5.6% from 55.2%. However, the 1990 census data shows that Genesee County Michigan, which the City of Flint is located within has an African American population of 19.6% compared to a white population of 78.2% (see Tables 4.2 and 4.3).

<b>Table 4.2: 1990 Race by Percentage</b>			
<b>Location</b>	<b>City of Flint</b>	<b>Genesee County</b>	<b>State of Michigan</b>
	<b>Percent</b>	<b>Percent</b>	<b>Percent</b>
<b>White</b>	49.6%	78.2%	83.4%
<b>Black</b>	47.9%	19.6%	13.9%
<b>Hispanic</b>	2.9%	2.1%	2.2%
<b>American Indian</b>	.7%	.7%	.6%
<b>Asian/Pacific</b>	.5%	.7%	1.1%
<b>Other</b>	1.2%	.8%	.9%

Source: U.S. Census, 1990

<b>Table 4.3: Population by Race</b>			
	<b>City of Flint</b>	<b>Genesee County</b>	<b>State of Michigan</b>
	<b>Number</b>	<b>Number</b>	<b>Number</b>
<b>White</b>	69,788	336,651	7,756,086
<b>Black</b>	67,485	84,257	1,291,706
<b>Hispanic</b>	4,014	8,877	201,596
<b>Native American</b>	1,045	3,132	55,368
<b>Asian/Pacific</b>	690	2,902	104,983
<b>Other</b>	4,014	3,517	201,596

Source: U.S. Census, 1990.

These figures are important for at least two reasons. First, the political

landscape in Flint changed. It was in the mid 1980's when the population was shifting towards African Americans, from whites, that Flint elected its first black mayor under the strong mayor form of government. This resulted in the appointment of the first black police chief in the history of the City of Flint. In other words, the population dynamics provided one nexus for the changing of political power within the City of Flint and its institutions.

Second, although Flint is a city with a significant African American population, the surrounding areas are decidedly white in their makeup. These areas are tightly packed around Flint. In other words, Flint is a rather congested metropolitan area where there is very little in the way of distinguishing it from the communities that are contiguous. This is important in that travel through the City of Flint is common place as people commute to the City for work and, travel to its outskirts to shop at any one of several major shopping centers. The implication of this is that although Flint is 49.6% white, its transient population probably more closely reflects that of the county it is located in. Arguably, this is very important in considering the raw numbers of people that are “available” for the police with respect to traffic enforcement. This fact is represented in Table 4.4.

<b>Table 4.4: Percent of Population with Mobility/Disability Issues</b>			
	City of Flint	Genesee County	State of Michigan
	Percent /Number	Percent /Number	Percent /Number
<b>Total, persons 16 to 64</b>	<b>71.7% 100,971</b>	<b>74.4% 320,374</b>	<b>63.7% 5924922</b>
<b>Persons 16 to 64 mobility/self care limitations</b>	<b>7.4% 7,494</b>	<b>4.8% 15,308</b>	<b>4.6% 270611</b>
<b>Mobility issues</b>	<b>3.3% 3,340</b>	<b>2.3% 7,270</b>	<b>2.3% 136856</b>
<b>Self care limits</b>	<b>5.7% 5,735</b>	<b>3.5% 11,266</b>	<b>3.3% 197125</b>
<b>Total 65 years + mobility/self care limitations</b>	<b>26.2% 3,765</b>	<b>22.9% 9,460</b>	<b>20.2% 212688</b>
<b>Mobility issues</b>	<b>19.9% 2,881</b>	<b>17.8% 7,465</b>	<b>20.2% 212688</b>
<b>Self care limits</b>	<b>15.6% 2,254</b>	<b>12.5% 5,239</b>	<b>11.7% 123803</b>
<b>Total 16 + with mobility/self care limitations</b>	<b>9.8% 11,289</b>	<b>6.8% 24,768</b>	<b>6.9% 483299</b>

Source: U.S. Census, 1990.

What is important to note in Table 4.4 is that this tends to show that over ninety percent of the population in the City of Flint and Genesee County are categorized as mobile. This is very significant, especially considering the linkage between municipalities. This should be a good indicator that the frequency of traffic stops ought to be in favor of whites given their representation in both city and county demographics.

With respect to gender, according to the 1990 United States Census Bureau females in the city outnumbered males by a little over six percent. The numbers for the county reflect a similar pattern (see Table 4.5).

<b>Table 4.5: Percentage Gender Types</b>			
	City of Flint	Genesee County	State of Michigan
Males	46.8%	47.9%	48.5%
Females	53.2%	52.1%	51.5%

Source: U.S. Census, 1990.

Seemingly, this should indicate that the proportion of females stopped should be greater than that of males. To somewhat mitigate this claim, one could assert that males have historically been thought to be more aggressive than females. As such, this could be extrapolated into driving patterns, but, ostensibly, females should have the same general rates of stops for equipment violations, since in theory, equipment on automobiles would malfunction regardless of the gender operating the automobile.

Age of the motor vehicle operator is another factor in considering differential traffic enforcement. Ostensibly, differential traffic enforcement would predict that the younger driver ought to be stopped more frequently than the older drivers. However, of interest is the ratio of stops to age. The bulk of the population in both the city and the county is over the age of 25. This is important to note in the representation of the young in proportion to the population (see Table 4.6).



Table 4.6: Age						
Age	City of Flint		Genesee County		State of Michigan	
	Percent /Number		Percent /Number		Percent /Number	
4 and younger	9.5%	13,375	7.8%	33,436	7.6%	702554
5 - 17	20.9%	29,379	20.3%	87,227	18.9%	1756211
18 - 24	11.4%	16,025	10.3%	44,390	10.8%	1004527
25 - 44	31.1%	43,790	31.9%	137,491	31.9%	2980702
45 - 64	16.4%	23,094	19.5%	84,086	18.7%	1742842
65 - 74	6.2%	8,699	6.1%	26,231	7.1%	655838
75 and older	4.5%	6,401	4.1%	17,598	4.9%	452623
Median Age	29.7 years		32.0 years		32.6 years	
Totals	100%	140,761	100%	430,459	100%	9295297

Source: U.S. Census, 1990.

As can be seen in Table 4.6 approximately 11.4% of the population in the City of Flint is below the age of twenty-five. When the entire county is considered in the equation, these figures are somewhat lower at 10.3%. Of course this means that slightly over sixty percent of those eligible for traffic enforcement of any kind are over the age of twenty-five. One would expect that stops in the younger group might be a little higher than that of older drivers, as such the statistics may be skewed slightly because of youthful indiscretions.

### **Summary**

The Flint Police Department is comprised mostly of white males (fifty-

three percent), although black males account for thirty-one percent of the allocated positions. When females are entered into the discretion whites account for approximately sixty-one percent of the police department where as blacks account for about thirty-nine percent. Although these figures are somewhat skewed in favor of whites, according to anonymous people within the hierarchy of the department, these numbers will balance out as officers retire so to reflect the makeup of the community.

According to the United States Census Bureau, in 1990 the Flint community was comprised 49.6% white and 47.9 black. This reflects somewhat of a white flight to the suburbs. However, Genesee County of which Flint is located within is predominantly white at 78 percent. Compare this to only 19.6% black. This is important, because in a transient society, which is highly mobile, with three interstate highways going into Flint, travel between Flint and the neighboring communities is common place. This is illustrated in Table 4.4 which shows that county wide slightly over 4.8% of those over the age of sixteen have significant limitations in their ability to travel. Ostensible, this would give a higher population of whites relative to blacks from which traffic enforcement activities could be conducted upon.

With respect to age and gender, Flint City and Genesee County mirror each other. This is significant if it is found that a particular segment of the population is stopped more frequently than another. For instance, the rates of stops between men and women should be roughly equal to their representation in the population. Even if one assumes that men do drive more aggressively than females, the rates of white males stopped versus black males should be relatively the same. This should also hold true for the

rate of white females stopped versus black females. This seems to be a safe assumption since as was discussed earlier, the rates of whites and blacks violating traffic regulations are roughly equal, each exceeding ninety percent.



## **Chapter 5**

### **Methodology**

#### **Preliminary Investigation**

Prior to the beginning of the investigation, during the months of May and June of 1998 several visits were made to the Flint Police Department. During these visits, the researcher met informally with some individual members of the police agency; those included, patrol lieutenants, detective lieutenants, patrol sergeants and some officers. The purpose of these meetings was to establish ground rules for the administration of the questionnaire as well as providing them with a general purpose of the study. Although supervisors were not given questionnaires, it was felt that by including them in the preliminary stages that they would be more receptive to the whole notion of the survey. As such, they were included only in the initial phase of the research.

Command and patrol officers were given a chance to ask questions regarding the proposed study as well as expressing comments, criticisms and concerns. Most of these comments centered on the perceptions of the minority community and the vitriolic relationship with the police department. That is, the police officers, command included, felt that minorities (in this case African American) were in general hostile and not very sympathetic to the police mission. These same officers primarily defined the police mission in terms of apprehending criminals rather than the more expansive role of the police as defined in community policing as put forth by Peel's Principles of

the same way as the other two, but the first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

The first is the only one that is not a member of the same family as the other two.

Law Enforcement that were discussed in Chapter 2. However, it should be pointed out that these officers also felt there was a need for community policing programs and did not dispute the efficacy of them. They simply felt that community policing programs should be secondary to the detection and apprehension of criminally deviant individuals.

Interestingly enough, in this initial phase, black officers expressed the opinion that some white officers would venture into predominately black sections of the community to conduct traffic enforcement. In fact, a high ranking black command officer even posited that it was the norm for a significant number of officers to do this. However, he even included black officers in this equation. In other words, he felt that even officers who were African American would target those in the minority community for enforcement. This brings up two separate dichotomies, first between the white police officer who is racially motivated and between the white officer who is motivated by the job. Secondly the dichotomy between an officer being a black policeman and a policeman who happens to be black, e.g. where does the person place the emphasis, on his racial characteristics or on his job description.

To this assertion, white officers responded by saying that they simply stop vehicles based on the infraction, not characteristics of the driver. They also argued that race was not as big a factor in conducting a traffic stop as was the actual committing of traffic offenses. In fact, most of these officers felt that race was less a determinant than was age. In essence, officers stated that they placed more emphasis on the age of the offender rather than race of the individual.



It was in this phase that some of the questions for the questionnaire were developed. That is, some questions were formulated given this input by the command and patrol officers. It should be pointed out, that it was explained to the officers that the research was about determinants in traffic enforcement decision making, these could have been literally anything, from offenders age to socioeconomic status. At this stage of the research, race was not mentioned by the researcher as a determinant, although it was the genesis of the research project. It was the officers that injected the notion of race as a possible factor. This is important because it was felt that if the researcher openly acknowledged that the proposed research dealt with race then police officers would not be as willing to participate or, worse that if they did participate the answers given would be suspect as the officers might have tried to conceal their motives behind traffic enforcement decision making.

### **Police Officer Daily Activity Reports**

Prior to the implementation of the survey, it was decided that in order to check the veracity of police officers responses, an unobtrusive method would be needed to perform an integrity check on the officers. After some consultation, it was decided that using the officers previous Daily Activity Reports (DAR's) would offer some insight into the types of offenders most likely stopped by the officers.

In order to accomplish this two things were needed, first the acquiescence of the Flint Police Department. Secondly it had to be determined that the DAR's accurately reflected a police officers list of activities for a given day. The first hurdle was accomplished with the approval of the Police Chief who

readily granted permission for the study and use of the DAR's.

The second issue, i.e. do the dailies actually reflect what the officers purport they do, was entirely a different question. To a large degree, one is required to accept them at face value. However, there is a good reason for this acceptance, officers are required to sign each and every DAR at the end of their shift. By signing the document officers are, under penalty of perjury, swearing that the entries are true as these documents are official police reports.

One can surmise then that the entries were accurate, but, this does not address the omission of an entry. Several high ranking police officials explained that officers are required to document each and every traffic encounter. They must document them in the following manner:

1. License plate number.
2. Location of stop.
3. Name, race, gender and age of driver
  - a. name, race gender and age of passengers.
4. Reason for the traffic stop.
5. Whether an arrest was made and type of arrest.
6. Whether a warrant arrest was made.
7. Whether or not a ticket was issued or a warning was given.
8. To whom the ticket was issued.

However, they acknowledge that a few of the officers do not always log complete and accurate information on their dailies. In fact they assert that some of them do even not log every traffic stop that they conduct. They posit that this is due to the fact that some of the officers will conduct traffic stops and hope to find some evidence of criminal wrong doing and that if they do not find any evidence, they simply let the traffic offender go without tallying the traffic stop on the DAR.



This is only problematic if we are incorrect in certain assumptions. First that the officers are doing this in disproportionate racial numbers to those listed on the dailies. In other words, it is only a problem if officers who do not fully document traffic contacts are in fact stopping more offenders of a certain race than their dailies actually portray. For instance, let us assume that the DAR's for Officer "Jones" reflect that seventy percent of his stops are African American and thirty percent are White American. The problem occurs if his undocumented stops are disproportionate to these percentages.

However, a problem of this type does not seem to be too likely. Primarily because if officers are stopping offenders looking for reasons to arrest, then those stops reflected on their daily activity reports would probably show the general types of offenders that the officer is looking at to begin with. That is, it would be hard to imagine that any officer would not document traffic stops simply because the offender was a certain color, since documenting the traffic stop has no impact on the offender or the officer. In fact, one could argue that an officer documenting more traffic stops looks better to his/her supervisor, that is, the officer would look more productive and more aggressive.

On the other hand the motive for not documenting an illegal traffic stop increases when an officer is unable to make an arrest. Once again it simply seems most plausible that even if it is the case that officers do make illegal stops, that they would do so proportionate to the numbers as they actually occur on their daily activity report. In short, one must rely somewhat on what the officers purported to have actually done. This is especially the case since at the time the officers were making these stops, they were unaware that a



study of this type was going to be conducted. Essentially there was not any possibility that these officers would have known that their entries on their 1997 DAR's were going to be subject to scrutiny.

