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## Racial Profiling

**POINT:** Profiling is a legitimate practice if used correctly. It can be an effective and necessary tool for law enforcement.

*Peter H. Schuck, Yale University*

**COUNTERPOINT:** Racial profiling is a discriminatory practice that undermines fundamental civil rights while failing to promote law enforcement goals.

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### Introduction

The practice of racial profiling, which involves singling out a person or persons for special (usually law-enforcement-related) attention based solely on their race or ethnicity, is part of a specific set of issues that the United States has grappled with in protecting the civil rights of minority individuals belonging to a specific group or class. The Fourth Amendment to the U.S. Constitution, protecting against unreasonable search and seizure, and the equal protection provisions of the Fourteenth Amendment make racial profiling per se illegal. But the legal community and law enforcement agencies have worked to define parameters that would allow consideration of race or ethnicity in conjunction with other behaviors or factors.

Given its controversial nature, it is not surprising that definitions of racial profiling vary. The Department of Justice, for example, defines it as “any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity.” Far more simply, the General Accounting Office defines it as “using race as a key factor in deciding whether to make a traffic stop.” The Office of the Arizona Attorney General, meanwhile, describes it as “use by law enforcement personnel of an individual’s race or ethnicity as a factor in articulating reasonable suspicion to stop, question or arrest an individual, unless race or ethnicity is part of an identifying description of a specific suspect for a specific crime.”

The issue of racial profiling has been brought into sharp focus in the immigration arena by passage of state laws such as Arizona’s S.B. 1070. Although S.B. 1070 specifically forbids racial profiling, critics have widely decried the law as impossible to enforce unless police engage in the practice. The central challenge is that, while the vast majority of illegal immigrants in Arizona are from Mexico and are Hispanics, not all Hispanics of Mexican origin are illegal immigrants. Thus, the probability that S.B. 1070 will result in discrimination by virtue of racial profiling against Hispanics who are either U.S. citizens or foreign nationals legally in the country seems very high.

As in all situations where racial profiling is a concern, there is a power imbalance between law enforcement personnel, who are frequently members of the majority population, and the targets of that enforcement, who are by definition members of a minority population. Proponents of “legitimate” racial profiling argue that it provides law enforcement with a valuable tool. Opponents argue that it is counterproductive and is a fundamental violation of core American values of human rights and dignity.

In the Point essay below, Peter Schuck argues that in the post-9/11 era, and with the issue of illegal immigration becoming more and more pressing, it is important for the country to have a rational discussion about the use of racial profiling. "Government may not treat individuals arbitrarily," he argues, "it must base its action on information that is reliable enough to justify its exercise of power over free individuals." He goes on to say, "Context is everything," and when it is used properly and within defined legal parameters, racial profiling can be a legitimate, useful tool of law enforcement.

In the Counterpoint essay, Karin Martin and Jack Glaser contend there are serious social costs incurred both by the targets of racial profiling and by the broader American society. They consider the effectiveness of racial profiling, determining that, in fact, the evidence shows that racial profiling is both ineffective and inefficient. Finally, they argue that the demonstrated ineffective and unjust nature of racial profiling demands that it be rejected, and that a proactive, enforceable ban on its use be enacted.

In reading this chapter, consider not only whether racial profiling is effective, but also to what extent such a practice is valuable, given the rights to equal protection established by the U.S. Constitution. How much safety can be "bought" through racial profiling, and is the price acceptable? Conversely, given the high expectations placed on law enforcement, is it reasonable to expect that consideration of race and ethnicity *not* be a part of standard investigation techniques?

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## POINT

Since the terrorist attacks of September 11, 2001, racial profiling has become one of the hottest civil rights issues of the day whose prominence that has only been heightened by the subsequent passage of state laws designed to deter undocumented immigrants from entering or remaining in the state. The issue, however, deserves cooler reflection than it has received thus far. Politicians and pundits, regardless of ideology, reflexively denounce the practice, and nary a word is raised in its defense. Some states have already barred any form of profiling, and it is possible that the U.S. Congress could follow suit. Yet, as Dr. Johnson said of the gallows, the events of 9/11 concentrate the mind wonderfully. The disaster that befell the United States on that day—and those that, on a smaller scale have occurred elsewhere since then, and will probably do so in the future—demands a profiling debate that is clear-eyed and hardheaded, not simplistic or demagogic.

One must be clear about the state laws that opponents believe invite profiling. In the case of Arizona's controversial statute (and some or all of the other similar state laws), the law specifically prohibits consideration of race, color, or national origin in its enforcement. Indeed, Arizona's governor, Jan Brewer, signed an executive order directing that law enforcement officials be trained to avoid illegal racial profiling. Further, the law expressly prohibits officials from making stops and arrests when race is the only basis for doing so. A lawful reason for the initial stop must exist other than the suspected immigration status of the detained person. Indeed, the law tracks the 2003 memorandum issued by the U.S. Department of Justice banning racial profiling in federal law enforcement. Therefore, the "racial profiling" argument against such laws serves only to prevent rational discussion of a screening practice that, when used properly and within defined legal parameters, can be a legitimate, effective tool of law enforcement. There are legitimate reasons to criticize the Arizona legislation, but the false assertion that the law permits racial or ethnic profiling is not one of them.

## CONTEXT IS EVERYTHING

The furor over racial profiling is easy to understand. Harassment of those who, as the sayings go, "drive while Black" or "fly while Arab," are emblems of the indignities that law enforcement officials are said to inflict on minorities on the basis of demeaning stereotypes and racial prejudice. This is no laughing matter. The state's coercive power creates special responsibilities for law enforcement officials to screen only in accordance with legal guidelines. Respect for the rule of law means that people must not be singled out for enforcement scrutiny simply because of their race or ethnicity.

Or does it? Much turns on the meaning of "simply" in that sentence. Profiling is not only inevitable, it is in fact sensible public policy under certain conditions and with appropriate safeguards against abuse. After September 11, the stakes in deciding when and how profiling may be used and how to remedy abuses when they occur could not be higher.

A fruitful debate on profiling properly begins with the core values of American society. The most important of these, of course, is national defense, without which no other values can be realized. But one should be wary of claims that ideals must be sacrificed in the name of national security; this means that other ideals remain central to the inquiry. The ideal most threatened by profiling is the principle that all individuals are equal before the law. In most but not all respects, the same entitlements are extended to aliens who are present in the polity, whether they are here legally or illegally. Differential treatment must meet a burden of justification—and in the case of racial classification, a very high one.

