

Racial Profiling: Definition ^[1]

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"Racial Profiling" refers to the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin. Criminal profiling, generally, as practiced by police, is the reliance on a group of characteristics they believe to be associated with crime. Examples of racial profiling are the use of race to determine which drivers to stop for minor traffic violations (commonly referred to as "driving while black or brown"), or the use of race to determine which pedestrians to search for illegal contraband.

Another example of racial profiling is the targeting, ongoing since the September 11th attacks, of Arabs, Muslims and South Asians for detention on minor immigrant violations in the absence of any connection to the attacks on the World Trade Center or the Pentagon.

Law enforcement agent includes a person acting in a policing capacity for public or private purposes. This includes security guards at department stores, airport security agents, police officers, or, more recently, airline pilots who have ordered passengers to disembark from flights, because the passengers' ethnicity aroused the pilots' suspicions. Members of each of these occupations have been accused of racial profiling.

Racial profiling does not refer to the act of a law enforcement agent pursuing a suspect in which the specific description of the suspect includes race or ethnicity in combination with other identifying factors.

Defining racial profiling as relying "solely" on the basis of race, ethnicity, national origin or religion can be problematic. This definition found in some state racial profiling laws is unacceptable, because it fails to include when police act on the basis of race, ethnicity, national origin or religion in combination with an alleged violation of all law. Under the "solely" definition, an officer who targeted Latino drivers who were speeding would not be racial profiling because the drivers were not stopped "solely" because of their race but also because they were speeding. This would eliminate the vast majority of racial profiling now occurring.

Any definition of racial profiling must include, in addition to racially or ethnically discriminatory acts, *discriminatory omissions* on the part of law enforcement as well. For example, during the eras of lynching in the South in the 19th and early 20th centuries and the civil rights movement in the 1950's and 1960's, southern sheriffs sat idly by while racists like the Ku Klux Klan terrorized African Americans. At times, the sheriffs would even release black suspects to the lynch mobs. A recent example would be the complaint by an African American man in Maryland, who after moving into a white community, was attacked and subjected to property damage. Local police failed to respond to his repeated complaints until they arrested him for shooting his gun into the air, trying to disperse a hostile mob outside his home.

Racial Profiling May Be Hazardous To Your Health

Many racial profiling victims walk away with traffic tickets, but too often for others the outcome of racial profiling is death.

Pennsylvania (Brentwood) - On October 12, 1995, Jonny Gammage, a 31 year-old African American male, was killed after being pulled over while driving the Jaguar of his cousin, Pittsburgh Steelers football player Ray Seals, in a predominately white community. Although police claimed that Gammage initiated the struggle, a tow truck driver said he saw one officer start the fight and the others join in kicking, hitting and clubbing Gammage while he lay on the pavement. Three officers were tried for involuntary manslaughter: John Vojtas was acquitted; Lt. Milton Mulholland and Michael Albert had their charges dismissed after two mistrials. Gammage's family settled a wrongful death civil rights lawsuit against the five officers involved and their police departments for \$1.5 million.

New York (Bronx-New York City) - On February 4, 1999, Amadou Diallo, an unarmed 22 year-old immigrant from New Guinea, West Africa, was shot and killed in the narrow vestibule of the apartment building where he lived. Four white officers, Sean Carroll, Kenneth Boss, Edward McMellon and Richard Murphy fired 41 bullets, hitting Diallo 19 times. All four were members of the New York City Police Department's Street Crimes Unit, which, under the slogan, "We Own the Night," used aggressive "stop and frisk" tactics against African Americans at a rate double that group's population percentage. A report on the unit by the state attorney general found that blacks were stopped at a rate 10 times that of whites, and that 35 percent of those stops lacked reasonable suspicion to detain or had reports insufficiently filled out to make a determination. Thousands attended Diallo's funeral. Demonstrations were held almost daily, along with the arrests of over 1,200 people in planned civil disobedience. In a trial that was moved out of the community where Diallo lived and to Albany in upstate New York, the four officers who killed Diallo were acquitted of all charges.

Ohio (Cincinnati) - On April 7, 2001, in the early morning hours, Timothy Thomas, a 19 year-old African-

American, was shot to death by police officer John Roach. Thomas had 14 outstanding misdemeanor warrants, mostly traffic violations, including failure to wear a seat belt. According to a city councilman, he was running away, holding up his baggy pants, and scaled a fence, landing in a driveway where Roach was approaching and shot Thomas. He became the fifth black male in the city to die at the hands of police in a five-month period and the fifteenth since 1995. Two nights of protests left broken windows at City Hall and fires around the city. Witnesses reported that following Thomas' funeral, six city SWAT team officers shot pellet-filled bags into a peaceful crowd. Two people hit by the pellets filed lawsuits. Under community and city council pressure, both the public safety director and city manager resigned. Officer Roach was indicted on charges of negligent homicide, and obstructing official business, resulting from differences in his version of events.