Aside from traffic stops there were other parts of the daily activity logs that were utilized. The additional data taken from these logs included:

1. Officers identification number
2. Shift worked
3. Section worked
4. Partner (if any)

The rationale for obtaining this data will be explained in detail later in this section.

### **Reasons for Traffic Stops**

The police officer's daily activity report is a reflection of what an officer does on his tour of duty, which is normally an eight hour shift. In addition to traffic encounters, an officer is required to document all radio calls for service and all self-initiated activities. For the purpose of this study, interest is only in traffic stops. This meant that the offender had to have been in a motor vehicle either as a passenger or driver. It is important to note that pedestrians who were stopped by police officers were not included in this study. Although this would have shown the types of pedestrian contacts, it would have shown a disproportionate number of women having these types of contacts. One could reasonably infer that from the location of these stops that a significant number of these women might have been involved in vice activity.

Additionally, the emphasis of this study focused on the how officers

1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

determine who they were going to stop for traffic offenses. It was felt that by placing pedestrians in the study it would create an unfair impression of who is actually being stopped. This is especially true when one considers that departmental rules do not require that officers list every person that they have an encounter with. Some officers may stop a person who is walking down the street so that they (the officers) may obtain information from that person. The officers are not required nor encouraged to document this type of stop. In fact, according to command personnel, they encourage their officers to stop and talk with pedestrians in the hope of gathering intelligence information.

On the other hand, an officer is required to document every traffic encounter where the offender is operating a motor vehicle. These stops must be thoroughly documented as it is a violation of law to arbitrarily stop citizens without a legal reason.

These traffic encounters were then categorized by type. After reviewing nearly thirty thousand dailies, it was decided that these police citizen/offender encounters could be placed into three categories:

1) hazardous, 2) non-hazardous, 3) unknown reason. They were broken down into these categories so that it would be possible to determine which types of stops citizens of a certain race, gender and to a lesser extent age, are most likely to be subjected to.

At this point a brief explanation of each is in order. With respect to hazardous violations, these would include all traffic violations in which points are assessed on a person's drivers license. Points are defined by Michigan Law and are assessed by the Secretary of State whom has administrative authority over licensing drivers. In the State of Michigan, when a driver



receives a specified number of points his or her license is subject to review. After which if the driver receives additional points, his or her license is subject to suspension. Types of offenses in which a driver would receive points are for operating a vehicle in violation of laws which are considered to the public, they include (by way of example, but not limited to): 1) disregarding a red light, 2) disregarding a stop sign, 3) violation of speed limits, 4) operating under the influence of intoxicating liquor, 5) improper lane use, 6) reckless driving and, 7) careless driving, 8) driving on a suspended license. The preceding list represents the types of traffic stops that most frequently were noted on the officers' dailies.

Non-hazardous violations are traffic offenses in which the State of Michigan has not assigned points to the infraction. These violations, although illegal, are not considered to be prima facie dangerous to the public at large. Types of these violations include, but are not limited to the following: 1) defective equipment on a motor vehicle (examples of which include head lamps not operating, turn signals not working properly, cracked windshields, loud exhaust etc.), 2) violating child restraint laws, 3) items obstructing forward field of vision (i.e. things hanging from the rear view mirror) and, 4) tinted side windows. In addition to these, there are several "financial" violations in which the motorist may have not paid registration fees for their automobile. These would include: 1) driving a motor vehicle with an expired plate, 2) driving a motor vehicle with a license plate registered to another vehicle, 3) driving a motor vehicle without a license plate. Financial violations are merely designed so that the State recoups monies for the privilege of allowing one to drive a vehicle upon

roadways. Once again the above listed violations reflect the most likely reported non-hazardous infractions found in the officers' daily activity reports.

Another issue is that of having been a passenger in a motor vehicle that was stopped. Officers are required to document passengers on their dailies. These passengers were counted in the study as contacts. At the outset this sounds a little peculiar, however, when one keeps in mind the rationale for the study it only seems logical that all persons in the vehicle would be subject to the same scrutiny that the driver would find himself under. As such, it seems plausible that if in fact police officers look for a certain type of person, then all of the occupants of the vehicle would be included. In addition, there are a few reasons that would allow an officer to stop a vehicle based upon the passenger's actions. Some of these reasons include: 1) the passenger openly drinking alcohol in the vehicle or, 2) the passenger littering. However, the review of the daily activity reports do not include any stops based upon the passenger's activities. Nonetheless, the dailies do reflect passengers in the vehicles. They also reflect the issuance of tickets to these passengers as well as their ages, gender and race. Therefore listing what enforcement action taken against passengers in stopped motor vehicles may show overall tendencies of these particular police officers.

Lastly, a category was included for those officers who did not list a reason for stopping a vehicle. In these cases it goes without saying that we are not able to determine why an officer initiated the stop. Although listing this as a "reason for a stop" seems somewhat paradoxical, we are still able to glean valuable data from these stops. For the most part even if an officer did not

list the reason for the stop, he or she would still list the race, sex and age of both the operator and passengers in the vehicle. Additionally, the other data was also included i.e. whether a ticket was issued or an arrest made. Thus, although the reason for the stop was missing, we are still able to determine the general types of individuals that the officer had stopped.

It bears mentioning that although the Flint Police Department requires officers to list the reason for stop, it is only done about fifty percent of the time. All officers' dailies are reviewed by the patrol officers' supervisor at the end of each shift (or by the beginning of the next tour of duty) there is not a formal explanation why departmental procedures are not followed. However, after talking with patrol supervisors it is reasonably speculated that when the supervisors are reviewing the patrol officers' dailies they simply scan them for information that they think is relevant. Normally this would deal with arrests and responses to serious crimes. Seldom are officers questioned about the lack of completeness with respect to traffic stops, however there were some exceptions. These primarily dealt with officers who were training new police recruits. The inference drawn from this was that patrol supervisors closely scrutinized the work of these new officers in an attempt to gain compliance with departmental policies.

### **Traffic Citations**

In the Flint Police Department the issuing of a traffic citation is up to the discretion of the police officer who observed the violation. There are not any requirements to issue tickets. In fact it is against the law in the State of Michigan for any department to require any officer to issue a specific number

of tickets.

Departmental rules require that officers when issuing tickets make a notation as to what the ticket was for and to record the ticket number. It is assumed that all tickets issued are recorded on the dailies. This assumption is made because there is a record kept of each officer's statistical performance. To not record a ticket that was issued would only diminish that officer's recorded performance. It would seem that if an officer was going to error, they would error on the side of making themselves look better, not worse.

For the purposes of the study, one could only determine whether or not a traffic citation was issued. A determination as to what it was issued for could not be made with certainty since some officers did not document their stops properly. Secondly, officers would frequently list two traffic violations committed by the same person, and would only issue one citation. For example, an officer may have stopped a person for speeding and also note that the person was not wearing a seat belt. Both of these are violations, however, one is a hazardous violation and the other is not. It is simply known that a traffic ticket was issued. Happily for purposes of this study that is all that one needed to know.

At this point one may wonder why the one simply would not look at the traffic tickets to determine ratio issued to whites and blacks, since ostensibly this would give a true picture of those who received a ticket. The main reason that this was not done was due to an administrative ruling dealing with how police officers are to complete the citation. In the early 1990's the State of Michigan adopted a uniform traffic citation. This format was designed so that in every court in the State, the same style citation would be used. This



would facilitate the court administrators in developing a data base that could be easily downloaded into the main State computer. This meant that every court would be documenting the same information and that it would be uniform.

During this period in which rules were promulgated the minority community felt that by designating on the ticket the race of the person, that minorities would receive differential justice from the majority community. As such court rules dictate that on all civil infractions race of the suspect is omitted. Race is only noted on traffic offenses that result in an arrest. Thus in order for us to determine the race of the individuals receiving the citations, it was necessary to review the DAR's. Without doing this one would not have a clear picture of the type of person who is most likely to be the recipient of a traffic citation.

### **Citations Issued**

As has been mentioned earlier, it is generally up to the police officer whether or not he/she wishes to issue a traffic citation to a citizen. The motivations for issuing them is beyond the scope of this study. That is, why an officer gives a citation to person "X" versus person "Y" is not known, what is important is the ratio of tickets issued to minorities versus non-minorities. This is not to say that officers should not be vigilant in their enforcement of traffic regulations and ignore violations, but, that there should be some proportionality to their stops.

In other words, in a city with a non-minority (white) population (49.6%) that out numbers the minority (black) population (47.9%) one would expect

the number of traffic citations issued would be somewhat equally distributed. However if we find that for any given officer that person "X" is usually black and that person "Y" is usually white and that "X" receives a disproportionate number of tickets than "Y" we can assume that either "X" people have characteristics that make them worse drivers than people with "Y" characteristics; or more likely, that the officer has motivations other than merely the enforcement of traffic regulations.

The only mitigating factor to an officer giving more African Americans tickets than non-minorities would be ratio of blacks to whites in a given sector. This issue will be discussed in the next section, however officers are not subject to issuing citations in only their assigned districts.

#### **Shift/Section/Name/Partner**

Each officer is required to fill out a daily activity report. If an officer is assigned a partner, then the partner too must fill out his own daily report. Usually these dailies mimic each other, but nonetheless rules and regulations require that each of the officers complete one of these reports. Each officer is required to date the dailies as well as place their shift and assignment on them. All of this is rather routine and is common place in most any department.

What is somewhat unusual is that with the Flint Police Department, officers assigned from the general patrol bureau to a given section can go into other areas and conduct traffic enforcement activities. One high ranking police official asserted that it was even the norm for officers to leave their assigned districts, go to another and there engage in traffic enforcement



activities. The problem that this creates is that the city is divided into specific districts some that are predominantly white and others that are predominantly black, allowing officers to cross boundaries to enforce traffic regulations may skew the data one way or the other. For the purposes of this study one is forced into making the assumption then that if officers are given the latitude to cross boundary lines, that they would encounter both minority and non-minority traffic violators at roughly the same rate.

Lastly, since the whole population of officers was sampled, and since all sections of the city were represented, we can assume that officers would encounter proportionately the same number of violators both minority and non-minority.

### **Race/Gender/Age**

It is axiomatic that for the purpose of this study, race, gender and age of the traffic offender are some of the most important categories. The police department insists that it's officers make the notation as to the race, gender and age of each traffic offender that they stopped. The reason for this is not to show what type of person is most likely to be stopped, but, it is primarily for intelligence gathering.

With respect to the intelligence gathering function, this information can be used to determine who is in an area at a specific time. In other words, if a crime occurred, unbeknownst to the police, and was discovered at a later time, the detectives could check the officers' dailies to ascertain if anyone had been in the area.

With very few exceptions, officers would document the traffic violator's

race, gender and age. Occasionally an officer would forget to indicate the person's race, gender and/or age. Sometimes, although very infrequently, the officer would only put the license plate number and reason for stop on the daily. However, for our purposes this did not pose a significant problem. If an officer forgot or simply omitted a person's race and/or age the specific category was not marked. If both race and gender were omitted, the information was not used in the study. On the other hand, if either race or gender was documented, it was used in the study.

The rationale for this is that if both race/sex were missing and the data was still used, one would not have any idea as to what type of person officers are issuing citations to. If either the race or gender of the offender is known, one could still use the data generated from the traffic contact as it illustrates the type (race/gender) of the person stopped.

One may wonder why age was included in the study since the omission on a daily did not warrant the stop from being excluded. The reason simply is that age is relevant as studies have shown that the crime prone years are between fifteen and twenty-five years of age. However the focus of this study deals with the differential treatment of minorities from that of non-minorities. As such age is not relevant, but it is helpful in determining who in the minority and non-minority communities are likely to be stopped and ticketed.

### **Daily Activity Reports as Related to Questionnaire**

Police officers are required to maintain a written log of their daily activities. In this log officers are required to keep detailed information



regarding traffic encounters. For the purpose of this study this is important, since the data from the dailies represents what the officers objectively did. The questionnaire on the other hand measures the officer's subjective attitude towards differential traffic enforcement. In other words, the daily activity reports measure what the officers have actually done and the questionnaire measures what the officers believe with respect to differential traffic enforcement.

Hy et. al. (1983) refer to this type of data as: secondary data analysis. They point out that this type of data can be useful when used in conjunction with other data from questionnaires. This can be used to assist in verification of opinions espoused by respondents.

The need for this type of verification is self evident, in that this provides a way in which one can possibly gauge the level of sincerity of police officers. This is an issue whenever one is asked to comment on one's perception of his/her own performance.

### **Instrumentation**

The patrol bureau of the Flint City Police Department has three divisions which are: general patrol, community policing officers and, traffic officers. The entire population of general patrol, one-hundred and forty-five (145) officers, were selected for this study. Prior to the administration of the questionnaire it was indicated by the Flint City command staff that approximately fifteen (15) officers either retired or, had been reassigned/promoted out of the general patrol division.

In addition, a transmittal letter to the Chief of Police, Patrol Captain and to

Lieutenants was sent explaining the nature of the study. This letter also included a request to review officers daily activity reports. The Chief of Police granted permission for the study and the use of these reports.

Prior to implementation of the survey, all the dailies generated by officers in the general patrol section were reviewed. The number of dailies reviewed approximated thirty-thousand. Since there were so many to review and since all had to be reviewed by hand it was necessary to solicit additional help. To meet this end, two volunteers were selected to assist in this endeavor. They were both trained on how to detect a traffic contact. In addition both worked very closely with the researcher and were instructed to contact the researcher if they had any questions about any particular stop.

The time frame for this began in the summer of 1998 and took approximately nine (9) months to complete. Direction from police department personnel necessitated that only 1997 dailies be used. This of course presented a slight problem, but their rationale was that they frequently used current year dailies and they wanted dailies immediately available to them.

The problem that this presented is that it was necessary to review the dailies prior to administering the questionnaire in order to facilitate in the development of questions. This necessitated that the questionnaires were administered to officers in 1999, while data taken from the daily activity reports came from 1997. This meant a time differential between the officers completing the daily activity reports and the survey of eighteen to thirty months (from the January 1997 to June 1999).

