

Racial Profiling

OBJECTIVES

The objectives of this large loss claim review are to:

- Examine a recent Law Enforcement Liability (LEL) claim related racial profiling and implicit bias;
- Understand the impact associated with certain discriminatory practices;
- Develop specific risk management best practices to either prevent or mitigate future losses for Connecticut law enforcement agencies based on lessons learned.

BACKGROUND AND INVESTIGATION

- While on patrol during the evening shift in January 2019, a police officer noticed an African American male, wearing a dark “hoodie” and a Hispanic female, also wearing a “hoodie” exit from the front door of their apartment.
- The apartment complex was part of the Public Housing Authority and was known by officers as a “hot spot for drug activity”.
- The housing complex’s racial demographics are as follows:
 - ▶ 52% Caucasian (White)
 - ▶ 25% African American
 - ▶ 20% Hispanic
 - ▶ 3% Asian American
- The two (2) individuals appeared to be between the ages of 20 -25 years old.
- The two (2) individuals approached a newer model Hyundai Santa-Fe, and after cleaning off the snow from the vehicle the male person entered the driver’s side of the vehicle.
 - ▶ There was a recent snow storm that had just concluded, leaving approximately 2-3-inches snow on the ground and on the parked vehicles in the complex.
- After entering the vehicle, the male driver started the SUV, put the vehicle in drive, proceeded to exit the apartment complex and turned onto a main road.
- The officer began to follow the light-colored SUV.
- After approximately 5 minutes, the officer initiated a traffic stop by turning on his emergency warning lights, as well as his siren.
- Upon noticing the police officer with his warning lights on, the driver of the SUV pulled to the right side of the road and lowered the driver’s side window.
- The officer approached the window and asked if the driver knew why he was being stopped, to which the driver replied, “No”.
 - ▶ At this time, the driver had not violated any motor vehicle regulations.
- The officer stated that the area from which the two (2) individuals had just left, was known for drug activity. The officer then asked for identification from both the driver and passenger.
- Both the male driver and female passenger provided the officer with valid state-issued identification. The driver also produced a valid vehicle registration and insurance card.
- The officer took the information and returned to his patrol car where he processed both individual’s information. The officer found there were no active “wants” or issues with their documentation.
 - ▶ The male’s driver license identified the apartment complex as his home address.
 - ▶ The passenger’s license indicated another home address across town.
- The officer returned to the driver’s side window and asked if there was anything in the vehicle that he should know about or that the occupants should not have.
- Both the driver and passenger stated that there was not.
- The officer then asked both occupants to exit the vehicle, at which time the driver asked, “Why?”
- The officer again gave a command to the occupants to exit the vehicle, to which the driver again asked, “Why?”

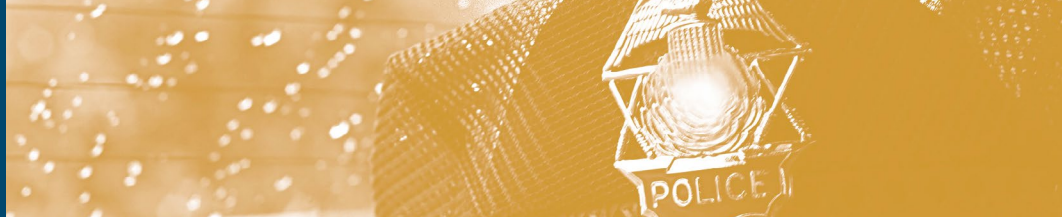
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- The officer opened the driver's door and grabbed the driver's arm and pulled him out of the vehicle.
 - ▶ The driver did not resist when forced out by the officer and again asked, "Why am I being pulled out of the vehicle?"
- The officer stated that he had reason to believe there were drugs in the vehicle and wanted to search the vehicle.
- The driver, also the registered vehicle owner, refused consent to search.
- At this time, the passenger exited the vehicle without force. Both the driver and passenger were asked by the officer to sit on the curb while officer called for a K-9 unit.
- While sitting on the curb, the officer turned on his patrol car's spotlight and shined it onto the driver and passenger.
 - ▶ This illuminated each of their faces so that any person driving by would be able to see them.
- The K-9 Officer arrived on scene and asked again for consent to search the interior of the vehicle, the driver refused.
- The K-9 Officer then had the K-9 conduct an exterior "walk around" of the vehicle. Upon completion of the "walk-around", the K-9 did not "hit" or indicate the presence of any narcotics.
- Upon hearing the K-9 Officer indicate this to the other officer, the driver slowly stood up and calmly asked if he can return to his vehicle.
- At this time the officer began yelling at the driver telling him to get on the ground. After several commands to get on the ground, the driver sat back down on the curb and began to argue with the officer.
- The officer then proceeded over to the driver, asked him to stand up, turn around, and put his hands behind his back. The driver refused and asked for an explanation.
- The officer then pushed the driver against his patrol vehicle and forcedly placed the driver's hands behind his back, ultimately placing him in handcuffs.
- The officer then moved the driver into the back of the police vehicle at which time he stated he was placing him under arrest for interfering with a police officer.
- The driver was transported to the local police station, and the driver's car was released to the passenger on scene.
- The passenger called the driver's parents and explained what had happened and where the driver had been taken.
- Upon arrival at the station, the commanding officer asked what had occurred, as the driver's parents had already called the station asking for an explanation.
- The officer provided his detailed account of the events, including the reason for the initial stop as suspicious activity.
- The officer was wearing a body-worn camera which recorded the events along with the vehicle's dash camera.
- The commanding officer reviewed both videos and determined that there was not any cause for the arrest and released the driver; without any formal charges, to his parents upon their arrival at the station.
- Further review into the officer's actions and history indicated that this officer's motor vehicle stops were predominantly made on African American individuals coming in and out of the same apartment complex.