This ideal has a corollary: government may not treat individuals arbitrarily. To put this principle another way, government must base its action on information that is reliable enough to justify its exercise of power over free individuals. How good must the information be? The law's answer is that it depends. Criminal punishment requires proof beyond a reasonable doubt, while a tort judgment demands only the preponderance of the evidence. Health agencies can often act with little more than a rational suspicion that a substance might be dangerous. A consular official can deny a visa if, in the official's "opinion," the applicant is likely to become a public charge, and, unlike the previous examples, courts may not review this decision. Information good enough for one kind of decision, then, is not nearly good enough for others. Context is everything.

This brings us to profiling by law enforcement officials. Consider the context in which an FBI agent must search for the September 11 terrorists, or in which a security officer at a railroad or airline terminal must screen for new terrorists. Vast numbers of individuals pass through the officer's line of vision, and they do so only fleetingly, for a few seconds at most. As a result, the official must make a decision about each of them within those few seconds, or be prepared to hold all of

them up for the time it will take to interrogate each individual, one by one. The official knows absolutely nothing about these individuals, other than the physical characteristics that can be immediately observed, and learning more about them through interrogation will take a lot of time. The time this would take is costly, and each question that is asked will either allow others to pass by unnoticed or prolong the wait of those in the already long, steadily lengthening line. The time is even more costly to those waiting in line; for them, more than for the official, time is money and opportunity. Politicians know how their constituents hate lines, and security, customs, immigration, and toll officials are constantly pressed to shorten them.

At the same time, the risks of being wrong are dramatically asymmetrical. If everyone is stopped, all of the problems just described may occur, and all of the people (except one, perhaps) will turn out to be perfectly innocent. On the other hand, if the official fails to stop the one person among them who is in fact a terrorist, the result may be a social calamity of immense proportions (not to mention the prospect of the official losing his or her job). In choosing between these competing risks, self-interest and the social interest will drive the official in the direction of avoiding calamity. The fact that society also presses for evenhandedness only adds to the dilemma, while providing no useful guidance as to what to do, given these incentives.

### **STEREOTYPES ARE OFTEN USEFUL**

So what should be done? Each person can get at this question by asking what she or he would do in this situation. To answer this question, one need not engage in moral speculation but can look to our own daily experiences. Each day, we all face choices that are very similar in structure, albeit far less consequential. We all must make decisions very rapidly about things that matter to us. We know that our information is inadequate to the choice, but we also know that we cannot in the time available get information that is sufficiently better to improve our decision significantly. We consider our risks of error, which are often asymmetrical. Because we must momentarily integrate all this uncertainty into a concrete choice, we resort to shortcuts to decision making. Psychologists call these shortcuts “heuristics.”

The most important and universal of these tactical shortcuts is the stereotype. The advantage of stereotypes is that they economize on information, enabling us to choose quickly when our information is inadequate. This is a great, indeed indispensable virtue, precisely because this problem is ubiquitous in daily life, so ubiquitous that we scarcely notice it, nor do we notice how often we use stereotypes to solve it. Indeed, few of us live without stereotypes. We use them to predict how others will behave. We may assume that Black people will vote Democratic, for example (though many do not), and we anticipate others' desires, needs, or expectations, perhaps offering help to disabled people (though some of them find this presumptuous). We use stereotypes when we take safety precautions when a large, unkempt, angry-looking man approaches us on a dark street (though he may simply be asking directions), or when we assume that higher-status schools are better (though they often prove to be unsuitable). Such assumptions are especially important in a mass society where people know less and less about one another.

Stereotypes, of course, have an obvious downside: they must sometimes be wrong, almost by definition. After all, if they were wrong all the time, no rational person would use them, and if they were never wrong, they would be indisputable facts, not stereotypes. Stereotypes fall somewhere in between these extremes, but it is hard to know precisely where, because we seldom know precisely how accurate they are. Although all stereotypes are overly broad, most are probably correct much more often than they are wrong; that is why they are useful. But when a stereotype is wrong, those who are exceptions to it naturally feel that they have not been treated equally as individuals, and they are right. Their uniqueness is being overlooked so that others can use stereotypes for the much larger universe of cases where the stereotypes are true and valuable. In this way, the palpable claims of discrete individuals are sacrificed to a disembodied social interest. This sacrifice offends not just them but others who identify with their sense of injustice, and when their indignation is compounded by the discourtesy or bias of bag checkers or law enforcement agents, the wound is even more deeply felt.

This is where the law comes in. When these stereotype-based injustices are viewed as sufficiently grave, they are prohibited. Even then, however, this is only done in a qualified way that expresses a general ambivalence. Civil rights law, for example, proscribes racial, gender, disability, and age stereotyping. At the same time, it allows government, employers, and others to adduce a public interest or business reason strong enough to justify using them. The law allows religious

groups to hire only coreligionists. Officials drawing legislative districts may, to some extent, treat all members of a minority group as if they all had the same political interests. The military can bar women from certain combat roles. Employers can assume that women are usually less suitable for jobs requiring very heavy lifting. Such practices reflect stereotypes that are thought to be reasonable in general, though false as to particular individuals.

Can the same be said of ethno-racial profiling? The answer is, “sometimes,” but again, context is everything. Most would object to a public college that categorically admitted women rather than men on the theory that women tend to be better students—not because the stereotype is false but because the school can readily ascertain academic promise on an individualized basis when reviewing applicants’ files, which it must do anyway. On the other hand, no one would think it unjust for an airport security officer to have screened for Osama bin Laden, who was a very tall man with a beard and turban, by stopping all men meeting that general description. This is so not only because the stakes in apprehending someone like bin Laden are immense, but also because in making instantaneous decisions about whom to stop, the official can use gender, size, physiognomy, and dress as valuable clues. It would be irresponsible and incompetent not to do so, even though every man stopped in this way would likely turn out to be a false positive, and thus feel unjustly treated for having been singled out.