The questionnaire was designed after consultation with Michigan State



University faculty and with input from both Flint City patrol officers and Command Personnel. Both M.S.U. faculty and police department personnel expressed concerns about directly asking officers questions regarding race. Police officials felt that officers might try to intentionally mislead the researcher if they believed that the researcher was attempting to assert that their traffic enforcement was racist. Michigan State faculty felt that officers might not participate if they believed that they were going to be inferentially classified as racist.

Prior to the implementation of the questionnaire, the researcher met again with Flint City Command Officers as they requested that they be allowed to examine the questionnaire. During this meeting it was explained that the questionnaire was to be administered at each roll call in which officers receive their daily assignments and briefings. Flint has six roll calls daily. The administration of the survey was over a two week period.

An internal memo was sent to each shift commander informing them that the Chief of Police had authorized the project and asked for cooperation. However, it also stated that participation was completely voluntary. In order to maximize participation officers were given several opportunities over the two week time frame.

### **Survey Design**

This survey is best thought of as a one-shot cross sectional design. It is cross sectional in that it observes a single group at one point in time. The use of officers' DAR's, even though eighteen to thirty months earlier simply provided a nexus between what was objectively done and between what the

officers subjectively believed.

The questionnaire itself was constructed using a combination of survey design: attribute, Likert scale and, open ended questions. Questions with respect to respondent's attributes were asked in order to determine the officer's age, race and, gender. In addition to these, there were other attribute questions asked which were hoped to link officers' education levels to differential traffic enforcement.

Likert scale questions were used in order to identify which issues police officers in the City of Flint felt were important. In other words, officers were given a statement and provided with five response options. The officer was asked to select the response that best represented his/her personal beliefs with respect to differential traffic enforcement.

Several open ended questions were also asked. These were designed to compare the officers perception of how they were treated by police if they were stopped prior to themselves becoming police officers. They were then asked a similar question, but, this time they were asked if they had been stopped since becoming a police officer and how they rated that experience.

This survey was designed to elicit responses that will assist in facilitating relevant training issues and most importantly will have a practical impact in the area of police/minority relations. Lastly, because this research is case specific it can be defined as exploratory in nature.

## **Population**

The sample group consists of patrol officers in the Flint Police Department (Flint, Michigan). By patrol officers, I am also including those officers

currently assigned to special operations, other than foot or motorized patrol. Currently, there are a total of two-hundred and thirty-three (233) officers classified in the patrol ranks. It should be noted that there are approximately fifty-nine (59) command officers assigned to the patrol division, they will not be considered part of the study.

Previously, it was noted that the uniformed patrol division of the Flint Police Department was broken down into three distinct units: general patrol, traffic and, community policing officers. For reasons already mentioned, the general patrol division was selected as the target group. This unit is comprised of 145 patrol officers. Thus, for the purpose of this study, the total population is 145 police officers. It is reasonable to make this distinction since the duties of these officers are different from those of the other two units.

Additionally, these officers are assigned to areas throughout the City. Their assignments may vary day to day. That is, one day they may be assigned to an area predominantly black and the next, to a predominantly white area. This is important in that they are not static like community policing officers. Nor, are they merely focused in on traffic like those officers assigned to the traffic unit.

### **Sampling Design**

Because of the nature of this research, the entire general patrol unit of the Flint City Police Department was chosen. This was done in order to provide as complete a picture as possible why officers select certain vehicles for traffic enforcement.

Secondly, a review of all DAR's generated by the general patrol unit for one complete calendar year was also conducted. This was done so that time of year would not be an issue. That is, it was felt that selecting a specific period of time within a year might open the study up to criticism. For instance, if the only time period examined was summer, this might skew the statistics towards the young as they would be out of school. During the colder months, this might provide exactly the opposite results. By examining the entire year these criticisms are somewhat mitigated.

### **Sampling Frame**

A sampling frame was provided by the Flint City Police Department. This included the names, race and, gender of each officer assigned to the general patrol unit. No attempt was made to exclude any officer. No sample was drawn since the entire general patrol unit was used.

### **Rationale for Sampling**

The reason for reviewing all daily DAR's was to mitigate any criticism that officers not included could have impacted the study in one way or another. Secondly, there were approximately 30,000 dailies generated by all of the officers, this amount was considered within the range of reasonableness. In other words, it was felt that by reviewing the entire population of "dailies" that this would provide a complete picture of whom officers stopped.

The reasons for selecting one unit, general patrol, over the other two include job assignment and police mission. Informal conversations with

officers assigned to the traffic unit, indicated that they viewed their job primarily in the context of traffic enforcement. Officers assigned to community policing positions viewed their job more as facilitators, or problem solvers. Similar conversations with officers assigned to general patrol revealed that they viewed themselves more as crime fighters. As such it was felt that they would be the best group to examine differential traffic enforcement.

### **Sampling Error**

Sampling error is believed to have been reduced significantly with respect to secondary data analysis. Simply because that all daily activity reports for the year were reviewed. However, by the inclusion of two additional reviewers, one could claim that one or both of them may have mis-classified some traffic encounters.

To somewhat mitigate this claim, the secondary reviewers were instructed to contact the primary reviewer with questionable entries. Secondly, the primary reviewer periodically rechecked some dailies completed by secondary reviewers. In all, there were no significant differences found amongst reviewers.

Prior to the questionnaire being administered, an internal memo was sent to shift supervisors explaining the nature of the study. The researcher also met informally with several of the supervisors and explained the nature of the study and was available to answer any questions. This was done in order to secure the cooperation of the command staff. In the past, some research initiatives that did not include command officials met with some resistance.

In this way supervisors were kept abreast of the nature of the study and they were aware of dates and times that questionnaires were administered to their officers.

**Sample Size**

The sample size for the secondary data analysis is equal to the population as all general patrol officer daily activity logs for the year 1997 were included in the study.

All general patrol officers were included in the sample. As such, the sample size is equal to the population of officers assigned to this unit. Therefore both secondary data analysis and survey distribution equals:

$$n = \frac{N}{N} = 1$$

where N is the population , where n is the sample size. For the previously listed reasons both sample sizes are equal to 100%.

Table 5.1: Response Rate - General Patrol Officers			
Group	Sample Size	N of Responses	Response Rate
General Patrol Officers	141	89	63%

**Confidentiality and Anonymity**

It is axiomatic that the daily activity reports contain the officer’s name and badge number. One of the procedural safeguards implemented to guarantee

confidentiality and anonymity for data taken was the development of a code book. This book identified officers by gender and race. Badge numbers and names were omitted in the final analysis. As such, without reviewing each daily, there is not any way of determining which specific officers stopped whom. Additionally, the data is considered in the aggregate not individually. In this way, individual officer data is not available.

In the administration of the questionnaire all officers were verbally told that participation in the study was completely voluntary. This was affirmed by the sergeants and lieutenants conducting the roll calls. In addition to these safeguards, a letter was attached to each survey guaranteeing confidentiality and anonymity. Officers were also told that they were not to place their name, badge number or any other identifying marks on the form. Lastly, they were told to place their responses in a sealed box which was picked up after each and every roll call.

### **Analysis of Secondary Data**

The analysis of this data is rather straight forward. Those items reported include: 1) number of traffic stops 2) whether a ticket was issued, 3) race of the offender, 4) gender of offender, 5) arrest other than warrant, 6) warrant arrests, 7) race of officer, 8) gender of officer.

### **Analysis of Questionnaire**

The dependent variable that is the focus of this study is: racial bias of officers when conducting traffic stops. The independent variables are: peer approval of conduct, what the officer perceives his/her supervisors want,

what the officer perceives the department wants (goals as they relate to arrests), the officers subjective (and some might argue objective) beliefs as they relate to police practices, and finally the officers beliefs as they relate to the notion of whom is likely to have an outstanding arrest warrant or be involved in criminal activity.

### **Demographic Variables**

There were five demographic variables asked of each officer. They are the first five unnumbered questions following the instructional page.

### **Closed Ended Questions with Ordered Choices**

There are five questions that deal with the officers treatment by other police officers both pre and post employment as a law enforcement officer. These questions are the last five unnumbered questions following the instructional page.

### **Likert Scale Questions**

There are twenty-seven questions using a Likert scale. The respondents are given a statement to which they are asked to either: 1) strongly disagree, 2) disagree, 3) neutral/don't know, 4) agree, 5) strongly agree. These questions are designed to measure whether officers subjectively believe that there is a basis for differential traffic enforcement. In other words these questions are meant to elicit whether or not officers believe that a particular segment of the population is more likely to have outstanding warrants than other segments.



Secondly, questions were asked about where they believed that their department places emphasis. This is related to the notion of peace officer or law enforcement officer.

Another series of questions asks officers about law enforcement practices. This is one of the central issues related to the practice of differential traffic enforcement in that it may simply be the case that officers are trained in identifying traffic encounters that lead to arrests.

A fourth series of questions asks whether or not supervisory behavior influence decision making in the context of traffic enforcement.

Finally, in an attempt to mask the race based nature of the study some questions were intentionally asked that may have led the officers to believe that peer pressure was a focus of this study.

### **Open Ended Question**

Following the twenty seventh question is an open ended question that was designed to allow the officer/respondent to explain any of his/her responses that they felt necessary. It also allowed them to comment on the survey itself.

### **Validity**

A significant issue with this type of study deals with the notion of construct validity. Briefly, what is meant by this is that what is being tested, racial attitudes of police officers when conducting traffic stops, is an abstract variable, rather than a concrete variable. According to Hy et. al. (1983) a construct variable is something that the researcher has literally developed. It is related to an observable behavior. "To determine their validity, hypotheses



(consisting of constructs) are deduced from theoretical statements and tested. If the data support the hypotheses, the construct is assumed valid (p. 58)."

The problem of course with this type of study is that the officers may in fact become suspicious about the study if the questions were simply to focus on race. It was felt that officers would be reluctant to participate in the study if it were simply about racial attitudes; further if officers did participate believing that they were inferentially being labeled a racist, it was felt that their answers could be less than truthful. As such it was explained to the officers that the study was about decision making with respect to traffic target selection. Further that their honest answers were needed if this research was to have any value. Most respondents were comfortable with this explanation.

### **Statistical Analysis**

All of the data are ordinal, nominal or, interval. Appropriate statistical tests were used to meet the assumptions.

The Levenes test for equality of variance was used to determine whether or not one could use the assumption of equal variance of means between white officers and black officers. A test statistic greater than (.05) required the assumption of equal variance of means. On the other hand a test statistic of less than (.05) indicated that the assumption of equal variance could not be assumed.

The second test of significance used was the t-test for equality of means. This was done to show an indication as to whether or not white officers and black officers stopped, ticketed and arrested white and black people at approximately the same rates. If the means differed in the predicted

directions, e.g., white officers proportionately stopping more blacks than black officers, one could inferentially assume that race was a factor in differential traffic enforcement. The standard level of significance used was the (.05) level. In addition if a variable was at or below the (.05) level and the confidence interval contained zero the result could not be considered significant. The tested variables included: traffic contacts based on race, was predicted from the independent variables, which include: police practices, officers' subjective opinions on likelihood of arrest, seeking supervisor's approval and, departmental mandate.

### **Summary of Major Research Steps**

1. Preliminary Investigation
2. Development of Sampling Frame
3. Review of Secondary Data - Police Officers Daily Activity Reports
4. Development of Questionnaire
5. Administration of Questionnaire
6. Analysis of Data
7. Presentation of Findings
8. Conclusions

## **CHAPTER 6**

### **ANALYSIS OF DATA**

#### **Introduction**

The data will be presented in two sections. The first section is the descriptive statistics taken from the police officers' daily activity reports. These include the number of traffic stops, traffic tickets, traffic arrests and warrant arrests by race, age and, gender of the offender, conducted by Flint police officers. These statistics were initially examined in the aggregate and subsequently broken down according to race and gender of the officer. The second section is the data from the survey instrument. It is comprised of two parts. The first part examines the respondents' demographic data. The second part attempts to identify beliefs that may be related to an officer's predisposition to conduct pretext traffic stops. In this way the data presented in this last section are the proportions of respondents that agree or disagree that a particular variable is descriptive of an officer's belief that in general a certain segment of the population is more likely to be a criminal offender.

## Part One: Daily Activity Report

### Traffic Contacts

Table 6.1 Traffic Contacts By Race					
	N	Minimum	Maximum	Sum	Mean
#Blacks Stopped	145	0	142	4996	34.45
#Whites Stopped	145	0	194	3407	23.5
Total	145			8403	

In Table 6.1 “N” refers to the number of officers whose dailies were examined. In this case “N” is equal to 145 which at the time was equal to the total number of officers assigned to general patrol division. The categories “minimum” and “maximum” refers to the number of stops that officers made. Here it can be seen that some officers did not stop any black motorists and some officers did not stop any white motorists. However, in the City of Flint, blacks are more likely to be stopped than are white.

When gender and race of the motorist is accounted for it is seen that black males are stopped more frequently than white males, black females or, white females. Table 6.2 illustrates that black males are stopped nearly one-third more than white males; they are three times more likely to be stopped as black females and, nearly four times as likely to be stopped as white females.

<b>Table 6.2: Traffic Contacts by Race and Gender</b>				
	N	Minimum	Maximum	Mean
#Stops M/B	145	0	142	26.13
#Stops M/W	145	0	194	16.48
#Stops F/B	145	0	54	8.32
#Stops F/W	145	0	70	7.02

As can be seen in Table 6.2 blacks in general are stopped in greater disproportion than whites. Table 6.3 reveals the differences in rates of traffic contacts in terms of race of the officer. According to the data, black officers are disproportionately more likely to stop black male motorists and blacks in general than white officers. Interestingly, black officers do not stop white motorists as frequently as white officers stop black motorists.