DAMAGES

- The claim was ultimately accepted under the CIRMA Liability-Auto-Property (LAP) policy.
- The driver and passenger retained legal counsel and filled a law suit against the officer, the department and town alleging;
 - ▶ Discriminatory practices against people of color,
 - ▶ Deformation of character,
 - ▶ Emotional distress,
 - ▶ Negligent supervision of the officer,
 - ▶ Negligent retention of the officer, and
 - ▶ Failure to maintain adequate training.
- The total demand made by the plaintiffs was \$2 million dollars.
- After reviewing the video, securing depositions of all parties involved, and review of the department's enforcement demographics, along with the media attention to this incident, it was determined that this case was best suited for a settlement strategy.
- Negotiations extended several months, however, they ultimately concluded in an agreed settlement amount of \$950K plus attorney fees and expenses.



CONCLUSIONS

Law enforcement and municipalities are among the many segments that have dealt with significant tumult this past year, but in their case, it's not completely related to the pandemic. Rather, the deaths of Black citizens by white police officers sparked racial justice movements across the country and shined a light on unjust police practices.

The legal doctrine known as qualified immunity has worked as a liability shield against frivolous litigation in suits against police officers and the municipalities they work for by making it difficult for plaintiffs to prove excessive force. But after so many high-profile events, qualified immunity has come under scrutiny in the courts, with even some judges questioning its application in excessive force cases. If liability claims against police departments or municipalities succeed, often there are associated large financial settlements, and loss of public trust.

Police departments nationwide are under a microscope and compelled to address racial biases within their force. Policies like police immunity when shootings occur and civil rights violations are being more heavily scrutinized and litigated, with multi-million-dollar settlements in some cases.

For the first time in its 27 years of measuring attitudes toward the police, Gallup found that a majority of American adults do not trust law enforcement. Amid waves of civil unrest as protesters across the country continue to demonstrate against police brutality, Americans' confidence in the police has dropped to a record low, according to a Gallup poll¹. This decline in trust not only affects the community, but also affects officer safety, the department's reputation and can create long term implications to the overall operations, and management of a department.

KEY RECOMMENDATIONS/ACTION ITEM

To further assist Connecticut law enforcement members in managing the increased exposure surrounding racial profiling allegations the following recommendations is proposed:

Provide effective training in accordance with the Conn. Police Accountability Act - The Connecticut General Assembly convened in a special session to consider a comprehensive police accountability bill in response to a call to action following the death of George Floyd and the ongoing Black Lives Matter movement. On July 30, 2020, the bill passed the General Assembly and the Governor signed it into law one day later.

The law amends Section 7-294s of the Connecticut General Statutes ("State and local police training programs to provide training in the use of physical force and body-worn recording equipment and *cultural competency and sensitivity training*").

Currently, police officers are required to undergo training on the use of physical force, the use of body-worn recording equipment, and cultural competency and sensitivity and bias-free policing. The amendment modifies the scope of this training to include "implicit bias training."²

¹ <https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>

² <https://www.jacksonlewis.com/publication/Connecticut-requires-implicit-bias-training-police>

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Questions on this topic? Ask your Supervisor or CIRMA Risk Management Consultant.