Roach was acquitted in a bench trial characterized by the judge's (a former prosecutor) open admiration for Roach, and blaming Timothy Thomas for "making" Roach kill him.

A community coalition, the Cincinnati Black United Front and the ACLU of Ohio filed suit against the city and the Fraternal Order of Police, citing a pattern and practice of discrimination by police, including issuing the type of traffic citations Thomas received to African Americans at twice their population percentage. In April 2002 the case was settled, under terms including the establishment of a civilian complaint review board and the activation of the reporting of collected traffic stop data that had been enacted by city ordinance in 2001. The Department of Justice also intervened and settled with the city, including revision and review of use of force policy.

It is significant to note that research confirms the existence of bias in decisions to shoot. A series of University of California/University of Chicago studies recreated the experience of a police officer confronted with a potentially dangerous suspect, and found that:

- participants fired on an armed target more quickly when the target was African American than when White, and decided not to shoot an unarmed target more quickly when the target was White than when African American;
- participants failed to shoot an armed target more often when that target was White than when the target was African American. If the target was unarmed, participants mistakenly shot the target more often when African American than when White;
- shooting bias was greater among participants who held a strong cultural stereotype of African Americans as aggressive, violent and dangerous, and among participants who reported more contact with African Americans. shooting bias was greater among participants who held a strong cultural stereotype of African Americans as aggressive, violent and dangerous, and among participants who reported more contact with African Americans.

The stories above and hundreds of others present a compelling argument that not only does racial profiling exist, but it is widespread, and has had a destructive effect on the lives of communities of color, and attitudes toward police.

Asian Racial Profiling

Asians, who, according to the U.S. census, number 10 million, or 4 percent of the population, have been victims of racial profiling as well. Wen Ho Lee, a Taiwanese American was targeted and suspected of espionage on the basis of his race. Memos by high-ranking FBI and Department of Energy officials acknowledged that Lee was singled out because he was Chinese, and eight similarly situated non-Chinese were not prosecuted.²

In Seattle, Washington in July 2001 a group of 14 Asian American youth were stopped by police for jaywalking, claiming that they were kept against the wall for about an hour. The *Seattle Times* reported that one officer told them he had visited their country while in the army, and asked them repeatedly whether they spoke English. The paper also reported that U.S. Representative David Wu (D-Oregon) was detained entering the headquarters of the Department of Energy, and repeatedly.

In 2001, the Asian Freedom Project of Wisconsin issued a report that found the racial profiling of Hmong communities there, and included the testimony of adults, as well as boys and girls.

The Garden Grove (CA) Police Department settled a "gang" database racial profiling lawsuit by a group of young Asian Americans who said their civil rights were violated when officers photographed them as suspected gang members based merely on their ethnicity and clothing.

Indian Racial Profiling

Indigenous people (Native Americans) call it "DWI," with a new twist: "Driving While Indian." According to the National American Indian Housing Council, there are 2.4 million Indians (including Eskimos and Aleuts) in the U.S. Indians complain about stops and searches by local police and sheriffs on roads leading to and from reservations.

In **South Dakota**, widespread reports of racial profiling led to hearings before the state legislature, where Indians

testified about their being stopped and searched not only based on race but also on religious articles hanging from rearview mirrors, and regional license plates that identified them as living on reservations.

In June 2002 scores of Indians in the state's Bennett County complained to Department of Justice attorneys, alleging racial profiling at the hands of sheriffs there, including vehicular stops in the absence of reasonable suspicion, the administration of breathalyzer tests without reasonable suspicion, warrantless searches of homes and vehicles, and demanding to see drivers licenses and vehicle registrations while inside bars.

Walking While Black and Brown

Although "Driving While Black/Brown" traffic stops and searches are the form of racial profiling that has received the most media attention, profiling takes place off the roadways as well. Black and Latino pedestrians are regularly stopped and frisked without reasonable cause.