<b>Table 6.3: Mean Number of Stops Based on Officers' Race</b>				
Race of Officer	# of Stops Black Males	# of Stops White Males	# of Stops Blk Females	# of Stops Wte Females
White	29.70	21.08	8.99	8.77
Black	19.94	8.49	7.17	3.98

The data in Table 6.4, 6.5 and, 6.6 not only reveal that there is a significant difference in the rates that police officers stop black males, white males, black females and, white females. Closer analysis indicates that black males are stopped more frequently than any other group and specifically they are over-represented as to what one would normally expect to find with

respect to their given population. White males are stopped more frequently than are females of either group. As a group, black people are stopped more often than one would generally expect to find in the population

The Levenes test for equality of variances in Table 6.4 determines whether or not one can use the assumption of equality with respect to the means of the compared groups. When the significance level is above the .05 level it is assumed that there is equal variance. As such, one is required to use the equal variance statistics. If the test result is below the .05 level that equal variance is not assumed and one is required to use the test statistic that indicates unequal variance. However, this is just one part of the test. The Levenes test is used in conjunction with the independent samples test, in this case the t-test for the equality of means.

In Tables 6.5 and 6.6 the t-test for equality of means is used. Table 6.5 measures the level of significance found using a two tailed test. Table 6.6 is used to measure the confidence interval of these findings. It is necessary that the confidence interval does not contain zero. If it does then the findings cannot be reported as significant.

In all three of these Tables (6.4, 6.5, 6.6) the race of the officer is compared to the rate of traffic stops by race and gender. It is assumed that if officers engaged in differential traffic enforcement that both black and white officers would stop a certain group disproportionately to their numbers in society. Further that if racism occurred one would expect to find that white officers stopped blacks as compared to whites at a proportion greater to that of black officers and vice versa for black officers.

When examining Tables 6.3, 6.4, 6.5 and, 6.6 it is seen that black officers





stop black men in greater proportion than do white officers that this is significant at .031 level (equal variance is not assumed). White officers stop white males in greater proportion than do black officers and this is significant at the .000 level (equal variance is not assumed).

When comparing the rates of women stopped it is seen that there is not a difference in the stopping of black females between white and black officers. Equal variance is assumed and the level of significance between the two groups is at the .254 level, which is above the general level of acceptable significance of .05. On the other hand, when comparing the difference between white officers and black officers in stopping white women it is seen that white officers stop white women at a greater rate than do black officers. Assuming unequal variance, this is significant at the .01 level.

This would lead one to believe that as a whole officers as a group are not racist, but that there is something within the Police Department's rules, training or structure that makes it desirable to conduct differential traffic enforcement activities against males, but, in particularly black males.

<b>Table 6.4: Levenes Test for Equality of Variances - Race of Officer</b>		
	<b>F</b>	<b>Sig.</b>
Stop m/b: Equal var assumed Equal var not assumed	8.411	.004
Stop w/m: Equal var assumed Equal var not assumed	11.282	.001
Stop f/b: Equal var assumed Equal var not assumed	2.334	.129
Stop f/w: Equal var assumed Equal var not assumed	4.441	.037

<b>Table 6.5: t-test for Equality of Means - Race of Officer</b>				
	<b>t</b>	<b>df</b>	<b>Sig. (2-tailed)</b>	<b>Mean Difference</b>
Stop m/b: Equal var. assumed Equal var. not assumed	1.906	143	.059	9.75
	2.178	142.945	.031	9.75
Stop w/m: Equal var. assumed Equal var. not assumed	3.273	143	.001	12.59
	4.051	124.634	.000	12.59
Stop b/f Equal var. assumed Equal var. not assumed	1.145	143	.254	1.82
	1.227	131.426	.222	1.82
Stop w/f Equal var. assumed Equal var. not assumed	2.918	143	.004	4.79
	3.320	142.794	.001	4.79

<b>Table 6.6: t-test for Equality of Means - Race of Officer</b>			
		<b>95% Confidence Interval of the Difference</b>	
	<b>Std. Error Difference</b>	<b>Lower</b>	<b>Upper</b>
Stops m/b Equal var. assumed	5.12	-.36	19.86
Equal var. not assumed	4.48	.90	18.60
Stops m/w Equal var. assumed	3.85	4.98	20.19
Equal var. not assumed	3.11	6.44	18.73
Stops f/b Equal var. assumed	1.59	-1.32	4.96
Equal var. not assumed	1.48	-1.11	4.75
Stops f/w Equal var. assumed	1.64	1.55	8.04
Equal var. not assumed	1.44	1.94	7.64

Thus Tables 6.4, 6.5 and 6.6 indicate that there is a significance difference between groups and that given relative equality in the population each should be stopped proportionately the same. When Table 6.2 is looked at in conjunction with Table 6.3 it can be seen that black people are stopped more frequently than are white people.

### **Traffic Tickets**

In Table 6.7 it can be seen that black males are almost two-thirds more likely to receive a traffic citation than are white males. They are almost three

times as likely to receive a traffic citation than a black female and nearly five times more likely to receive one than a white female. In fact black people are nearly twice as likely to receive a traffic citation than are white people. However, when race is held constant, males are three times more likely to receive a traffic citation than are females.

<b>Table 6.7: Number of Tickets Issued by Race and Gender</b>					
	N	Minimum	Maximum	Sum	Mean
Tickets to m/b	145	0	97	2203	15.19
Tickets to m/w	145	0	132	1360	9.38
Tickets to f/b	145	0	155	819	5.65
tickets to f/w	145	0	38	487	3.36

The data in Tables 6.8, 6.9 and 6.10 coupled with the data in Table 6.7 reveal that when police officers decide to issue tickets, black males are more likely to be recipients than are any other group of people. There are significant differences in the four groups with respect to the issuance of traffic citations. The data indicates that males in general receive more citations than their representation in the population would suggest. In addition, females, regardless of race receive fewer tickets than would be expected.

Again testing for significance was done using the Levenes test as well as

the independent t-test for equality of means. Once again using the assumption that if officers engaged in differential traffic enforcement both black and white officers would ticket more blacks than whites. In addition, if racism was the motive behind the tickets, it would be expected that white officers would ticket more blacks as compared to whites at a proportion greater to that of black officers and vice versa for black officers.

When examining Tables 6.7, 6.8, 6.9 and, 6.10 it is seen that black officers ticket black men in greater proportion than do white men. This is significant at .031 level (equal variance is not assumed). White officers ticket white males in greater proportion than do black officers and this is significant at the .000 level (equal variance is not assumed).

When comparing the rates of women ticketed it is seen that between white and black officers there is not a significant difference in the ticketing of black females. Equal variance is assumed and the level of significance is at the .175 level. When comparing the difference between white officers and black officers in ticketing white women, it is seen that white officers are twice as likely to ticket white women (means of 4.14 and 2.00 respectively). Assuming unequal variance, this is significant at the .03 level.

<b>Table 6.8: Levenes Test for Equality of Variances - Race of Officer</b>		
	<b>F</b>	<b>Sig.</b>
Tickets b/m:		
Equal var assumed	8.670	.004
Equal var not assumed		
Tickets w/m:		
Equal var assumed	7.162	.008
Equal var not assumed		
Tickets f/b:		
Equal var assumed	3.130	.079
Equal var not assumed		
Tickets f/w:		
Equal var assumed	2.724	.101
Equal var not assumed		



<b>Table 6.9: t-test for Equality of Means - Race of Officer</b>				
	<b>t</b>	<b>df</b>	<b>Sig. (2 tailed)</b>	<b>Mean Difference</b>
Tickets m/b: Equal var. assumed Equal var. not assumed	1.830	143	.069	5.63
	2.124	142.571	.035	5.63
Tickets w/m: Equal var. assumed Equal var. not assumed	2.703	143	.008	6.55
	3.334	126.151	.001	6.55
Tickets b/f Equal var. assumed Equal var. not assumed	1.364	143	.175	3.22
	1.748	107.038	.083	3.22
Tickets w/f Equal var. assumed Equal var. not assumed	2.505	143	.013	2.14
	2.772	139.344	.006	2.14

<b>Table 6.10: t-test for Equality of Means - Race of Officer</b>			
		<b>95% Confidence Interval of the Difference</b>	
	<b>Std. Error Difference</b>	<b>Lower</b>	<b>Upper</b>
Tickets m/b Equal var. assumed	3.08	-.45	11.71
Equal var. not assumed	2.65	.39	10.87
Tickets m/w Equal var. assumed	2.42	1.76	11.33
Equal var. not assumed	1.96	2.66	10.43
Tickets f/b Equal var. assumed	2.36	-1.45	7.89
Equal var. not assumed	1.84	-.43	6.88
Tickets f/w Equal var. assumed	.85	.45	3.83
Equal var. not assumed	.77	.61	3.67

Again, this would lead one to believe that as a whole the officers are not racist, but there is something operating within the Police Department's rules, training or structure that makes it desirable to conduct differential traffic enforcement activities against males, in particularly black males.

This conclusion seems plausible since there is not any significant difference in the treatment of black females between the officers of the two groups. Seemingly if racism was the operative paradigm in the Flint Police



Department black females would also be disproportionately ticketed. This would be seen in the comparisons between white and black officers, which was not found.

### **Non-Warrant Related Arrests**

The data in Table 6.11 indicate that black males are more likely to be arrested for fresh criminal offenses than are white males or women of either race. In this context a “fresh criminal offense” is an incident in which new criminal activity is discovered by the police officer. These incidences can be as minor as littering in public up to the most serious criminal offenses. Specifically excluded from this category were warrant arrests.

<b>Table 6.11: Non-Warrant Arrests by Race and Gender</b>			
	<b>Race Of Officer</b>	<b>N</b>	<b>Mean</b>
Non-Warrant Arrests b/m	White Officers	92	9.75
	Black Officers	53	5.38
Non-Warrant Arrests w/m	White Officers	92	4.67
	Black Officers	53	1.36
Non-Warrant Arrests b/f	White Officers	92	1.64
	Black Officers	53	.85
Non Warrant Arrests w/f	White Officers	92	1.29
	Black Officers	53	.44

As can be seen black males are arrested on non-warrant related matters over twice the rate of white males. White officers arrest black males a little

more than twice the rate that the arrest white males. On the other hand black officers arrest black males nearly four times as often as they arrest white males.

For every four black females arrested by white officers three white females are arrested. Black officers arrest black females almost twice as often as they do white females.

Testing for statistical significance was done using the Levenes test for equality of variance along with the independent samples t-test for equality of means test. Once again using the assumption that if officers engaged in differential traffic enforcement both black and white officers would arrest more blacks than whites. In addition, if racism was the motive behind the arrests, it would be expected that white officers would arrest more blacks as compared to whites at a proportion greater to that of black officers who themselves would be expected to arrest more whites as compared to blacks at a proportion greater than the white officers.

When examining Tables 6.11, 6.12, 6.13 and, 6.14 it is seen that there is a significant differences in means between white and black officers in the arrest of black males. This is significant at the .005 level (equal variance is not assumed). There is also a significant difference in the rate of arrest of white males between white and black officers and this is significant at .000 level (equal variance is not assumed).

When comparing the rates of women arrested it is seen that men are over five times as likely to be arrested than are women. There is a significant difference between white and black officers in arresting black females. The difference is significant at the .004 level (equal variance is not assumed).

When comparing the difference between white officers and black officers in arresting white women there is a difference and it is significant at the .001 level (assuming unequal variance).

<b>Table 6.12: Levenes Test for Equality of Variances - Race of Officer</b>		
	<b>F</b>	<b>Sig.</b>
Non-Warrant Arrests b/m: Equal var assumed Equal var not assumed	14.047	.000
Non-Warrant arrests w/m: Equal var assumed Equal var not assumed	8.621	.004
Non-Warrant Arrests f/b: Equal var assumed Equal var not assumed	18.275	.000
Non-Warrant Arrests f/w: Equal var assumed Equal var not assumed	13.223	.000

<b>Table 6.13: t-test for Equality of Means - Race of Officer</b>				
	<b>t</b>	<b>df</b>	<b>Sig. (2-tailed)</b>	<b>Mean Difference</b>
Non-Warrants m/b				
Equal var. assumed	2.432	143	.016	4.37
Equal var. not assumed	2.883	139.526	.005	4.37
Non-Warrants w/m				
Equal var. assumed	2.856	143	.005	3.32
Equal var. not assumed	3.651	108.184	.000	3.32
Non-Warrants b/f				
Equal var. assumed	2.438	143	.016	.79
Equal var. not assumed	2.903	138.469	.004	.79
Non-Warrants w/f				
Equal var. assumed	2.760	143	.007	.84
Equal var. not assumed	3.407	125.766	.001	.84

<b>Table 6.14: t-test for Equality of Means - Race of Officer</b>			
		<b>95% Confidence Interval of the Difference</b>	
	<b>Std. Error Difference</b>	<b>Lower</b>	<b>Upper</b>
Non-Warrant Arrest m/b Equal var. assumed	1.80	.82	7.93
	1.52	1.37	7.37
Non-Warrant Arrest m/w Equal var. assumed	1.16	1.02	5.61
	.91	1.52	5.12
Non-Warrant Arrest f/b Equal var. assumed	.33	.15	1.43
	.27	.25	1.33
Non-Warrant Arrest f/w Equal var. assumed	.30	.24	1.44
	.25	.35	1.33

In Table 6.15, when race is not controlled for, it is seen that black males are arrested more than twice as often as white males, more than six times as frequently as black females and more than eight times as often as white women. Since black males only comprise approximately twenty-three percent of the population in Flint, there is no doubt that they are disproportionately arrested as compared to the other groups. If one were to



simply look at the raw numbers, one would probably conclude that racism is at the root of the problem.

However, given that these findings tend to confirm the previous findings it seems plausible to conclude that as a group officers are not racist, but practice differential traffic enforcement. This only makes sense when one considers that black males are treated differentially by both sub-groups of police, black officers and white officers. As a matter of fact, black police officers arrest black males rather than white males in greater disproportion than white police officers. Therefore explanations other than racism should be sought. Reasonably one can infer that differential traffic enforcement is endemic in the rules, training and/or socialization process within the police department.

