

## **PROFILING: AN UGLY WORD?**

We live in a society where the media helps mold and shape public opinion. Many words no longer carry their true meaning, but have come to represent definitions of a form of evil. A simple example would be the word “discrimination”. Typically, when an American hears the word “discrimination”, we think of it as exhibiting behaviors to minorities that we would not exhibit to the rest of the population. It brings back thoughts of African-Americans sitting in the back of the bus, white-only bathrooms, and separate drinking fountains. In fact, to discriminate simply means to distinguish or differentiate. A secondary meaning is to treat differently on the basis of something other than individual merit. We sometimes tend to forget the other meanings of individual words. Such is the case with “profiling”.

I believe we have taken the concept of racial profiling and assigned its meanings to the word “profiling”. Racial profiling is an evil that cannot be tolerated in our society. It is wrong, under all circumstances, to treat people differently based simply upon their race. This does not mean that I am against, or find something wrong with, the concept of profiling.

Profiling simply means trying to describe, in a statistically significant manner, the cohorts, attitudes, and demographics of a certain examined population. There are some groups that can be profiled to a very high degree. There are other groups in which profiling is almost impossible. For example, we can do a very thorough job of constructing a profile of a National Football League defensive lineman. There are certain things we are highly likely to find in a profile. A few of these characteristics are:

1. The football player will be a male
2. The defensive lineman will be 6’ 1” or taller
3. He will be 300 pounds or heavier
4. He will be a college graduate
5. He will have played college football
6. He will probably have attended a nationally known college

There are other characteristics, including race, that we are more likely to find than not. Among these are:

1. He is often African-American
2. He will have played on special teams
3. He will play with a heavily meshed faceguard
4. He will play with tape on one or both wrists or arms.

This profile does not exclude the possibility that there will be a white, female, lightweight who did not go to college who will become an NFL defensive lineman. It simply tells us

that this likelihood is insignificant. Likewise, it does not mean, and was never intended to mean, that every person who meets all the profile criteria is in fact an NFL defensive lineman. It doesn't mean there are not white defensive linemen; in fact, there are many white defensive linemen. We have, however, established a profile that will be right more often than it will be wrong.

As a trial consultant, I conduct jury selections. It is my experience that no individual cohort can stand alone. For example, any person who would propose that a juror of a certain race would be more prone to be in favor of the defendant than the plaintiff is simply making statements without scientific support. Race is one of the aspects of profiling that can be used. In many cases, it is insignificant. If I were to tell you that we could use race to profile a cashier at a Wal-Mart, I would be totally without scientific support.

Attitudes are far more important than cohorts and demographics in jury selection. People break out of racial molds and age categories on a regular basis. One thing that seldom changes with us is our deep-rooted beliefs. Certain behaviors are caused by our beliefs, and it is the belief system we must expose to perform the best profile. There was considerable research done to tell what type of juror would be more in favor of a plaintiff in a sexual harassment in the workplace suit. The research conducted showed that the best question to ask to identify a pro-plaintiff juror was, "Do you watch women's tennis?" There was a very significant correlation between men and women who watched women's tennis on television and who tended to vote in favor of plaintiffs in sexual harassment in the workplace suits.

The entire person needs to be looked at in order to form a profile. We are all familiar with the O.J. Simpson criminal trial. There are shortsighted people who say that black jurors were better for the defense than white jurors. While this may seem accurate at first glance, there is truly a poverty of information to support such a claim. A more accurate claim would be that an African-American who is 22 years old, a high school dropout, unemployed, who lives in a large metropolitan area, and has had confrontations with police would view the case much differently than a 55 year old white male, with a college education, who works in the agricultural industry in Ohio, and who has never had contact with police officers except for the rare speeding ticket. Clearly, there is a basis here to begin a profile.

Racial profiling is wrong, scientifically sound profiling makes sense. If I were writing this article prior to September 11, 2001, I would limit my comments to jury selection. Now that an attack against America has been made, we need to consider that racial profiling is always wrong, but statistically accurate profiling can help make us safe.

Profiling is a tool easily abused, and must be watched carefully. Whether it is the lives of people on airplanes or a fair trial for each of the parties involved, profiling should be used to guard our rights.

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