In **New York City**, the December 1999 report of the New York City Police Departments pedestrian "stop and frisk" practices by the state attorney general provided glaring evidence of racial profiling in the nation's largest city. Blacks comprise 25.6 percent of the City's population, yet 50.6 percent of all persons "stopped" during the period were black. Hispanics comprise 23.7 percent of the City's population yet, 33.0 percent of all "stops" were of Hispanics. By contrast, whites are 43.4 percent of the City's population, but accounted for only 12.9 percent of all stops. Blacks comprise 62.7 percent of all persons "stopped" by the NYPD's Street Crime Unit ("SCU").

In precincts in which blacks and Hispanics each represented less than 10 percent of the total population, individuals identified as belonging to these racial groups nevertheless accounted for more than half of the total "stops" during the covered period. Blacks accounted for 30 percent of all persons "stopped" in these precincts; Hispanics accounted for 23.4 percent of all persons "stopped."

Finally, precincts where minorities constitute the majority of the overall population tended to see more "stop & frisk" activity than precincts where whites constitute a majority of the population: Of the ten precincts showing the highest rate of "stop and frisk" activity (measured by "stops" per 1,000 residents), in only one (the 10 th Precinct) was the majority of the population white. In seven other precincts, blacks and Hispanics constituted the majority of the population. The remaining two precincts were business districts in Manhattan and Brooklyn in which the daytime racial breakdown of persons within the precinct is unknown.

In roughly half of the police precincts in New York City, the majority of the population living in the precinct is white. However, of these 36 majority-white precincts, only 13 were in the top half of precincts showing most "stops" during the period.

"Gang" Database Racial Profiling

In **Orange County California**, a database containing the names and photographs of reputed gang members appeared to racially profile.³ Latinos, Asians and African Americans were more than 90 percent of the 20,221 men and women in the Gang Reporting Evaluation and Tracking system, but made up less than half of Orange County's population. The disparity attracted the notice of the California Advisory Committee of the U.S. Commission on Civil Rights as well as the ACLU. We asked the county district attorney's office to establish a civilian oversight board to monitor what we saw as problems with the list.

"Bicycling While Black and Brown"

Youth of color have been victims of racially-motivated bicycling stops, " In April, 2001, the ACLU joined a suit against **Eastpointe, Michigan** , representing 21 young African-American men who were stopped by the police while riding their bikes there. The ACLU argued that the bicyclists were stopped in this predominantly white suburb of Detroit because of their race and not because they were doing anything wrong. In a 1996 memorandum to the Eastpointe City Manager, the former police chief stated that he instructed his officers to investigate any black youths riding through Eastpointe subdivisions. Police searched many of young men and, in some cases, seized and later sold their bicycles. Police logs and reports in Eastpointe have identified over 100 incidents between 1995 and 1998 in which African-American youth were detained.

"Bitten While Black and Brown"

A throwback to the grainy '60's black and white television news footage of vicious police dogs attacking peaceful black civil rights protesters is the continued discriminatory use of canine units by police. These dogs, lethal weapons capable of biting at 2000 pounds pressure per square inch, and their handlers have been implicated in a vicious form of racial profiling that has led to legal action:

California (Los Angeles)- The ACLU of Southern California compiled reports on the hundreds of mostly blacks and Latinos who were bitten by Los Angeles Police Department dogs from 1990-1992, charging that the dogs trained to "attack and maul," were routinely sent out in non-violent situations. In 1997, California state highway patrol

canine units stopped almost 34,000 vehicles. Only 2 percent were carrying drugs.

Maryland (Prince Georges County) - The *Washington Post* reported that in May 2001 federal prosecutors charged a county police officer with releasing her police dog on an unarmed Mexican immigrant as part of a pattern of using and threatening the use of the dog on people of color. Despite being the subject of four lawsuits, twice being guilty of making false statements to a supervisor, and five prior instances of releasing the dog on suspects who weren't resisting, and being flagged by a departmental "early warning" system, the officer remained undisciplined in any substantive way. In 1999 the *Post* reported that thirteen police dog excessive force suits had been filed in Prince Georges circuit and federal courts, in addition to five others that ended in judgement for plaintiffs or settlement. Of the total, ten alleged repeated bites of suspects once under police control, or while cuffed or on the ground.

South Dakota (Wagner)- While not involving the use of physical canine force, the issue reached a new low when school officials and police led a large German shepherd drug dog through classrooms in suspicionless drug searches of Yankton Sioux K-12 students, some as young as six years old. In July 2002, the ACLU filed suit in federal court.