<b>Table 6.15: Arrest other than Warrant - Race/Gender</b>					
	N	Minimum	Maximum	Sum	Mean
Arrest m/b	145	0	52	1182	8.15
Arrest m/w	145	0	70	502	3.46
Arrest f/b	145	0	11	196	1.35
Arrest f/w	145	0	14	143	.99
Total	145			2023	13.95

## **Warrant Arrests**

An arrest warrant is issued against individual suspected of committing crimes. It is a process in which a judge or magistrate has preliminarily reviewed assertions made by the police and a determination made as to whether or not the police have probable cause to arrest. If it is determined that cause for an arrest is sufficient, the presiding judge or magistrate then issue a warrant for the person's arrest. Arrest warrants can be issued for misdemeanor or felony offense. The violations can be as simple as littering or as serious as homicide.

Warrant arrests differ from other arrests in that the illegal behavior has already been committed. In this instance police officers are not interested in ferreting out illegal behavior, but they are interested in seeking out people who have evaded prosecution for earlier unresolved transgressions against the State.

The data in Table 6.16 indicates that black males are arrested on warrants by white officers at nearly 2 ½ times the rate of white males. Black officers arrest black males on warrants over four times the rate in which they arrest white males. White officers arrest black women with warrants just less than twice the rate of white women. On the other hand, black officers arrest black women over three times the rate they arrest white women.



<b>Table 6.16: Warrant Arrests by Race and Gender</b>			
	<b>Race Of Officer</b>	<b>N</b>	<b>Mean</b>
Warrant Arrests	White Officers	92	4.79
Black Males	Black Officers	53	2.57
Warrant Arrests	White Officers	92	1.77
White Males	Black Officers	53	.64
Warrant Arrests	White Officers	92	.91
Black Females	Black Officers	53	.66
Warrant Arrests	White Officers	92	.52
White Females	Black Officers	53	.15

Testing for statistical significance was done using the Levenes test for equality of variance along with the independent samples t-test for equality of means test. The same assumptions were used in the previous three analyses of the of the police officers' dailies, namely, that if officers engaged in differential traffic enforcement both black and white officers would arrest more blacks than whites. Again, if racism was the motive behind the arrests, white officers would arrest more blacks as compared to whites at a proportion greater to that of black officers who themselves would be expected to arrest more whites as compared to blacks at a proportion greater than the white officers.

When examining these Tables it is seen that there is a difference in the rates of arrest between black officers and white officers in the rates of arrest of black men. This is significant at the .001 level (equal variance is not assumed). There is also a difference in the rate of arrest of white males

between white officers and black officers. This is significant at .000 level (equal variance is not assumed).

When comparing the rates of women arrested on warrants it is seen that men are nearly five times as likely to be arrested than are women. There is not a significant difference between white and black officers in arresting black females. The significance is reported at the .336 level (equal variance is assumed). When comparing white officers and black officers in arresting white women there is a difference and it is significant at the .002 level (assuming unequal variance).

<b>Table 6.17: Levenes Test for Equality of Variances - Race of Officer</b>		
	<b>F</b>	<b>Sig.</b>
Warrant Arrests b/m: Equal var assumed Equal var not assumed	10.290	.002
Warrant arrests w/m: Equal var assumed Equal var not assumed	22.217	.000
Warrant Arrests f/b: Equal var assumed Equal var not assumed	3.444	.066
Warrant Arrests f/w: Equal var assumed Equal var not assumed	24.342	.000

<b>Table 6.18: t-test for Equality of Means - Race of Officer</b>				
	<b>t</b>	<b>df</b>	<b>Sig. (2-tailed)</b>	<b>Mean Difference</b>
Warrants m/b				
Equal var. assumed	2.255	143	.026	2.23
Equal var. not assumed	2.708	136.161	.008	2.23
Warrants w/m				
Equal var. assumed	3.456	143	.001	1.13
Equal var. not assumed	4.206	131.604	.000	1.13
Warrants b/f				
Equal var. assumed	.966	143	.336	.25
Equal var. not assumed	1.005	122.134	.317	.25
Warrants w/f				
Equal var. assumed	2.656	143	.009	.37
Equal var. not assumed	3.154	139.116	.002	.37

<b>Table 6.19: t-test for Equality of Means - Race of Officer</b>			
		<b>95% Confidence Interval of the Difference</b>	
	<b>Std. Error Difference</b>	<b>Lower</b>	<b>Upper</b>
Warrant Arrest m/b			
Equal var. assumed	.99	.27	4.18
Equal var. not assumed	.82	.60	3.85
Warrant Arrest m/w			
Equal var. assumed	.33	.48	1.78
Equal var. not assumed	.27	.60	1.66
Warrant Arrest f/b			
Equal var. assumed	.26	-.26	.77
Equal var. not assumed	.25	-.24	.75
Warrant Arrest f/w			
Equal var. assumed	.14	9.48E-02	.65
Equal var. not assumed	.22	.14	.60

Table 6.20 reports the mean number of warrant arrests by race and gender for police officers as a group. It is seen that black males are arrested almost three times as often as white males, nearly four times as frequently as black females and more than ten times as often as white women. Males of either race are arrested on warrants more frequently than females of either

race. Again, there is no doubt that black males are disproportionately arrested as compared to the other groups. One would be tempted to simply draw the conclusion that racism is behind the reason that black males dominate warrant arrests, however these findings tend to confirm the earlier findings. As such, it seems plausible to conclude that as a group officers are not overtly racist, but practice differential traffic enforcement. This only makes sense when one considers that black males are treated differentially by both sub-groups of police, black officers and white officers. As a matter of fact, black police officers arrest black males rather than white males in greater disproportion than white police officers. Reasonably one can infer that differential traffic enforcement is endemic in the rules, training and/or socialization process within the police department.

It also bears mentioning that warrant arrests are more reflective of the judicial system than the police department. This must be the case since police officers cannot make a warrant arrest unless a judge or magistrate already issued a warrant. This is unlike other types of arrests in which police officers have the discretion to arrest or not to arrest. As a result one might reasonably infer that more black males have outstanding arrest warrants than other segments of the population. This is somewhat beyond the scope of the study, in addition at the time neither Flint City District Court nor Genesee County District Court had the capability to ferret out how many warrants were issued by race or gender.





<b>Table 6.20: Warrant Arrests by Race/Gender</b>					
	N	Minimum	Maximum	Sum	Mean
Warrant m/b	145	0	37	577	3.98
Warrant m/w	145	0	9	197	1.36
Warrant f/b	145	0	9	119	.82
Warrant f/w	145	0	5	56	.39
Total	145			949	6.54

From the preceding tables, it can be seen that police officers in the City of Flint stop more blacks, males in particular, issue them more tickets, arrest them more often for both fresh offenses and outstanding criminal warrants than one would normally expect to find in the population. Especially when the demographics in the community indicate that blacks, whites, males and females are virtually equally distributed. It is important to remember that this data was taken from the police officers' DAR. Significantly, this represents the activities that the officers actually did. In this sense the dailies represent an objective accounting of the officers productivity.

In the second part of this chapter these results will be compared to how the officers responded to the questions in the survey that was administered. The responses from the questionnaire indicate how the officers subjectively

feel about these very same issues.

## **Part Two: Survey Responses**

In this section the data pertaining to the survey responses are examined. The dependent variables are grouped into three different categories. Those are: race related variables, organizational variables and, training variables. The independent variable is the officer's race. The results are reported in two ways. First percentages of agreement and disagreement are reported for each grouping. Secondly the Levenes test for equality of variance and the independent t-test for the equality of means were used to measure differences between respondents by race.

Race was used as the independent variable to determine whether or not police officers differed in their responses when race was controlled for. It was felt that if there was not a difference between the responses, then racism was less likely to be the reason behind differential traffic enforcement.

### **Attitudinal Variables - Race**

The statements in the survey were designed to elicit responses from officers ranging in degree from: strongly disagree, disagree, neutral, agree and, strongly agree. For coding purposes each answer was given a numerical value, e.g., strongly disagree (1), disagree (2), neutral (3), agree (4), strongly agree (5). Means were calculated by averaging the responses. Means less than three indicated that the officers disagreed with the statement. On the other hand means greater than three indicated that officers agree with the statements.

The questionnaire had seven specific questions that dealt with race. These statements were designed to gauge the officers' beliefs about traffic enforcement activities and the role that race played into their decision making process. Presumably if racism was present, one would expect to find that white and black officers would differ in their responses to the statements.

In Table 6.21 it is seen that on the whole, white officers' mean response (2.64) to the question "In the last year, I have conducted more traffic stops on white people than on black people" reveals that they disagree with this statement. Black officers' mean response of (1.94) indicate a stronger level of disagreement with this statement. The Levenes test in Table 6.22 shows a significance level of (.057) which assumes equal variance. The t-test for equality of means in Tables 6.23 and 6.24 indicate that this finding is significant at the .002 level. However these findings tend to confirm the officers' DAR's in that black officers tended to stop black people more than white people and they did this disproportionately greater than white officers. Thus one would expect to find exactly what was reported, namely, that black officers would more strongly disagree with this statement than white officers.

To the statement "In the last year, I have found that it is more likely that a white male will have a warrant for his arrest than a black male" white officers had a mean response of (2.22) and black officers had a mean response of (2.21). The Levenes test result was (.022) which means that equal variance cannot be assumed. The t-test for equality of means indicates that the findings are not significant (.968). When these findings are compared to the objective data taken from the DAR's, it is found that they too are consistent with each other. Since both groups of officers had arrested more black males

on warrants than white males.

White officers mean response to the statement "(I)f I were assigned to work an area heavily populated with minorities and I saw a white person in the area that appeared out of place, I would stop that person and find out why he was in the area" was (3.42) which indicates general agreement with the statement. Black officers mean response to the same statement was (2.85) which in general indicates disagreement with the statement. The Levenes test indicated the assumption of equal variance with a test statistic of (.861). The t-test for equality of means shows that this difference is significant at the (.017) level.

To the statement "(T)hrough my patrol experience for the last year, I have found that it is more likely that a black male will have a warrant for his arrest than a white male" that white officers mean response was (3.30), while black officers mean response was (3.21). The response from both groups of officers indicates that in general they agree with the statement. The Levenes test statistic of (.117) assumes equality of variance. The t-test for equality of means indicates that the differences between means is not significant (.687). This once again confirms data from the DA R's in that both groups did arrest more black males than white males on warrants. Their answers are seemingly consistent with their activities.

To the statement "(I)f I were assigned to work an area that was exclusively white and I saw a black person in the area that appeared out of place, I would stop that person and find out why he was in the area" white officers had a mean response of (3.12) which indicates a slight level of agreement with the statement. On the other hand black officers had a mean

1. The first part of the report is a general statement of the purpose of the study.

2. The second part is a description of the methods used.

3. The third part is a description of the results of the study.

4. The fourth part is a discussion of the results and their implications.

5. The fifth part is a conclusion and a list of references.

6. The sixth part is a list of references.

7. The seventh part is a list of references.

8. The eighth part is a list of references.

9. The ninth part is a list of references.

10. The tenth part is a list of references.

11. The eleventh part is a list of references.

12. The twelfth part is a list of references.

13. The thirteenth part is a list of references.

14. The fourteenth part is a list of references.

15. The fifteenth part is a list of references.

16. The sixteenth part is a list of references.

17. The seventeenth part is a list of references.

18. The eighteenth part is a list of references.

19. The nineteenth part is a list of references.

20. The twentieth part is a list of references.

21. The twenty-first part is a list of references.

22. The twenty-second part is a list of references.

23. The twenty-third part is a list of references.

24. The twenty-fourth part is a list of references.

25. The twenty-fifth part is a list of references.

response of (2.81) which indicates a slight level of disagreement with the statement. The Levenes test indicates the assumption of equal variance with a test statistic of (.092). The t-test for equality of means shows that the difference between mean did not reach a significant level (.194). When this finding is compared to the earlier results (stopping a white person out of the area) it is seen that both groups of officers still responded with similar patterns, however the difference mainly centered on white officers who seemingly were more reluctant to stop blacks that appeared out of the area. One possible explanation for this could be that white officers may be more conscious of the racial implications of stopping blacks who appear to be out of the area and they do not feel the same pressure in stopping whites who appear to be out of the area.

White officers mean response to the statement “(G)iven the exact same violation, occurring at the exact same time, I would rather stop a white person driving a new car than I would stop a black person driving an old beat up car” was (2.37), indicating that they disagree with this statement. Black officers mean response was (1.97), which indicates a strong level of disagreement with the statement. The Levenes test statistic (.972) indicates the assumption of equal variance. The t-test for equality of means shows that the difference between the two groups is not significant (.055). These responses seem to be in dispute with the data from the DAR’s, primarily because of the disproportion that black males were stopped in comparison to everyone else. This seems especially true when one considers that nearly (95%) of all drivers of both races violate traffic laws.

The last statement in this section “(D)uring the past year, I have ticketed





more black citizens than I have white citizens" white officers had a mean response of (3.02), which indicates a very slight level of agreement with the statement. Black officers had a mean response of (2.94), which indicates a slight level of disagreement with the statement. The Levenes test statistic of (.052) assumes equal variance. The t-test for equality of means indicates that there is not a significant difference between the two groups (.739). The data from the DAR's indicated that both groups ticketed more blacks than whites. However black officers marginally denied this while white officers marginally agreed with this statement.

Out of the seven (7) variables examined, it was found that with five (5) them there was not a significant difference between the mean answers of white and black officers. The other two (2) variables did show a significant difference in the means, however the difference in the first instance confirmed what was found in the objective data. The difference found in "stopping whites out of place" was also somewhat consistent with the findings in "stopping blacks out of place." What was somewhat surprising is that the white officers level of agreement was stronger in the former rather than the latter, while black officers expressed somewhat the same level of disagreement to both statements. If racism was operative, one would expect different results, especially from the white officers.