Racial profiling in more typical law enforcement settings can raise difficult moral questions. Suppose that society views drug dealing as a serious vice, and that a disproportionate number of drug dealers are Black men, although of course many are not. Would this stereotype justify stopping Black men simply because of their color? Clearly not. The law properly requires more particularized evidence of possible wrongdoing. Suppose further, however, that police were to observe a Black man engaging in the ostensibly furtive behavior that characterizes most but not all drug dealers, behavior also engaged in by some innocent men. This type of observational deduction is referred to as “behavioral profiling,” and of course it is a perfectly legal means of inferring the likelihood that the suspect has committed the crime in question. Here, the behavioral stereotype would legally justify stopping the man. But what if the officer relied on both stereotypes in some impossible-to-parse combination? What if the behavioral stereotype alone had produced a very close call, and the racial one pushed it over the line?

Likewise, imagine a scenario that takes place in an immigrant-dense region such as Arizona, where a large number of Spanish-speaking males are gathered outside a 7-Eleven store in the morning and are eventually approached by a man in a pickup truck looking for workers for the day. The response of a law enforcement officer who observes this scene will be determined by two types of profiling, working in tandem: behavioral (some but not all Spanish-speaking men engaged in this type of activity would be illegal aliens) and ethnic (the vast majority of illegal aliens in Arizona are of Hispanic descent). When the officer pulls into the parking lot, some of the men run away. Is it legally justifiable for an officer to stop these individuals if this decision is reached based partly on ethnic profiling? And should that depend on a subsequent judicial determination of what percentage of such an inference was based on observed behavior and what percentage on ethno-racial generalization (which, again, would be accurate in the vast majority of such cases)?

Although all of these questions cannot be answered with certainty, most critics of ethno-racial profiling do not even ask them. A wise policy will insist that the justice of profiling depends on a number of variables. How serious is the crime risk? How does the public feel about the relative costs of false positives and false negatives? Is it relevant that members of the group being stereotyped would support such profiling in their capacities as citizens equally concerned about security? How accurate is the stereotype? How practicable is it to pursue the facts through an individualized inquiry rather than through stereotypes? If stereotypes must be used, are there some that rely on less incendiary and objectionable factors?

A sensible profiling policy will also recognize that safeguards become more essential as the enforcement process progresses. Stereotypes that are reasonable at the stage of deciding whom to screen for questioning may be unacceptable at the later stages of arrest and prosecution, when official decisions should be based on more individualized information, and when lawyers and other procedural safeguards can be made available. Screening officials can be taught about the many exceptions to even serviceable stereotypes, to recognize them when they appear, and to behave in ways that encourage those being screened not to take it personally.

It is a cliché that September 11 changed the world. Profiling is bound to be part of the new dispensation. With the debate over illegal immigration persisting and growing increasingly heated, clearer thinking and greater sensitivity to the potential uses and abuses of profiling can help produce both a safer and a more just America.

## REFERENCES AND FURTHER READING

- Chebel d'Appollonia, A., & Reich, S. (Eds.). (2008). *Immigration, integration, and security*. Pittsburgh, PA: University of Pittsburgh Press.
- Glaser, J. (2006). The efficacy and effect of racial profiling: A mathematical simulation approach. *Journal of Policy Analysis and Management*, 25, 395–416.
- Heumann, M., & Cassack, L. (2007). *Good cop, bad cop: Racial profiling and competing views of justice*. New York, NY: Peter Lang.
- Muffler, S. J. (2006). *Racial profiling: Issues, data, and analyses*. New York, NY: Nova Science.
- Schuck, P. H. (2006). *Meditations of a militant moderate: Cool views on hot topics*. Lanham, MD: Rowman & Littlefield.
- Stein, D. (2010, April 30). What Arizona's immigration law really says. *Los Angeles Times*. Retrieved from <http://articles.latimes.com/2010/apr/30/opinion/la-oe-stein-20100430>
- Viscusi, W. K., & Zeckhauser, R. J. (2003). Sacrificing civil liberties to reduce terrorism risks. *Journal of Risk and Uncertainty*, 26(2/3), 99–120.
- Von Spakovsky, H. (2010). *The Arizona immigration law: Racial discrimination prohibited*. Retrieved from the Heritage Foundation website: <http://www.heritage.org/research/reports/2010/10/the-arizona-immigration-law-racial-discrimination-prohibited>
- Withrow, B. L. (2006). *Racial profiling: From rhetoric to reason*. Upper Saddle River, NJ: Pearson/Prentice Hall.

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Note: This essay was adapted from a chapter in *Meditations of a Militant Moderate* by Peter H. Schuck.

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## COUNTERPOINT

Racial profiling is law enforcement's use of race, ethnicity, or national origin as a basis for criminal suspicion. Racial profiling is an intuitively appealing idea—target groups with higher offending rates for greater law enforcement—that proves deeply problematic. This essay argues that racial profiling is unjustified because it is discriminatory and unconstitutional, ineffective, and probably counterproductive.

### DEFINING RACIAL PROFILING

Racial profiling is the use by law enforcement officials of race, ethnicity, or national origin (or proxies thereof) as a basis of criminal suspicion. This definition is consistent with well-established definitions used at the highest levels of American government. The U.S. Department of Justice, in a 2003 memorandum that specifically banned racial profiling in federal law enforcement, stated, "In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity if a specific suspect description exists."

Despite many attempts over the last decade, the U.S. Congress has not passed federal legislation on racial profiling. Nevertheless, the leading proposed legislation, the End Racial Profiling Act (ERPA) of 2010, defines it as

the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme.

The definition used by the authors of this essay adds two items to the definition of racial profiling. First, including the use of the phrase "proxies thereof" reflects the reality that law enforcement agents typically do not have direct information regarding suspects' race or ethnicity; they are merely making inferences about race or ethnicity based on appearance, name, or other superficial proxy characteristics like clothing and car type. Second, it is also worth elaborating on the use of the phrase "basis of criminal suspicion." This choice of words is deliberately inclusive, so that racial profiling also includes cases where no actual stop, search, or detention is carried out, but where the likelihood of such actions is

increased. This wording would include as racial profiling any law enforcement procedures, such as consideration of race in compilation of suspect lists or decisions to patrol certain neighborhoods, because they raise the probability of detention and sanction of minorities. On the whole, these would have the same discriminatory effect as an aggregation of stops and searches each of which was determined, in whole or in part, by the race or ethnicity of the individual suspects.