Washington (Seattle) -In 1992 the ACLU alleged that police dog handlers used excessive force on suspects. Dogs were trained to attack and bite suspects regardless of their actions, even against alleged shoplifters, gasoline siphoners and jaywalkers. They also reported that in that year, 40 percent of police dog attacks were against African Americans, and that 91 people had received police dog bite injuries requiring hospitalization.

The following states appear to require independent reasonable suspicion for dog searches: Alaska,⁴ Illinois,⁵ Minnesota,⁶ New Hampshire, New York,⁸ Pennsylvania,⁹ and Washington.¹⁰

"Shopping While Black and Brown"

The targeting of shoppers/business patrons of color for suspicion of shoplifting by private security and other employees has disproportionately affected both working and prominent African-American women. TV talk show host Oprah Winfrey said she was refused buzz-in entry to a store even after seeing white women admitted and making a second attempt. After calling from a pay phone and being assured the store was in fact open, a third try failed as well (**New York City**) . U.S. Congresswoman Maxine Waters said she was followed around a store and required to show her key at a hotel, unlike whites who entered before her (**New York City**) . Professional basketball player and Olympic medalist Sheryl Swoopes was kept waiting to be seated for almost an hour at a restaurant, while whites who arrived after her were seated before her (**Houston, Texas**).

Pauline Hampton and her niece, both African-Americans, were shopping at the Dillard Department Store in **Overland Park, Kansas** , a suburb of Kansas City, with their children. After making several purchases, they went to the cosmetics counter to redeem a coupon. A white security guard accused Hampton of shoplifting, took her shopping bag, and, without consent, searched it, emptying the bag onto the counter. After finding the receipt for the items, he shoved the goods and the empty bag back to her. When she complained about his actions, the guard ordered them to leave, and threatened to call the police and have them forcibly removed. Hampton eventually called her husband to the scene and the situation escalated. They sued, and were awarded a \$1.2 million judgement; the U.S. Supreme Court declined to hear Dillard's appeal.

The store chain, based in Arkansas has also faced dozens of racial profiling lawsuits, claiming harassment and false arrest, in other states including **Arkansas, Iowa, and Texas**. Evidence produced in one case showed that although 16 percent of its shoppers were African American, 87 percent of the false arrest claims were made by them. In Texas, Dillard settled and paid money to the family of an African American customer who died at a store after being beaten and hog-tied while being detained, and has also settled discrimination suits by employees in Kansas and Missouri.

Other companies sued for racial profiling include Eddie Bauer, Avis Rent A Car, Denny's Restaurant, The Children's Place, and Holiday Spa.

Worksite Racial Profiling

The Immigration and Naturalization Service has had a history of disproportionately targeting ethnic groups of color for undocumented labor violations. Like all law enforcement, INS agents must have sufficient evidence of wrongdoing to establish probable cause or reasonable suspicion to arrest or detain. They may not carry out their duties in a racially or ethnically discriminatory manner. While ethnicity or nationality are obviously critical elements in immigration violations by themselves, without additional facts there is insufficient basis for law enforcement action.

The New York Times reviewed files of INS raids released as part of the settlement of a garment workers union selective enforcement suit against the agency in New York City. The settlement included a summary that Latinos were 96 percent of the 2,907 people arrested in the 187 worksite raids carried out by the INS in the district, far greater than their representation in the city's legal or illegal population. This occurred even where the INS acknowledged that half the workers were not Latino but Asian, including undocumented immigrants.

And while some raids were based on informant information, 80 percent were initiated by agents who cited as primary evidence subjects' appearance or language without evidence of wrongdoing. Included were skin color,

speaking Spanish or English with a Spanish accent, appearing to be of South or Central American descent and wearing clothing “not typical of North Americans.” Such characterizations in major American cities are common to born and naturalized citizens alike.

Undocumented workers were discovered and arrested in all but a few of the reviewed raids, but nearly everyone arrested was Latino.

Suits have also been filed in Arkansas, California, Louisiana, and Ohio claiming racial profiling by the INS. A federal court in Ohio found violations of the rights of Latinos by that states highway patrol's practice of stopping Latino drivers to question them about their immigration status, including officers even confiscated the green cards of legal migrant workers claiming they were counterfeit. In California, federal courts have found Fourth Amendment violations of Latinos in the stopping of Latinos on the basis of appearance and foreign sounding names.

The Supreme Court has held that INS agents working near the Mexican border may use Spanish ethnicity as a basis for detaining a person, but that it may not be the only basis.

A related issue is the targeting by police, first reported by the ACLU in **Florida**, of Latinos waiting on public sidewalks for labor employers to appear and select them for work, under the offense of being "visual clutter."

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