<b>Table 6.21: Attitudinal Variables - Race</b>						
	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Neutral</b>	<b>Agree</b>	<b>Strongly Agree</b>	<b>Mean</b>
stopped more w/m	20.2%	40.5%	19.0%	10.7%	3.6%	w/ 2.64 b/ 1.94 both 2.37
more white have warrant	19.0%	42.9%	35.7	1.2%	1.2%	w/ 2.22 b/ 2.21 both 2.23
stop white out of area	8.3%	17.9%	25.0%	42.9%	6.0%	w/ 3.42 b/ 2.85 both 3.2
more black have warrant	3.6%	17.9%	34.5%	36.9%	7.1%	w/ 3.30 b/ 3.21 both 3.26
stop black out of area	11.1%	22.2%	27.2%	37.0%	2.5%	w/ 3.12 b/ 2.81 both 2.98
Stop white in new car vs. black in old	27.5%	28.8%	38.8%	5.0%	.0%	w/ 2.37 b/ 1.97 both 2.21
ticketed more black than white	9.8%	23.2%	32.9%	26.8%	7.3%	w/ 3.02 b/ 2.94 both 2.99

w/ = white officers mean response

b/ = black officers mean response

both = combined mean response of both black and white officers

<b>Table 6.22: Levenes Test for Equality of Variances - Race of Officer</b>		
	<b>F</b>	<b>Sig.</b>
Stop more white than black: Equal var assumed Equal var not assumed	3.738	.057
Whites more warrants than blk: Equal var assumed Equal var not assumed	5.478	.022
Stop white out of area: Equal var assumed Equal var not assumed	.031	.861
Blks more warrants than whites: Equal var assumed Equal var not assumed	2.509	.117
Stop black out of area: Equal var assumed Equal var not assumed	2.910	.092
Stop white in new car vs. black in old car: Equal var assumed Equal var not assumed	.001	.972
Ticket more black than white: Equal var assumed Equal var not assumed	3.896	.052

<b>Table 6.23: t-test for Equality of Means - Race of Officer</b>				
	<b>t</b>	<b>df</b>	<b>Sig. 2 tail</b>	<b>Mean</b>
Stop more white: Equal var. assumed	3.155	81	.002	.70
Equal var. not assumed	3.293	77.467	.001	.70
More white have warrant: Equal var. assumed	.043	81	.966	7.88E-03
Equal var. not assumed	.040	51.602	.968	7.88E-03
Stop white out of area: Equal var. assumed	2.439	81	.017	.57
Equal var. not assumed	2.472	71.703	.016	.57
More black warrants: Equal var. assumed	.404	81	.687	8.79E-02
Equal var. not assumed	.384	56.685	.702	8.79E-02
Stop black out of area: Equal var. assumed	1.311	78	.194	.32
Equal var. not assumed	1.257	55.407	.214	.32
Stop white in new car vs. black in old: Equal var. assumed	1.947	78	.055	.40
Equal var. not assumed	1.904	59.241	.062	.40
Tkt more blk Equal var. assumed	.334	79	.739	8.45E-02
Equal var. not assumed	.313	51.277	.755	8.45E-02

<b>Table 6.24: t-test for Equality of Means - Race of Officer</b>			
		<b>95% C. I. of the Difference</b>	
	<b>Std. Error Diff.</b>	<b>Lower</b>	<b>Upper</b>
Stop more white			
Equal var. assumed	.22	.26	1.14
Equal var. not assumed	.21	.28	1.12
More white have warrants			
Equal var. assumed	.18	-.36	.37
Equal var. not assumed	.20	-.39	.40
Stop white out of area:			
Equal var. assumed	.23	.11	1.04
Equal var. not assumed	.23	.11	1.03
More black have warrant			
Equal var. assumed	.22	-.34	.52
Equal var. not assumed	.23	-.37	.55
Stop black out of area:			
Equal var. assumed	.24	-.16	.80
Equal var. not assumed	.25	-.19	.82
Stop white in new car vs. black in old car:			
Equal var. assumed	.21	-8.90E-03	.81
Equal var. not assumed	.21	-2.03E-02	.82
Ticket more black than white:			
Equal var. assumed	.25	-.42	.59
Equal var. not assumed	.27	-.46	.63

## **Organizational Variables**

There were nine (9) variables that were organizationally oriented within the questionnaire. These were designed to elicit responses that would help identify whether or not organizational goals played a role in differential traffic enforcement. The answers to these statements were coded just as in the preceding section.

The responses of the white officers are compared to the responses of the black officers to establish whether or not they view the organizational goals and mission differently. It is posited that if the Department placed an emphasis on arrests that this would be revealed in the responses to these questions and may be an indicator of institutional racism. On the other hand if officers do not believe that arrests are of benefit to them departmentally, one could argue that differential traffic enforcement is a merely a result of officers attempting to ferret out criminals.

In Table 6.25 the mean response of white officers to the statement “(M)y supervisors do not care whether or not I conduct traffic stops” is (2.52) which indicates that they disagree with this statement. Black officers have a mean response of (1.73) which indicates a strong level of disagreement with this statement. In Table 6.26 the Levenes test for with a result of (.094) indicates the assumption of equal variance. In Tables 6.27 and 6.28 the t-test for equality of means reveals that there is a significant difference between the means of the two groups of officers and that this is significant at the (.001) level. Although there is a significant difference between the two groups the





difference is only in the level of disagreement as both groups disagree with statement.

As such, there is a consensus between the two that supervisors do care if they engage in traffic enforcement activities. This lends some credence to the notion that there are departmental norms which at the minimum informally require officers to conduct enforcement activity.

To the statement “(C)atching criminals is the primary function of police departments” white officers had a mean response of (2.90), which indicates that they slightly tended to disagree with the statement. On the other hand, black officers had a mean response of (3.39), which indicates that they agreed with the statement. The Levenes test for equality of variances had a test statistic of (.917) which indicates an assumption of equal variance. The t-test for equality of means shows that there is not a significant difference between the means of both groups (.091).

On the whole, both groups are somewhat unsure of the Department’s direction in this area. This finding is interesting in that if officers believe that catching criminal is not a priority for the police, then the notion that officers engage in differential traffic enforcement to ferret out criminal behavior loses some of its impetus.

The next statement “(M)y department places too much emphasis on community policing” finds the mean answer of white officers at (3.26), which indicates a level of agreement to the statement. Black officers mean answer of (2.36 ) indicates that they disagree with this statement. The Levenes test



statistic (.000) for equality of variances requires that equal variance not be assumed. The t-test for equality of means shows that there is a significant difference between the two groups of officers with a significance level of (.000).

This finding is interesting, since in the previous question white officers marginally felt that catching criminals was not the primary purpose of police departments, yet, they felt that their Department emphasized community policing too much. While the black officers felt catching criminal was the primary purpose, yet, they felt community policing was not emphasized enough. One explanation might be that black officers believe that too much emphasis is placed on arresting people and not enough on helping people. While white officers may believe arresting people is not all that important but, that community policing takes up more of time then they would like to give. Further research is needed in this area.

To the question “(M)aking arrests is one way to enhance promotional opportunities” white officers had a mean response rate (2.32) which indicates disagreement to the statement. Black officers had a mean response rate of (2.64) which also indicates disagreement to the statement. The Levenes test statistic of (.011) requires that equal variance not be assumed. The t-test for equality of means had a result of (.199) which means that there is not a significant difference between the two groups.

This seems to be somewhat counter intuitive as neither group believes that making arrests will enhance their promotional opportunities. However

through interviews it was determined that this was due to the fact that Flint Police Officers have a strong collective bargaining agreement which outlines promotional procedures.

The next statement “(M)y police department emphasizes treating all citizens equally” had a mean response of (3.94) for white officers. This indicated that in general they agreed with the statement. Black officers had a mean response rate of (3.77) which also indicated agreement with the statement. The Levenes test statistic of (.015) required that equal variance not be assumed. The test statistic (.548) for the t-test of equality of means indicated that there was not a significant difference between the two groups.

Interestingly, both groups of officers agreed that the police department emphasized that all citizens be treated equally. If one were to have assumed that the police department’s norms were racist, this is seemingly strong contradictory evidence since one would not expect both groups of officers in agreement with this statement.

With respect to the question “(T)raffic stops are one of several law-enforcement activities that is emphasized by my police department” white officers had a mean response of (3.35) which indicates agreement with the statement. Black officers had a mean response of (3.71) which also shows agreement with the statement. The Levenes test shows a significance level of (.182) which means that equal variance can be assumed. The t-test for equality of means showed a test statistic of (.107) which indicates that there is not a significant difference between the groups.



One interpretation of this statement when combined with the previous statement is that differential traffic enforcement is the choice of the officer, not the department. This can be inferred in that the officers acknowledge that the department wants the officers to treat the citizens equally, the mere fact that the agency also wants traffic enforcement does not mitigate the officers obligation to treat people fairly.

To the statement “(M)y department places more emphasis on helping citizens than catching criminals” white officers had a mean response of (2.98) which barely states disagreement. In fact, one could argue that the response of the white officers could be better interpreted as either neutral or “don’t know.” Black officers had a mean response of (2.39) which indicates disagreement with the statement. The Levenes test (.149) assumes equality of variance. The t-test for equality of means was significant (.013) which indicates that there is a difference between groups.

Black officers are fairly consistent in their responses to statements such as this, the inference drawn is that they feel the Department does not emphasize the helping aspect enough, that it focuses on the law enforcement activities versus peace officer activities. White officers slightly disagreed with the statement however they expressed a strong “neutral” opinion. They too are somewhat consistent in their beliefs that the Department places too much emphasis on the helping aspect and inferentially, not enough on law enforcement activities.

To the statement “(T)here is a direct connection between how hard I work



and the promotion that I get” white officers had a mean response of (2.25) which shows disagreement with the statement. On the other hand, black officers had a mean response of (2.58) which also shows disagreement with the statement. The Levenes test for equality of variance was (.511) which assumes equality of variance. The results of the t-test for equality of means was (.243) shows that there was not a significant difference between the two groups.

Neither group felt that there was a connection between work ethic and promotions. This is interesting in that this directly bears on the notion of responsibility for differential traffic enforcement. If neither group feels that the Department cares about the level of work they do in relation to being promoted, inferentially one could posit that officers engage in differential traffic enforcement because they want to do this activity. This is vastly different from doing it because they feel departmental pressures to engage in this activity.

Lastly white officers had a mean response of (2.38) to the statement “(P)olice supervisors do not care about officers making arrests.” This indicates disagreement with the statement. Black officers had a mean response of (1.74) which indicates a strong level of disagreement with the statement. The Levenes test statistic of (.078) assumes equal variance. The t-test for equality of means shows that there is a significant difference between the groups at the (.004) level.

What is interesting is that police officers of both groups feel that their



supervisors care about them making arrests, yet, apparently there is only an internal incentive for making arrests. One plausible interpretation is that supervisors create an atmosphere in which differential traffic enforcement is encouraged, since they are the ones that make daily duty assignments. This interpretation is in part based on interviews that were held with both supervisors and subordinates. Some supervisors stated that they would base some assignments on the caliber of employee, giving the better districts to those who wanted to work and, assigning employees whom they considered “slugs” to areas that forced them to work.

On the other hand some subordinates claimed that some co-workers always seemed to get the better assignments and that supervisors rewarded some officers by letting them work the district that they wanted. It is unknown if this is merely a form of nepotism or if in fact supervisors awarded choice assignment to employees who worked. However, informally, there is an under current that this occurs.

Out of the nine (9) variables examined there was not a significant difference in five (5) of them. The four (4) that significance was found, three (3) of them were significant on the level of disagreement. In other words both black and white officers disagreed with the statements, simply one group disagreed more. The one statement with a significant difference in which there was disagreement, black officers did not believe that the Department placed too much emphasis on community policing while white officers felt that it placed too much emphasis on community policing.

These variables were designed to determine whether or not there were departmental norms that placed an emphasis on arresting people. If it were found that there were norms, this would give credence to the notion that the Department encouraged differential traffic enforcement. The findings were to the contrary in that officers did not perceive pressures from the organization to make arrests. However, they did feel pressures from their supervisors to make arrests. It may be the case that supervisors have departmental pressures for arrests, however this is beyond the scope of the study.