**What racial profiling is not.** In defining racial profiling, it is important to distinguish it from two law enforcement practices that bear some resemblance to it, but which are legal and, if carried out correctly, nondiscriminatory. The first is “criminal profiling,” which can take two forms. One is the development of a constellation of characteristics that are predictive of a perpetrator of a particular crime. This can be thought of as profiling broadly defined. It is generally a more formal process than racial profiling and can result from either formal agency guidelines (as in the case of early Drug Enforcement Agency drug courier profiles starting in the 1970s) or informal stereotypes of criminals held by individual officers. This practice is also referred to as “behavioral profiling,” although the emphasis in behavioral profiling protocols is, as the name indicates, typically not on *trait* characteristics (e.g., age, gender), but rather on *behaviors* such as loitering, avoiding eye contact, and furtiveness (in the case of drug crimes), or purchasing one-way tickets with cash and then traveling without luggage (in the case of terrorism).

The second form of criminal profiling is an older variety that is qualitatively different. Whereas racial profiling involves searching for suspects of crimes (e.g., drugs or weapons possession, terrorism) that are not yet known to have been committed, classical criminal profiling involves narrowing the pool of suspects for a known (already perpetrated or, based on valid intelligence, imminent) crime. For example, investigators seeking to apprehend serial killers have utilized criminal profilers (sometimes forensic psychologists or psychiatrists) who develop a demographic (and possibly psychiatric) profile of the likely perpetrator. There are some remarkable success stories, but on the whole this kind of criminal profiling has had limited success, at best (Silke, 2001; Winerman, 2004).

Another important distinction is between *racial profiling* and the *use of race in suspect descriptions*. Although some legal scholars (e.g., Banks, 2004) argue that use of race in suspect descriptions can, under some circumstances, be a discriminatory practice akin to racial profiling, the two procedures must be kept distinct from one another. Use of race in suspect descriptions necessarily involves a known crime with specific evidence (e.g., a witness report) of a suspect’s race, while racial profiling involves as yet unknown crimes with no direct basis for inference about a possible criminal’s race.

Racial profiling must be distinguished from these other practices because they are often conflated, with the effect of confusing the issue and, more troublingly, justifying racial profiling. By arguing that use of race to identify suspects in any form is racial profiling, some seek to raise concerns about throwing out a valuable law enforcement tool. However, using race or ethnicity to describe a known suspect of a known crime is a perfectly legitimate and, no doubt, effective investigatory practice. Similarly, criminal profiling and offender profiling are legitimate tools to narrow the pool of suspects for a known crime, although there is only anecdotal support for this approach and no empirical evidence that it is a reliable practice. Behavioral profiling, which by definition focuses on behaviors and not traits like race, has been found to be effective, at least in the case of counterterrorism (Silke, 2011). A precise definition of racial profiling that avoids conflation with other legitimate law enforcement practices affords a meaningful consideration of the subject on its merits.

One other source of definitional imprecision that can undermine a productive consideration of the subject is the tendency for some commentators to define racial profiling as being law enforcement decisions that are based *solely* on race. Legal scholar R. S. MacDonald, for example, uses the race-as-sole-factor characteristic to distinguish between traffic stop profiling and airport security screening profiling, arguing that the latter is based on multiple factors and, for this and other reasons, is acceptable. This type of definition can enable profiling to be either defined away (“nobody does *that*”) or promote support for a practice that seems, by comparison, to be innocuous. This misses the basic point that using race as the sole basis for decisions to stop and search is not mere “bias” but full blown racial oppression. It also violates the basic semantics of the terminology—a “profile” is by definition a multifaceted depiction. Perhaps most insidiously, the sole-factor definitional approach fails to appreciate that even if race is only one of many factors, its presence in the profile necessarily has the effect of increasing the probability that one racial group will be subject to disproportionate police attention. If the profile is young, male, and Black, then young, Black men will, for reasons to be elaborated further, bear the brunt of the policy.

The argument presented here against racial profiling operates on several fronts, beginning with a brief review of the relevant case law and subsequent options for legal remedy. The remedies, it will be seen, are meager, even though racial

profiling violates basic civil liberties and fundamental American values. This is followed by a discussion of the grave social costs incurred by the targets of racial profiling and by society as a whole. Then the effectiveness and efficiency of racial profiling will be considered, and it will be shown that there is no compelling evidence in this regard; to the contrary, there is evidence that racial profiling is ineffective and inefficient. Finally, it will be argued that the demonstrated ineffective and unjust nature of racial profiling demands not only a lack of support for the practice, but a proactive, enforceable ban on it altogether, and the promotion of policies and practices to remediate it.

## CONSIDERATIONS OF LAW AND JUSTICE

**Constitutional remedies and case law.** The Fourth Amendment to the U.S. Constitution protects citizens against “unreasonable searches and seizures,” and the Fourteenth Amendment forbids any state to “deny to any person within its jurisdiction the equal protection of the laws.” The vast majority of legal cases seeking remedies for those who allege they have been racially profiled make arguments under these two amendments: the Fourth for its mandate for “probable cause,” and the Fourteenth for its prohibition against any action by the state that discriminates on the basis of race. Importantly, the standard of proof is lower for the Fourth Amendment—reasonableness—than it is for the Fourteenth—strict scrutiny for racial discrimination.

As Harris (2002), Withrow (2006), and others have compellingly described, the most relevant case law rests on two cases. In *Terry v. Ohio* (1968), the U.S. Supreme Court ruled that, in order to justifiably detain and search a suspect, a law enforcement officer need only have reasonable suspicion that a person is armed and dangerous, even if this suspicion is not sufficient to be probable cause for arrest. *Whren v. United States* (1996) is probably the most significant court case in terms of leaving open the possibility of legal racial profiling. This case stemmed from an incident in which police officers pulled over a Pathfinder truck, with a young (Black) driver and passenger inside, waiting at a stop sign (for what the police officers claimed was an abnormally long time). After the truck turned and went an “unreasonable” speed, and then stopped at a red light, the police officers pulled it over. One of the officers spotted what appeared to be, and turned out to be, plastic bags containing cocaine, and the truck’s occupants were arrested. Several other types of illegal drugs were also found. In *Whren*, the defendants argued that there had been no probable cause or reasonable suspicion of illegal drug activity and that the officers used a pretext of giving a warning about traffic violations.

The Court of Appeals for the District of Columbia Circuit eventually ruled that a traffic stop is permissible as long as another reasonable officer could have stopped the car for a suspected traffic violation, and the Supreme Court upheld the decision. In essence, the Court ruled that the police officers’ “subjective intentions” did not matter, even if race was a factor, and validated the use of pretexts—using one reason (e.g., minor traffic violation) to more extensively investigate a more serious offense even in the absence of reasonable suspicion (Withrow, 2006). In the Court majority’s words, “We think these [past Supreme Court rulings] foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved.”

