This commentary is designed to examine whether or not racial profiling exists in our judicial system. The affects that it may have and if it does exist, where are its origins.

Watch the news or read the newspaper and you will find people killing people based on their ethnicity or religious beliefs. Here in America we have a Constitution and a multitude of amendments which protect all citizens from these type of abuses. We have the freedom of religion, innocent until proven guilty, all men are created equal and the right to legal representation even if we cannot afford it. With all of this protection, you would think that racism in the criminal justice system could not exist.

“It is generally agreed that discrimination based on ethic origin is morally wrong and a violation of the principal of equality. The equality principal requires that those who are equal be treated equally based on similarities and that race is not a relevant consideration in that assessment” (May and Sharratt 1994:317).

It is generally accepted that discrimination due to race, color or creed is unacceptable and there are laws that govern such discriminations. Studies show that racism gradually took hold here in the United States with the institution of slavery in the 17th Century.

“African Americans have suffered discrimination on grounds of race, initially through the system of slavery and then through a pattern of exclusion and segregation, both informal and formal, in the shape of legislation and court decisions that have historically endorsed overt racial discrimination. From the time of the inception of slavery in the early 17th Century until 1865, slaves were considered the property of their masters based on a view that they were naturally unequal and inferior people” (Banks, 2004).

If racial discrimination does not exist, it certainly has a solid historical foundation for its existence. Slavery was deeply rooted in the southern parts of the United States and played a huge role in the division of the north and south during the Civil War between the Union and the Confederacy from 1861 to 1865.

Following the Civil War came years and years of segregation, the Ku Klux Klan, Civil Rights movement, Assassination of Martin Luther King, Jr., etc... John Wilkes Booth assassinated even President Abraham Lincoln because he was a southern sympathizer for the southern cause for slavery.

In the 1990’s the possibility of police brutality and racism were brought to the forefront, when in California, a high-speed chase was caught on camera by news helicopter. The chase involved the Los Angeles Police Department and a black motorist by the name of Rodney King. The video of the chase and the subsequent beating that King took at the hands of the police were shown nationwide. Several of the officers were indicted on civil charges and sentenced
to prison. Because of all the publicity, a major investigation took place within the Department. It also forced other agencies across the country to take a long hard look at their own practices.

“Following the Rodney King incident, the Report of the Independent Commission on the Los Angeles Police Department (1991) (also called the Christopher Commission) found that there was excessive use of force by LAPD officers and that this was compounded by racism and bias. One-quarter of the 960 LAPD officers surveyed by the commission agreed that officers held a racial bias toward minorities and more than one-quarter agreed that this racial bias could lead to the use of excessive force” (Banks, 2004).

Another report in that same year was conducted by the New York State Judicial Commission on Minorities. The commission put together a panel to look into the justice system within the courts. The panel was made up of judges, attorneys and law professors. Their findings found two justice systems, one for whites and the other for minorities and the poor. More and more judges and prosecutors are starting to speak out on this issue.

“When I was a state prosecutor in Nashville just out of law school in the early 1970’s, it seemed that something less than half of the defendants I faced were African American. Why is it then, that when I go to court in Nashville these days it seems that virtually all of the defendants I see are people of color?” (E.E. (Bo) Edwards, 2004)

Prosecutor Edwards goes on to say,

“My observations are obviously unscientific, but not far from the mark. Racial disparity in the criminal justice system has increased dramatically over the past 30 years. There are over two million people behind bars in America and 70% of these people are minorities.”

There is strong evidence of racial discrimination all through the justice system from racial profiling, jury selection, specific drug laws and capital punishment. Of all the discrimination, some would argue that the most horrific is that of the death penalty.

“There is overwhelming evidence that the death penalty in the U.S. continues to be corrupted by race and class bias. Approximately 90% of those whom federal prosecutors seek to execute are African Americans or Latinos; more than half of those waiting executions in states are African Americans or Latinos. Since 1976, more than 80% of those executed were convicted of killing white people, although African Americans and Latinos comprise more than half of all homicide victims in the United States” Moffitt, 2000).

Studies also show that African Americans are at greater risk of being wrongfully convicted of a capital crime. Many have been convicted and sentenced to death even though there were questions raised as to their possible innocence. When DNA testing has been done, more blacks are cleared than whites. It also appears that when a death penalty case has been overturned by the appellate courts and sent back with the trial court, the defendant is either found
not guilty after retrial or the charges are dropped by the prosecution team.

“There is a long history of racial discrimination in the use of the death penalty in this country. Indeed, racial discrimination based on both the race of the defendant and the race of the victim was a principal reason why Justice Thurgood Marshall joined the Supreme Court majority that held in 1972 that the death penalty was unconstitutional” (Furman v. Georgia, 408 U.S. 238, 364-65 (1972) (Tabak, 2005)

The one area that seems to have taken the biggest toll is in the area of drug arrests among minorities. The numbers are ever creeping higher and higher. The affects have been staggering to the black population. Many believe that the damage being done to the African American families is epidemic. With more and more young black males being arrested, tried, convicted and sentenced to prison, the landscape left behind is that of unwed single black females raising children without a father. In many cases where the mother has to work, the responsibility of raising the child is left with a grand parent or a great aunt. Many of the young children will grow up visiting their father in prison, forming an impression that this is an acceptable way of life.

In 2004, there were over 2 million inmates in the United States, over 570,000 of them were African American males between the ages of 20-39 years. Two years earlier in 2002, the number of inmates serving time in prison related to drugs, according to the Bureau of Justice Statistics, was 265,100 with 126,000 (47.53%) Black, 61,700 (23.27%) Hispanic and 64,500, (24.33%) White. From 1990 through the year 2000, the US Department of Justice reported a 27% increase in drug related arrests among blacks and a 15% increase among whites.

There are an alarming number of studies that show minorities are far more likely to get a prison sentence compared to whites when charged with a felony. Many believe that this is due to a high drop out rate in high school, fewer minorities attending college, fewer quality paying jobs, and lack of funds for adequate legal representation. Many accuse law enforcement of racial profiling and targeting minorities therefore over loading the system. With the police arresting far more minorities than whites, it would stand to reason that more minorities would receive prison time. This is not the case. When equal numbers for similar charges are compared; whites are still less likely to receive prison time.

There seems to be conflicting views in regards to the job that law enforcement is doing. In the African American and Latino communities, the atmosphere pertaining to law enforcement and the legal system is one of distrust and racist. On the other hand most white communities have a respect and faith in the criminal justice system. Is there racial discrimination in America? Sure there is, just as there is discrimination in all parts of the world. Is there racial discrimination in the American judicial system, or can the unbalances mentioned in this reading be explained through further research and from different approaches not taken into consideration? You be the judge as to whether it exists, but the one element that cannot be alleviated is the one of racial perception.

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10. Department of Justice. Fact Sheet Racial Profiling. Defining the Problem: Racial Profiling is wrong and will not be tolerated. (Tuesday, June 17, 2003 www.usdoj.gov.).