<b>Table 6.25: Organizational Variables - Race</b>						
	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Neutral</b>	<b>Agree</b>	<b>Strongly Agree</b>	<b>Mean</b>
supviser do not care traffic stops	28.6%	42.9%	11.9%	11.9%	4.8%	w/ 2.52 b/ 1.73 both 2.21
Catching criminal primary function	9.5%	34.5%	10.7%	28.6%	16.7%	w/ 2.90 b/ 3.39 both 3.08
Dept. to much emph. Com Pol	9.5%	33.3%	28.6%	14.3%	14.3%	w/ 3.26 b/ 2.36 both 2.90
Making arrest enhance promo	19.0%	35.7%	27.4%	16.7%	1.2%	w/ 2.32 b/ 2.64 both 2.45
Dept. emph equal treatmnt	6.2%	7.4%	4.9%	55.6%	25.9%	w/ 3.94 b/ 3.77 both 3.88
Traffic stop emph. by P.D.	2.5%	17.3%	19.8%	50.6%	9.9%	w/ 3.35 b/ 3.71 both 3.48
Emph on citizen not catch criminal	8.6%	35.8%	34.6%	13.6%	6.3%	w/ 2.98 b/ 2.39 both 2.75
Direct connect work - promote	30.0%	26.3%	23.8%	13.8%	6.3%	w/ 2.25 b/ 2.58 both 2.40
Supvisor not care about arrests	26.8%	45.1%	17.1%	8.5%	2.4%	w/ 2.38 b/ 1.74 both 2.15



<b>Table 6.26: Levenes Test for Equality of Variances - Race of Officer</b>		
	<b>F</b>	<b>Sig.</b>
Supervisors do not care traffic stops: Equal var assumed Equal var not assumed	2.864	.094
Catch criminals primary function: Equal var assumed Equal var not assumed	.011	.917
Dept to much Com Pol Equal var assumed Equal var not assumed	14.316	.000
Making arrest enhance promotion: Equal var assumed Equal var not assumed	6.760	.011
Dept. emphasizes equal treatment: Equal var assumed Equal var not assumed	6.240	.015
Traffic stops emphasized by P.D.: Equal var assumed Equal var not assumed	1.817	.182
Emph. help citizen not catch criminals: Equal var assumed Equal var not assumed	2.124	.149
Direct connect work and promotions: Equal var assumed Equal var not assumed	.436	.511
Supervisor not care about arrests: Equal var assumed Equal var not assumed	3.179	.078

<b>Table 6.27: t-test for Equality of Means - Race of Officer</b>				
	<b>t</b>	<b>df</b>	<b>Sig. 2-tailed</b>	<b>Mean Diff.</b>
Supervisors do not care about traffic Equal var assume Equal var not assumed	3.298	81	.001	.79
	3.365	73.146	.001	.79
Catching criminal is prime function Equal var assume Equal var. not assumed	-1.710	81	.091	-.49
	-1.705	68.054	.093	-.49
Emphasizes Com Pol. Equal var assume Equal var. not assumed	3.540	81	.001	.90
	3.904	80.396	.000	.90
Making arrests enhances promotion Equal var assume Equal var. not assumed	-1.381	81	.171	-.32
	-1.302	54.975	.199	-.32
Emphasizes equal treatment: Equal var assume Equal var. not assumed	.659	78	.512	.16
	.605	47.276	.548	.16
Traffic emph. by Police Dept.: Equal var assume Equal var. not assumed	-1.628	78	.107	-.36
	-1.649	66.568	.104	-.36

Emph. help citizen not catch criminals				
Equal var assume	2.544	78	.013	.59
Equal var. not assumed	2.741	76.806	.008	.59
Direct connection work and promotion				
Equal var assume	-1.177	77	.243	-.33
Equal var. not assumed	-1.163	61.689	.249	-.33
Supervisors do not care about arrests				
Equal var assumed	2.930	79	.004	.64
Equal var not assumed	3.142	76.489	.002	.64

<b>Table 6.28: t-test for Equality of Means - Race of Officer</b>			
		<b>95% C. I. of the Difference</b>	
	<b>Std. Error Diff.</b>	<b>Lower</b>	<b>Upper</b>
Supervisors do not care about traffic stops: Equal var. assumed	.24	.31	1.27
Equal var. not assumed	.24	.32	1.26
Catching criminals is primary function P.D.: Equal var. assumed	.29	-1.07	8.08E-02
Equal var. not assumed	.29	-1.07	8.08E-02
Dept. to much emph. on Com. Pol.: Equal var. assumed	.25	.39	1.40
Equal var. not assumed	.23	.44	1.35
Making arrests enhances promotions: Equal var. assumed	.23	-.77	.14
Equal var. not assumed	.24	-.80	.17
Dept. emphasizes equal treatment: Equal var. assumed	.25	-.33	.66
Equal var. not assumed	.27	-.38	.71



Traffic stops emphasized by P.D.:			
Equal var. assumed	.22	-.81	8.07E-02
Equal var. not assumed	.22	-.81	7.64E-02
Emphasis on helping citizen not catch crim.:			
Equal var. assumed	.23	.13	1.06
Equal var. not assumed	.22	.16	1.02
Direct connect between work and Promotion:			
Equal var. assumed	.28	-.89	.23
Equal var. not assumed	.28	-.90	.24
Supervisors do not care about arrests:			
Equal var. assumed	.22	.20	1.07
Equal var. not assumed	.20	.23	1.04

## **Discussion of Hypotheses**

There were four (4) suggested hypotheses. The first null one “(P)olice are not more likely to stop a black motorist rather than a white motorist,” was rejected. The DAR’s revealed that officers regardless of their race stop black motorists at a far greater rate than white motorists. Even though blacks comprised smaller numerical numbers than whites, they were stopped more frequently than whites. However this only held true when gender was factored into the equation. Males were stopped more frequently than females, regardless of race. The research instrument also supported this as both white and black officers believed that they had stopped more blacks than whites. In fact among officers, blacks believed this more strongly than white officers.

The second null hypothesis “(P)olice are not more likely to stop a black motorist rather than a white motorist based on the belief of an outstanding warrant for the person,” was rejected. The analysis of DAR’s indicated that blacks were several times more likely to have been arrested on outstanding arrest warrants than are whites. Once again this only holds true only if gender is not considered. Since males regardless of race were several times more likely to have been arrested on outstanding arrest warrants than females. The research instrument supports this as officers, regardless of race, believe that blacks have more outstanding arrest warrants than whites. It is apparent that this belief is translated to practice since blacks, males in particular, find themselves stopped and ticketed more frequently than one would generally expect to find in the population.

The third hypothesis “(P)olice decisions to stop black people are based on racist attitudes, not on imbalanced statistics. The review of the DAR’s

simply does not support this. If this were the case one would expect to find white police officers stopping blacks in greater proportion to that of black officers. This was not found. In fact, black police officers proportionately stopped more blacks than they did whites. White officers also stopped more blacks than whites, however proportionately they were not as extreme as black officers. Further both white and black officers arrested blacks on outstanding arrest warrants and for “fresh” criminal offenses in frequencies far greater than they did whites. However, these differences only held true when gender was not controlled for. Once gender was controlled, it was found that white males were stopped and arrested significantly more than black or white females. The research instrument also supports this as officers regardless of race believed that they had stopped more blacks than whites and that they felt black males had more outstanding arrest warrants than whites.

Lastly, the fourth hypothesis “(A)n enforcement pro-active police agency is not more likely to encourage officers to stop a greater number of minority motorists,” was not rejected. Although the DAR’s reflected that minorities were stopped in numbers significantly greater than white people, the research instrument simply did not reveal that this was related to practices within the police department. In fact officers reported that although they felt that making arrests were important, they did not feel that it would help with advancement in their careers. This is not to say that the department did not think that making arrests was important, simply officers did not perceive it as a departmental factor. However officer did acknowledge that police supervisors cared about the level of arrests that they made. Although this was a form of pressure it was of little consequence since officers knew that aside



from duty assignments there was little else of consequence that could happen to them.

These findings reveal that differential traffic enforcement is practiced in the Flint Police Department. They do not indicate that the department nor it's officer have an overtly racist motive in practicing this activity as both white and black officers engage in this practice. In fact black officers proportionately stop more blacks than do white officer. However, even given that there may not be a racist motive in stopping blacks, the end result is still the same, they are stopped, ticketed and arrested more frequently than are white people.

### **Summary**

When utilizing data from the DAR's it is seen that when gender is not controlled, blacks are more likely to be stopped, ticketed and arrested than are whites. However when gender is controlled for it was found that black males were significantly more likely to be stopped, ticketed and arrested than white males, black females or white females. On the other hand, white males were more likely to be stopped, ticketed and arrested than either black or white females.

When controlling for the race of the officer it was found that black officers proportionately stopped black males in greater relative numbers than they did white males. White officers also stopped black males in greater proportions than white males, however, the difference was not as great as the black officers. Black and white females were stopped infrequently as to what one might normally expect given their proportion in the population.

When examining the survey instrument, it was found that neither group of officers felt “departmental” pressure to make arrests. However both groups acknowledge that their supervisors want both arrests and traffic contacts. Neither group felt that these activities were related to their advancement within the police department. However anecdotal comments revealed that supervisors rewarded officers who produced, arrests and traffic stops, by giving them preferred assignments.

Three of the four null hypotheses were rejected including: 1) Police officers are not more likely to stop a black motorist rather than a white motorist, 2) Police are not more likely to view racially unbalanced traffic stops as standard police practice based on a focus of criminal behavior, 3) Police decisions to stop people of color are based on racist attitudes not imbalanced statistics. Based on the data these were rejected. The fourth hypothesis could not be rejected as the evidence did not support the notion that the practices promulgated by the police department encouraged officer to engage in differential traffic enforcement.

## **CHAPTER 7**

### **Conclusions and Recommendations**

#### **Introduction**

This inquiry was composed of three parts. The first part consisted of formulating a basis for the application of differential traffic enforcement in the context of pretext traffic stops. The second part consisted of the development of an ethical paradigm which was designed to guide officers actions with respect to differential traffic enforcement. The third part consisted of the complete examination of traffic enforcement activities of police officers' DAR's assigned to the general patrol division of the Flint City Police Department. This resulted in the review of nearly thirty-thousand daily reports. This was followed by the administration of a survey instrument to officers assigned to this division, of which eighty-four officers out of one-hundred and forty-five participated.

The analysis of this data served to reinforce the theoretical perspective developed in this case study. Specifically, the issues addressed earlier in Peel's Ten Principles of Law Enforcement and the notion of fairness outlined in the ethical theory: Reflective Equilibrium.

Although it was not feasible to test the various ethical paradigms that officers operated under, questions in the survey were designed to illicit general notions of fairness. Specifically, as it relates to the types of persons that an officer would stop in certain situations. The research provides a starting point to address the issue of differential traffic enforcement in the





context of race.

### **Conclusions and Recommendations<sup>1</sup>**

Differential traffic enforcement in the racial context is problematic in that people are singled out for treatment based on skin color. However, in society at large differential treatment in the general context is somewhat common place. Consider for example similar parallels: insurance agents who charge teenagers higher rates for insurance than the elderly or mortgage brokers who assign points based on the type of category one fits into. Also consider the notion of selective recruitment in academia, athletics and the military.

In all of these cases there is the selective perception that a person is either at greater risk to succeed or fail. In this way the treatment of these groups of people is based upon statistical evidence that is used to predict future behavior. What is important is that society at large uses group characteristics to predict individual probability with respect to failure or success. In this sense given the statistical evidence that police officers are confronted with, they are in essences acting no differently than the insurance agent, mortgage seller, academic or military recruiter in selecting people for differential traffic enforcement. They are merely increasing their chances of arresting people that they believe are most likely to be involved in criminal activity.

Although the findings indicate that in the subjective sense individual officers are not racist they can not be extrapolated to the objective or structural sense. By this it is meant that there might be rules or policies

---

<sup>1</sup>Much of this discussion is a result of conversations with Dr. Albert Cafagna.

within the police department that encourage the practice of differential traffic enforcement. The structural environment may produce racist results, such as black males being disproportionately stopped, by officers who themselves may not be racist. This is of little consolation to those who are affected by this practice since the end result is disparate treatment. As such, race is a factor in differential traffic enforcement.

The consequences of this specific police behavior is that the more that it is practiced, the more likely it will be reinforced by arrests. It becomes self-fulfilling in that the more blacks are stopped the more they will be arrested; the more that they are arrested the more they will over-represent the numbers of those arrested relative to their numbers in the population. Thus the cycle feeds upon itself and if officers continue the practice of differential traffic enforcement the future will also represent a disproportionate number of blacks coming into contact with police officers via traffic enforcement contacts. Additionally this means that the more that these patterns are reinforced the greater the likelihood that relations between the police and the black community will deteriorate. If this continues it is only reasonable to expect less trust in the future.

However these predictions need not take place. There are several strategies that the police could employ to ameliorate this cycle. For instance they could attempt to explain to the black community that they are merely using predictors to identify those that prey upon the law abiding members of society. The heightened surveillance that the police give the black community is a way to protect the law abiding black community from being victimized by predators.

Secondly, as social and economic inequalities disappear this heightened surveillance can gradually disappear. As the economic statistics change so too will differential traffic enforcement. This seems reasonable since presumably the reason that the police give the black community their attention is related to the notion criminality. As more and more blacks attain middle class stature, the less that they will be associated with crime as social and economic equalities seemingly are at the root of blacks being over-represented in the criminal statistics.

In mean time there are several measures that the police can undertake to gain the trust of the black community. First and foremost, they can formally bar the use of racial characteristics in determining whom they are going to stop. This is not to infer that police should not stop someone because of who he is, a known drug dealer. However they should not stop anyone because of what they are; in this case the “what” refers to a specific classification, i.e., black, white, yellow, etc. This is not to say that police officer when looking for a specific criminal ought not be able to stop people fitting that general description. However what is being asserted is that police officers should not be allowed to go on a “fishing” expedition and stop every black person in the hopes of finding one that may possess drugs or some other illegal substance. In fact as was detailed earlier the courts have ruled that the practice of using race as a part of a profile for stopping a person simply to determine whether or not they were engaged in an illegal activity is not permissible.

Secondly, the police ought to consider adopting a different approach to traffic enforcement one that takes into consideration the impact that specific police practices have on society. One suggestion might include the notion

that officers adopt a higher standard when searching automobiles. Cole (1999) suggests that the Supreme Court require that officer use the “reasonable person” standard. In essence this would still allow officers to stop anyone they wish as long as there is a traffic violation, but, it would place the burden on the officer to articulate why a search of the automobile or person was necessary. This would require that the officers’ suspicion rise at least to the minimum level of a stop and frisk search. Cole points out that most importantly each stop and frisk must be based on individualized grounds, not group characteristics. This essentially would remove the issue of race for police officers when conducting searches.

Third, for the last twenty or so years community policing has been the paradigm under which several police agencies have operated. These programs have generally addressed the problems of crime and it’s causation within the community and as the concept’s name suggests the solutions require community involvement. This approach could work in the traffic context although it would require that police and community leaders work together to educate citizens as to the rationale for differential enforcement. If people are able to change their view-point and see contacts with the police as less oppressive and as a way to control crime and criminality this would go a long way towards healing schism between the police and the black community.

Lastly there is the issue of police training. This research has shown that differential traffic enforcement is a common practice of both white and black police officers. Further that in the City of Flint neither group of officers believe that their specific job performance is related to their advancement



within their department. This leads one to believe, at least inferentially so, that racism does not dominate the Flint Police Department at the institutional level. This of course is the good news as this means that one need not challenge the official structure to effect change. One merely needs to challenge the beliefs of officers as a group. This can be accomplished by giving additional on the job training to officers so that they are instructed as to notions of fairness and sensitivity to others who may not fully understand the police practice of differential traffic enforcement.