Because it provides wide latitude for these pretextual stops, *Whren* effectively removes the option of Fourth Amendment–based challenges to racial profiling. Legal scholars tend to characterize the Supreme Court’s rulings as “race-neutral” to a fault, because they fail to address the racial attitudes and tensions of both law enforcement and the victims of racial profiling (e.g., Lyle, 2001). Taken together, current case law puts in place rather high legal hurdles that must be cleared in order to prove racial profiling and its subsequent harm. Indeed, almost all racial profiling constitutional challenges have failed or have ended with out-of-court settlements (Harcourt, 2004, p. 1278).

**Threat to civil liberties.** The inadequacy of the current legal remedies for racial profiling does not obviate its violation of the core American principles of civil liberty, nondiscrimination, and basic fairness. The violation of these principles is obvious to anyone with a basic American civics education. Yet the persistence of support for racial profiling reflects the perennial tension between the necessity of securing public safety and the constitutional mandate to protect against restrictions of individual liberty. Indeed, there are some liberties that need to be abridged (such as speech that incites violence, or littering) to promote public safety. With regard to intrusions by law enforcement, people must and do submit to surveillance and screening, including relatively invasive procedures like those used on airline passengers. However, because racial profiling involves differentiations among racial and ethnic groups in terms of whose liberties are more or less infringed, it concerns *civil* liberties. It is one thing to expect everyone to relinquish the right to yell “fire” in a



crowded theater, or to carry their own beverages through airport security, but it is quite another to deny only one racial or ethnic group that right. Regardless of one's beliefs about the potential effectiveness of racial profiling, even if we were to stipulate that targeted groups have criminal offending rates so high as to pose a threat to public safety, singling them out on the basis of race or ethnicity (as opposed to individual behavior) would violate sacrosanct American constitutional and moral principles.

These principles are enshrined in the statements of America's founders and most respected jurists:

"They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety"  
—Benjamin Franklin (1818)

"Civil government cannot let any group ride roughshod over others simply because their consciences tell them to do so" —Justice Robert H. Jackson, *Douglas v. City of Jeannette*, 319 U.S. 157 (1943)

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding" —Justice Louis D. Brandeis, dissenting, *Olmstead v. United States*, 277 US 479 (1928)

"History teaches us that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure" —Justice Thurgood Marshall, dissenting, *Skinner v. Railway Labor Executives Association*, 489 U.S. 602, 635 (1989)

Despite America's strong tradition of and commitment to liberty, the government has, at several points in its history, succumbed to fear and insecurity to engage in policies that have violated basic individual and civil liberties. The Alien and Sedition Acts, Lincoln's suspension of habeas corpus, the internment of Japanese Americans during World War II, and the Congressional persecution of suspected communists and their associates in the early years of the Cold War—were all rationalized by real or perceived dangers. Although the drug war that inspired racial profiling in traffic and pedestrian stops has not been held up as rising to that level of threat, terrorist threats (and the attendant "war on terror") have, and these threats have subsequently been used to justify racial profiling. It is worth remembering that the historical, liberty-violating policies that preceded racial profiling have been judged extremely harshly by history, after the fog of war has cleared.

Racial profiling clearly falls into the same category as these historical lapses because it is an unmistakable breach of the Fourth and Fourteenth Amendments and the core American principles of fair and equal treatment and liberty that these amendments reflect. The notion that a person who happens to be a member of a racial, ethnic, or religious category that is presumed to be populated with a relatively high proportion of perpetrators of some sort of crime should be subject to greater suspicion and law enforcement intrusion because of that coincidence, is unambiguously in contradiction with American law and values. This is reflected not only in the quotes of influential officials like those provided above, but also in public opinion polls, wherein overwhelming majorities disapprove of racial profiling (e.g., 81% in Gallup Organization, 1999).

Not surprisingly, the post-9/11 "war on terror" appears to have engendered a greater sense of threat—and, consequently, willingness to compromise civil liberties—than has the "war on drugs." In a November 2001 Kaiser Family Foundation poll, 66 percent of Americans surveyed approved of profiling "people who are Arab or of Middle Eastern descent." However, in the same survey, only 21 percent approved when asked about a more generic profiling scenario involving traffic stops—an approval rate comparable to the pre-9/11 response. The majority approval of counterterrorism profiling of Middle Easterners has persisted since 2001 (e.g., Quinnipiac University, 2006). The ability of Americans to maintain these paradoxical views is not new when it comes to the public safety–civil liberties tradeoff, and it is not limited to the public. As the Supreme Court majority articulated in *Hirabayashi v. United States* (1943), "Because racial discriminations are in most circumstances irrelevant, and therefore prohibited, it by no means follows that, in dealing with the perils of war, Congress and the Executive are wholly precluded from taking into account those facts and circumstances which are relevant to measures for our national defense and for the successful prosecution of the war, and which may, in fact, place citizens of one ancestry in a different category from others." Yet the Court also addressed the offensiveness of discrimination: "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Somehow, the court had confidence that the stereotypes causing racial discrimination were "irrelevant" (i.e., spurious) in most domains, but not in the domain of national security. The

flaw in this view was laid bare by subsequent revelations that the U.S. government had, in the Hirabayashi trial upholding Japanese-only curfews, suppressed evidence indicating that, in fact, very few Japanese Americans were actually suspected of treason or espionage. Hirabayashi's conviction was, as a result, later overturned.

There is no reason to believe that specious stereotypes are any more reliable in national security than in ordinary law enforcement. One can argue that the stakes are higher, but the error is the same, and the costs borne by the targets of discrimination are at least as severe.

**Fairness and social costs.** Because it heaps further disadvantage on groups—particularly African Americans and Hispanics—that are historically disadvantaged due to discrimination, racial profiling raises the issue of basic fairness and social costs. Racial profiling is not the sole source of disproportions in the criminal justice system, but it necessarily exacerbates them insofar as it increases the likelihood that certain racial minorities are targets of suspicion. In being disproportionately subject to suspicion, surveillance, and intrusion, members of these groups are inordinately punished and disenfranchised, with the attendant alienation from economic, political, and civic affairs. The magnitude of the racial disparities is striking. The Bureau of Justice Statistics projected that, assuming that 2003 incarceration rates persisted, 5.9 percent of White men born in 2001 would be incarcerated at some point in their lifetime, while for Latinos it would be 17.2 percent, and for African Americans it would be 32.2 percent (Bonczar, 2003). In an analysis of men born between 1965 and 1969, Petit and Western (2004) estimated that 60 percent of African American men who dropped out of high school would spend time in prison (compared to 11 percent of White high school dropouts). These disparities are reflected in the composition of the state prison population: According to the U.S. Department of Justice, in 2008, African Americans comprised 38.1 percent, Whites were 35.5 percent, and Hispanics were 18.7 percent, even though African Americans represent only 12.6 percent of the US population, Whites (non-Hispanic) 63.7 percent, and Hispanics, 16.3 percent (U.S. Census Bureau, 2010). The myriad collateral consequences of imprisonment compound how troublesome these statistics are.

Chief among these consequences is the effect of incarceration on employment and income. In a clever and careful employment audit experiment, Pager (2003) found that having a criminal record significantly decreased the likelihood that a job applicant would be called back by a real employer, and that this effect is even more dramatic for Black applicants. White applicants had their prospects cut in half by a criminal record, from 34 percent to 17 percent. Black applicants fared worse with or without a criminal record, but their prospects were reduced nearly threefold, from 14 percent to 5 percent. It is further noteworthy that Whites with a criminal record still fared better than Blacks without one, a general, pronounced employment discrimination finding replicated by Bertrand and Mullainathan's (2003) large and highly rigorous employment audit study. It is not surprising then that another study found the employment rate of formerly incarcerated men to be 6 percentage points lower than comparable men who had not been incarcerated, and their hourly wage to be between 14 and 26 percent lower (Geller, Garfinkel, & Western, 2006). Given the perennially higher unemployment rates for African Americans and Hispanics (U.S. Department of Labor, 2009), the repercussions of incarceration are even more calamitous, because they further limit the wage-earning capacity of so many people. The effects of incarceration are magnified in these vulnerable populations, making the collateral damage of racial profiling even greater.

To make matters worse, the effects of incarceration extend beyond the individual who serves time. There are also formidable costs to the families of those who are incarcerated in terms of lost income and employment-related benefits, strains on parenting, social stigma, and the emotional toll of having an absent family member. There is recent evidence that paternal incarceration puts children at greater risk for behavioral and mental health problems, and that the racial disparities in incarceration are a factor in the racial disparities in these childhood problems (Wakefield & Wildeman, 2011). There is also evidence that those who have been incarcerated are more likely to suffer from infectious diseases and illnesses related to stress (Massoglia, 2008). Intimates of incarcerated individuals are also at greater risk. For example, Johnson and Raphael (2006) found that higher incarceration rates among Black men are a significant, unique source of the disparity in HIV infection rates between Black women and women of other racial and ethnic groups.

Contact with the criminal justice system results in a significant, negative effect on political and civic engagement, even when socioeconomic status and criminal propensity are taken into account (Weaver & Lerman, 2010). Having a felony conviction also bars individuals from accessing many types of state assistance, such as housing, welfare, and financial assistance for higher education (Finzen, 2005). Moreover, in 48 states, a felony conviction results in either a temporary

or permanent loss of the right to vote; as a consequence, 1.4 million African American men (13%) are disenfranchised (Sentencing Project, 2011). The systematic disenfranchisement of one ethnic group undermines the representation of that group's interests in government, and there is direct evidence that some elections would have had different outcomes had ex-felons been allowed to vote (Uggen & Manza, 2002).

As will be discussed further, computational modeling shows how racial profiling necessarily causes targeted groups to be incarcerated at rates that are disproportionate to their offending rates (Glaser, 2006). Racial profiling therefore brings additional burdens on minority populations. That racial minorities already face impediments to well-being should prompt an assiduous assessment of the threat to American ideals and social costs posed by racial profiling.

The clear violation of core constitutional principles and American values of liberty and fairness should be sufficient grounds on which to reject and condemn racial profiling in any domain of law enforcement. Nevertheless, the tipping point for the safety–liberty tradeoff resides at different points on the spectrum for different people. Indeed, discourse over racial profiling often turns to questions of police efficiency and effectiveness, in terms of conserving resources and mitigating crime. Even commentators who oppose racial profiling will sometimes stipulate that it is appealing on efficiency grounds (e.g., Kennedy, 1999). However, there is no evidence that racial profiling actually affords the kinds of efficiency and effectiveness gains that it is presumed to, or that would be necessary to pass even a minimal threshold for compromising civil liberty. In fact, there are good reasons to be concerned that racial profiling, if practiced as its defenders commend, has very modest effects on criminal captures and deterrence, and can even have ironic effects.

## EFFECTIVENESS

***Efficient use of law enforcement resources.*** Perhaps the most common and straightforward rationale offered to support racial profiling is that it is efficient. The logic goes that if one group (e.g., a racial group) is more prone to committing a particular kind of crime (e.g., drug possession for sale, terrorism), then targeting police resources at members of that group will (1) net more criminal captures and (2) deter crime among those most inclined to commit it. The argument appears sound. However, when considered carefully, there are serious problems with this logic.

The first problem is that in practice it is rarely known, even by law enforcement agencies, what actual criminal offending rates are within a group for the crimes of interest. Racial profiling is typically targeted at drug and weapons possession, and statistics on perpetrators are based on *known* perpetrators. These statistics are going to be skewed by any prior racial bias in policing. To the extent that police are disproportionately stopping and searching a given group, it is a mathematical reality that they will disproportionately arrest members of that group (as illustrated in the mathematical simulations described below; see Glaser, 2006). Surveys, in fact, indicate that Whites and Blacks in the United States report comparable rates of illicit drug use (U.S. Department of Health & Human Services, 2007), and that among youths rates are considerably lower for Blacks (Johnston, O'Malley, & Bachman, 2001). The implication of not actually knowing what the offending rates of different groups are is that when police profile, they are almost certain to rely on informal stereotypes of unknowable accuracy.