To facilitate this change, the police department could offer incentives to officers to comport with the notion of fairness. This might include tying advancement within the department to job performance and assessments of citizen satisfaction with the officer. This could be accomplished by citizen surveys and documented work history.

It is only through adherence to the principles of impartiality and fairness can the police and the minority community ever hope to reconcile their differences and work together for a better society.

## **Bibliography**

- Arras, John D. and Bonnie Steinbock. *Ethical Issues in Modern Medicine*. Mountain View, California: Mayfield Publishing Co. (1995)
- Bandura, A. *Social Learning Theory*. Englewood Cliffs, New Jersey: Prentice-Hall (1977).
- Bayley, David and Harold Mendelsohn. *Minorities and the Police*. New York, New York: Free Press (1969).
- Bartol, Curt R. *Psychology and American Law*. Belmont, California: Wadsworth Publishing Company (1983).
- Benjamin, Martin. Lecture, Michigan State University, October 17, 1995.
- Berelson, B. and Skinner, G. A. *Human Behavior: An inventory of Scientific Findings*. New York: Harcourt Brace and World Inc. (1964).
- Campbell, Angus and Howard Schuman. "Racial Attitudes in Fifteen American Cities," Supplemental Studies for the National Advisory Commission on Civil Disorders. Washington, D. C. : U.S. Government Printing Office (1968).
- Cole, David. *No Equal Justice: Race and Class in the American Criminal Justice System*. New York: New Press (1999)
- Delattre, Edwin J. *Character and Cops: Ethics in Policing*. Lanham Maryland: University Press of America, Inc. (1989).
- Franklin, Raymond S. *Shadows Of Race And Class*. Minneapolis Minnesota: University of Minnesota Press (1991).
- Goldstein, Herman. "Police Response to Urban Crises." Public Administration Review. 28 no. 5 (September/October, 1968) 417-418.

- Hahn, Herbert. "Ghetto Assessments of Police Protection and Authority." Law and Society Review. 6: 183-193 (1971).
- Hamilton, D. C. *Cognitive Processes in Stereotyping and Intergroup Behavior*. Hillsdale New Jersey, (1981).
- Hare, R. M. *Moral Thinking: Its Levels, Method and Point*. New York, New York: Oxford University Press (1988).
- Harman, Gilbert. *The Nature of Morality: An Introduction to Ethics*. New York: Oxford University Press (1977).
- Homant, R. J. "Public Perceptions of the Police: Attitudes and Complaints." V. G. Strecher, L. T. Hoover, and J. T. Dowling (Eds.) *Encyclopedia of Police Science*. Garland Publishing Company (1989).
- Hy, R. J., Feig, D. G., and Regoli, R. M. *Research Methods and Statistics: A Primer for Criminal Justice and Related Sciences*. Cincinnati, Ohio: Anderson Publishing Company (1983).
- Jacob, Herbert. "Black and White Perceptions of Justice in the City." Law and Society Review. 5: 69-88 (1971).
- Kant, Immanuel. *Prolegomena To Any Future Metaphysics (1783)*. Indianapolis, Indiana: Hackett Publishing Company (1977)
- Kant, Immanuel. *Fundamental Principles of the Metaphysic of Morals (1785)*. As cited in: *An Introduction to Ethics*. Robert E. Dewey and Robert H. Hurlbutt III editors. New York, New York: Macmillan Publishing Co., Inc. (1977).
- Kennedy, D. B. "Toward a Clarification of Police Role as a Human Service Agency." Criminal Justice Review. 8: 41-55 (1983)
- Lundman, Richard J. "The Traffic Violator: Organizational Norms." Carl B. Klockars editor. *Thinking about Police: Contemporary Readings*. New York, New York: McGraw-Hill Book Company (1983).



- Madison, James, Alexander Hamilton and John Jay. *The Federalist Papers*. Clinton Rossiter editor. New York, New York: Times/Mirror Publication (1961). No. 10
- Mill, J. S. *On Liberty* (1858). Stefan Collini editor. Cambridge, New York: Cambridge University Press (1991).
- Mill, John Stuart. *Utilitarianism* (1863). As cited in: *Reason and Responsibility*. Fifth edition. Joel Feinberg editor. Belmont, California: Wadsworth Publishing Company (1981).
- Misner, Gordon, E. "Enforcement: Illusion of Security." Nation. 208 no. 16 (April 21, 1969): 488
- Packer, Herbert L. *The Limits of Criminal Sanctions*. Stanford, California: Stanford University Press (1968).
- Peltason, J. W. and Edward Samuel Corwin. *Understanding The Constitution*. Ninth edition. New York, New York: Holt Rinehart and Winston (1982).
- Peterson, C., and Seligman, M. E. P. "Learned Helplessness and Victimization." Journal of Police and Administration. 39: 103-116 (1983).
- Radelet, Louis, A. *The Police and the Community*. Fourth edition. New York, New York: Mcmillan Publishing Company (1986).
- Rawls, John. *A Theory of Justice*. Cambridge Massachusetts: The Belknap Press of Harvard University Press (1971).
- Reiss, Jr., Albert, J. *The Police and the Public*. Cambridge Massachusetts: Yale University Press (1971).
- Rubin, Z., and Peplau, L. A. "Who Believes in a Just World." Journal of Social Issues. 31: 65-86 (1975).

- Swanson, Charles R. and Leonard Territo. *Criminal Investigation*. New York, New York. McGraw-Hill Publishing Co. (1996).
- Verdun-Jones. "Victims Before the Law." *Butterworth's Criminology Series*. Canada: Butterworth and Co. (1983).
- Weber, Max. *The Theory of Social and Economic Organization*. Translated by A. M. Henderson and Talcott Parsons. New York, New York: The Free Press, Macmillan Publishing Co. (1947).
- Wilson, James Q. *Varieties of Police Behavior: The Management of Law and Order in Eight Communities*. Cambridge, Massachusetts: Harvard University Press (1968).
- Wilson, William J. *The Declining Significance of Race*. Chicago and London: The University of Chicago Press, (1980).

## **APPENDIX A**

**Transmittal Letter to Flint Police Chief**

Date: May 11, 1998

Dear Chief Hampton,

My name is Jude Rariden I am currently a Doctoral Candidate at Michigan State University, seeking an inter-disciplinary Ph.D. in criminal justice, in addition, I am a patrol sergeant with the Grand Blanc Township Police Department. I am working on a research project (my dissertation) which seeks to determine factors involved in a police officer's decision making process on whom they conduct traffic stops on. In short, I am trying to determine why officers choose to stop one vehicle over that of another.

In order to do this, I will need access to numerous departmental records. With your approval, I would like to examine the last year's worth of patrol officers' daily activity sheets. In addition, I would like to examine both the police copies (or file copies) of traffic citations as well as warrant files. With respect to warrant files, I am in the process of contacting the Michigan State Police L.E.I.N. Services to see if they can do a computer audit of the warrants. If they are able to do this, then I would not have any need to look at the warrants.

Next, with your permission and the cooperation of your patrol officers, I would like to personally interview some of them as well as administer a questionnaire to all (or at least those willing to participate) patrol officers.

**This information is going to be used for my dissertation only. I am not acting in any capacity other than that of a student/researcher. I will not identify any officer individually, in fact, once the questionnaires are tabulated, they will be destroyed. Confidentiality of all the participants is guaranteed.**

**Finally, all those who participate can get a copy of the results of the questionnaire. The results will be available on a group basis only, that is, specific questionnaires and the identity of the person who took it will not be released.**

**With your approval, I would like to start gathering this information as soon as possible. It is my hope that I would be able to be completed with the archival research within a few months. Once that is completed, I would then begin the process of interviewing officers and administering the questionnaires.**

**Thank you in advance for your consideration on this matter.**

**Sincerely,**

**Jude Rariden**

1. The first step is to identify the problem.

2. The second step is to define the problem.

3. The third step is to analyze the problem.

4. The fourth step is to develop a solution.

## **APPENDIX B**

### **Transmittal Letter to Respondents**

2000-0000



My fellow officers, I am a sergeant with the Grand Blanc Township Police Department. I am currently working on my doctoral degree in criminal justice through Michigan State University. I am at the stage in my program (this is my last hurdle) where I have to write a dissertation. For my dissertation I have chosen to investigate the process in which officers go through in determining the importance of arrests and traffic stops. Additionally, I hope to find out how officers think this will affect their careers.

Please do not put your name anywhere on the questionnaire. The results are to be completely anonymous and your participation is completely voluntary. I have asked some general questions age, sex, etc., because I need to interpret the results on a group basis. These questions will not be used to identify you in any way. In fact the questionnaires will be destroyed as soon as the results are tabulated. There will not be any other person looking at these questionnaires. They will not be made available to any police department.

There are only 27 short questions and it should not take you very long (5 to 10 minutes) to complete this questionnaire. I do need you to give me your honest answers. When you are done you can place them in the box on your way out of the room.

Again, all the responses will be kept anonymous. Further, this research concerns my work as a student only, and is not a function of my work as a police officer. Your cooperation in this matter will be greatly appreciated. If you are interested in the group results, once they are completed, I will make them available to any of the participants that requests them.

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

**Thank you in advance for your assistance.**

**Jude Rariden**

**APPENDIX C**  
**Research Instrument**

Please answer the following questions. None of this information will be used to identify you in anyway. This information will only be used in the aggregate, to analyze the group. As such, it is essential that you answer each question so that I may perform the necessary statistical tests.

What is your age?\_\_\_\_\_

What is your race?

- a. Black
- b. White
- c. Hispanic
- d. Other (please describe)\_\_\_\_\_

Please circle one. Male or Female

What is your educational level? (Please circle one)

- a. High school or G.E.D.
- b. Some college
- c. Two-year college degree
- d. Four-year college degree
- e. Some graduate work
- f. Master's degree
- g. Doctorate degree

How many years have you been a police officer?\_\_\_\_\_

Prior to becoming a police officer, about how many times were you stopped or approached by the police? \_\_\_\_\_

If you were stopped, do you feel that they treated you in a fair manner?\_\_\_\_\_

Since becoming a police officer, about how many times have you been stopped or approached by the police? (While off duty.) \_\_\_\_\_

If you were stopped, do you feel that they treated you in a fair manner?\_\_\_\_\_

Please circle the answer that most closely fits the type of area in which you work:

- a. Mostly white
- b. Mostly black
- c. Mostly Hispanic
- d. Other (please describe)\_\_\_\_\_

(Answer the following questions by placing a number, 1 through 5 beside it. Use the following scale:

- |                        |                    |
|------------------------|--------------------|
| 1 = Strongly Disagree  | 4 = Agree          |
| 2 = Disagree           | 5 = Strongly Agree |
| 3 = Neutral/Don't Know |                    |

Note that the higher the number, the stronger the agreement.)

1. \_\_\_\_ A good police officer will stop and identify a person that does not look like he belongs in the area.
2. \_\_\_\_ The legal system is arranged so that generally people get what they deserve, that is, justice prevails.
3. \_\_\_\_ In the last year, I have conducted more traffic stops on white people than on black people.
4. \_\_\_\_ My supervisors do not care whether or not I conduct traffic stops.
5. \_\_\_\_ In the last year, I have found that it is more likely that a white male will have a warrant for his arrest than a black male.
6. \_\_\_\_ Catching criminals is the primary function of police departments.
7. \_\_\_\_ In the last year in my patrol experience I have found that women are less likely than men to have warrants out for their arrest.



8. \_\_\_\_ When conducting a traffic stop, it is a good thing when one or more of the occupants have warrants out for their arrest.
9. \_\_\_\_ If I were assigned to work an area heavily populated with minorities and I saw a white person in the area that appeared out of place, I would stop that person and find out why he was in the area.
10. \_\_\_\_ My department places too much emphasis on community policing.
11. \_\_\_\_ Through my patrol experience for the last year, I have found that it is more likely that a black male will have a warrant for his arrest than a white male.
12. \_\_\_\_ People that drive older, more beat-up vehicles are more likely to have warrants than people who drive newer vehicles that are good shape.
13. \_\_\_\_ Making arrests is one way to enhance promotional opportunities.
14. \_\_\_\_ If I were assigned to work an area that was exclusively white and I saw a black person in the area that appeared out of place, I would stop that person and find out why he was in the area.
15. \_\_\_\_ My police department emphasizes treating all citizens equally.
16. \_\_\_\_ Traffic stops are one of several law-enforcement activities that is emphasized by my police department.
17. \_\_\_\_ Police officers conduct themselves in an impartial manner when selecting vehicles that they are going to stop.
18. \_\_\_\_ My department places more emphasis on helping citizens than on catching criminals.
19. \_\_\_\_ There is a direct connection between how hard I work and the promotion that I get.





20. \_\_\_\_ Given the exact same violation, occurring at the exact same time, I would rather stop a white person driving a new car than I would stop a black person driving an old beat up car.
21. \_\_\_\_ There are officers that I consider lazy, that do not want to arrest people or who do not want to look for people to arrest.
22. \_\_\_\_ The most important job a police officer does is arresting criminals.
23. \_\_\_\_ During the past year, I have ticketed more black citizens than I have white citizens.
24. \_\_\_\_ Police supervisors do not care about officers making arrests.
25. \_\_\_\_ During my training period with the police department, there were senior officers who showed me the types of people who were most likely involved in criminal activity.
26. \_\_\_\_ I do not care if other officers think of me as lazy.
27. \_\_\_\_ Police officers in my department generally treat all citizens the same.

If you wish to explain any of your answers, or offer any other comments, please feel free to do so here.

This concludes the questionnaire. Thank you for your cooperation. It is hoped that your answers will help in evaluating the decision making process an officer goes through with respect to performing his/her duties.

MICHIGAN STATE UNIV. LIBRARIES



31293020483982