***The stereotype problem.*** A stereotype is a belief about the traits that are disproportionately possessed by members of a group. Beliefs (stereotypes) that Blacks are more likely to be engaged in drug crime and Muslims are more likely to be terrorists drive drug interdiction and counterterrorism profiling. Most people have a sense that judgments of individuals based on stereotypes about their groups are inherently misguided, and are particularly intolerable when they engender discriminatory outcomes such as the undue deprivation of material resources, status, or liberty. Consequently, a recognition of the role of stereotyping is usually a sufficient rationale for rejecting racial profiling. Even those who do not object to stereotype-based law enforcement, however, should have concerns about effectiveness.

One could argue that law enforcement agents develop their own stereotypes regarding race and criminal offending, and that these stereotypes, being based on direct experience (e.g., investigating, searching, and arresting suspects) have a good chance of being reasonably accurate. This does not address the fairness problem, but it does allow for the possibility of effectiveness. There are a number of important reasons, however, why police stereotypes are unlikely to be particularly accurate or effectively applied to suspect identification.

Nearly a century of scientific study of stereotyping has provided the field of social psychology with a deep and broad understanding of the phenomenon. Fundamental discoveries include the fact that stereotypes serve as cognitive

shortcuts (“mental heuristics”) for making judgments in the absence of complete information (Fiske & Taylor, 1991), and that this can cause people to make dramatically different assessments of the identical behaviors of individuals (Darley & Gross, 1983; Sagar & Schofield, 1980). Research has shown that entirely spurious stereotypes can be formed via “illusory correlation,” such as when rare events (like minority status and crime) co-occur (Hamilton & Gifford, 1976); and that stereotypes are resistant to change, even in the face of clearly contradictory evidence (Weber & Crocker, 1983). Stereotypes can, ironically, have even more pronounced biasing effects when one attempts to suppress them (MacRae, Bodenhausen, Milne, & Jetten, 1994). It has also been shown that stereotypes can be formed and perpetuated to serve the psychological function of rationalizing inequities between groups and that they are exacerbated by a phenomenon called “outgroup homogeneity,” wherein people tend to overestimate the similarities within groups to which they do not belong (Park & Rothbart, 1982). The mere knowledge of a stereotype, even if it is consciously repudiated, is sufficient to cause stereotype-biased judgments (Devine, 1989). Most recently, scores of studies have shown that stereotypes can operate outside of conscious awareness or control, but nevertheless influence important, discriminatory behaviors (Jost et al., 2009). In other words, there is overwhelming evidence that stereotypes are distortions and, even if based on a “kernel of truth,” present serious obstacles to accurate and fair appraisals of others.

As undesirable as stereotyping may be, the research shows that it is entirely normal to human cognition—most, if not all, people do it. Because law enforcement agents are normal humans with normal cognition, they too are vulnerable to the pitfalls of stereotyping, including the flawed judgments of individuals that result from it. Importantly, research conducted on police samples has directly demonstrated this; police possess race-crime stereotypes and these unduly influence their judgments and behaviors toward minorities (Correll et al., 2007; Eberhardt, Goff, Purdie, & Davies, 2004).

Even if stereotypes are directionally accurate (e.g., if Blacks have a higher rate of drug-related criminal offending, or Arabs have a higher rate of terrorism), employment of them in decisions to stop and search can reflect an error akin to the logical fallacy of “affirming the consequent.” This error takes the form “if A, then B; B therefore A.” In stereotype-based judgments, this translates into, “if criminal, then likely to be Black; Black therefore likely to be criminal.” The error is not unlike the common “base-rate fallacy” (Kahneman & Tversky, 1973), where people fail to account for the general prevalence of something when trying to estimate its likelihood based on some indicator. For example, people who obtain a positive result on a test for a rare disease are likely to overestimate the probability that they have the disease, having failed to account for the low overall probability of the disease. If crime and terrorism are rare events (and they are, especially terrorism), even if race or ethnicity is correlated with them, it will have low diagnostic value at the individual level. This is borne out in the statistics on hit (arrest) rates for stop-and-frisk programs (Jones-Brown, Gill, & Trone, 2009; Office of the Attorney General of New York, 1999); these analyses tend to reveal low hit rates, typically around 10 percent, and paradoxical racial disproportions—stop/search rates are higher for minorities, but hit rates among those stopped are higher for Whites.

In short, there are many reasons to be skeptical about the accuracy of the stereotypes that cause racial profiling. Furthermore, even if one stipulates the possibility that officers will have a concrete basis for their stereotypes, one should be very skeptical about their accuracy and practicality when it comes to predicting criminality in individual suspects.

***Diminishing returns and self-fulfilling prophecies.*** Even if respective offending rates of different racial groups were known, and assuming one group actually had a higher rate, the long-term effects of profiling are likely to exhibit diminishing returns that yield modest results in terms of criminal captures—and yet profiling would still create racial disproportions in excess of any real differences in offending. In a series of mathematical simulations (necessitated by the lack of information about actual offending or profiling rates), Glaser (2006) found that sustained profiling (i.e., stopping minorities at proportionally higher rates) yielded only modest gains in criminal captures, unless minority-offending rates were dramatically (and implausibly) higher than the rates of others. In scenarios where stop rates were disproportionate to offending (i.e., minorities were stopped at relative rates that were in excess of their relative offending rates), profiling was particularly ineffective and led to overall capture rates that were lower than those in the absence of profiling. Of particular note was the finding that racial profiling causes incarceration disparities that are in excess of any actual offending disparities. This is, of course, most evident and transparently unjust in scenarios where there are no offending disparities (i.e., minorities offend at the same rate as Whites), but it poses a fairness problem even when targeted groups have higher offending rates. Profiling itself causes or exacerbates racial disparities in criminal sanctions, and this is in

addition to the problem of the higher proportions of innocent (non-offending) minorities' lives being disrupted by unwanted contact with police.

**Deterrence?** The deterrent effect of racial profiling is also dubious. The theory with regard to deterrence is that the increased attention to targeted groups should cause a decrease in offending among those groups, and that this deterrent effect would be especially consequential if those groups had relatively high offending rates. This thesis is consistent with deterrence theory, a key component of criminological canon (Blumstein, Cohen, & Nagin, 1978), which holds that expectations of increased costs of crime (due to increased penalties, increased probability of apprehension, or both) will lead even partially rational criminals to reduce offending, to the extent that they perceive changes in costs.

Racial profiling, however, presents a special case with regard to deterrence because there is no net increase in enforcement, but rather just a shifting of resources from some group or groups to others. As Glaser (2006) and Harcourt (2004) have noted, because profiling necessitates greater focus on one group, there is less focus on other groups. If deterrence works as it is theorized to, with criminals detecting changes in costs of offending, criminals (and marginal criminals) in nonprofiled groups should expect a lower cost, and therefore commit more crime. If the criminality rate in these groups is nontrivial, this could have an upward pressure on crime rates.

Glaser showed in his simulations that, with conservative assumptions about deterrence included in the model, the already modest benefits for criminal captures seen in most racial profiling scenarios are further reduced because the groups receiving the most attention (i.e., minorities) are committing less crime, while groups receiving the least attention (i.e., Whites) are committing more crime. Because nonprofiled groups tend to be larger, this could cause a net increase in crime.

Experimental evidence supports this pattern. Hackney and Glaser (2009) simulated racial profiling in a classroom testing paradigm wherein student cheating could be reliably detected. They found that when White students thought that Black students were being profiled for cheating by the administrator, they cheated *more* than when White students were ostensibly being profiled or in a no-profiling control condition. In contrast, Black students cheated at comparable (low) rates across all three experimental conditions (perhaps not inferring race-based profiling in the Whites-profiled condition because there is no preexisting schema for that). The net effect of profiling, therefore, was an increase in cheating, what Hackney and Glaser call "reverse deterrence." Racial profiling will not necessarily lead to a net increase in crime. If the targeted group is deterred and has an offending rate much higher than other groups, it could yield a net decrease. However, given that targeted groups tend to be numerical minorities, and the oft-targeted crimes (e.g., drug possession) do not appear to have dramatic offending rate differences between groups, there is the very real potential for ironic effects of racial profiling on crime rates and criminal captures. In the realm of counterterrorism, White separatist extremists in the United States, who have a long and deadly history of terrorism, could feel they can act with relative impunity if other ethnic groups are receiving the lion's share of law enforcement attention. The possibility of a more strategic form of reverse deterrence should also be considered, where terrorist groups deliberately exploit and circumvent profiles by recruiting outside of them.

In sum, racial profiling (1) is often targeted at groups that we are not at all confident actually have higher offending rates; (2) yields at best modest gains in criminal incapacitation, but only when targeted groups have higher offending rates; and (3) has the potential to, at best, have moderate aggregate deterrent effects, and at worst, increase crime through reverse-deterrence. Because of these factors, the assumed efficiency of racial profiling is highly questionable.

**Crime reduction.** The appropriate standard for assessing the effectiveness of any law enforcement strategy is whether or not it reduces crime and its consequences. In arenas where racial profiling might seem compelling—reducing drug trafficking or gun possession, terrorism, illegal immigration—the achievement of ostensible goals is difficult to assess due to the intractable problems with establishing reliable offending base rates, collecting comprehensive data, and conducting reliable analyses. Specifically, in order to determine the ability of racial profiling to capture offenders successfully, the underlying rate of offending by race and ethnicity would need to be known.

With that limitation in mind, it is useful to note that in many jurisdictions studied, targeted groups often yield less evidence of crime (e.g., contraband, weapons) when stopped and searched (see Harris, 2002, citing New Jersey State Police data on turnpike stops; and Center for Constitutional Rights, 2009), while other analyses find approximately equal

hit rates (e.g., Harris, 2002, citing evidence from the Maryland State Police). For example, in Gross and Barnes's (2002) analysis of traffic stops in Maryland, the proportion of car searches that yielded drugs was 37.4 percent for White drivers, 30.6 percent for Black drivers, and 11.9 percent for Hispanics. The lower hit rates for Black and Hispanic drivers indicates that they required a lower threshold of suspiciousness to get stopped or searched, and that offending rates may not be any higher for the targeted groups.

Recent assessments of the "stop, question, and frisk" policies of the New York Police Department further indicate that racial profiling is an ineffective crime reduction strategy. After controlling for a variety of factors that are predictive of police activity (e.g., precinct and its racial composition), Fagan (2010) found that Black and Hispanic individuals were stopped at much higher rates, and that the overall hit rate is less than 6 percent (the rate of gun seizures was only 0.15 percent). An analysis of stops made from 2005 through 2008 found that 80 percent of all stops were of Black and Latino individuals, who, respectively, make up 25 percent and 28 percent of the city's population (Center for Constitutional Rights, 2009). Ten percent of stops during the same time period were of White individuals, who were 44 percent of the city's population. The clearest indication of the ineffectiveness of racial profiling is the report's finding that only 2.6 percent of the stops yielded contraband. Similarly, Jones-Brown, Gill, and Trone (2010) found that even though the number of pedestrian stops in New York City more than tripled between 2003 (<150,000) and 2009 (>500,000), the total number of illegal guns found through these searches remained fairly constant during the same time period. The number of stops of White individuals in 2003 was around 20,000 and grew to 50,000 in 2009. The number of stops of Black individuals went from approximately 80,000 in 2003 to nearly 350,000 in 2009. The additional searches in later years appear to have been highly arbitrary, yielding trivial gains in gun seizures over the results obtained from the earlier, smaller numbers of searches.

The U.S. Customs Service provides an apt example of the ineffectiveness of racial profiling that mirrors the findings from New York City. In 1998 the service made a series of reforms to reduce gender and racial bias in the selection of air travel passengers for personal searches. By 2000 the service had conducted 79.3 percent fewer searches, yet while the overall number of seizures of contraband was roughly the same as before, racial disparities in stops, searches, and seizures decreased.

The conclusion to be drawn from this type of evidence is that subjecting African American and Hispanic individuals to a lower threshold for suspicion and an increased likelihood of being stopped and searched by the police will certainly have a discriminatory impact on those minority groups but is unlikely to reduce crime.

**Procedural justice.** Another reason to doubt racial profiling's effectiveness is the likelihood that this practice is perceived by its targets as a gratuitous violation of procedural justice, thereby eroding the law-enforcement benefits of good police-community relations. Procedural justice concerns the fairness of how (i.e., the mechanisms or processes by which) an outcome is achieved, as opposed to the fairness of the outcome itself (Lind & Tyler, 1988). At its core, racial profiling involves singling out a person for a nonlegal reason (race is not legally relevant). Importantly, the effects of violating procedural justice extend beyond the original target. While the target may experience the violation as a personal affront (Skitka, 2002), friends and family of the target may experience "empathic anger," which occurs when someone one cares about is harmed (as opposed to the anger caused by being harmed personally) (Batson et al., 2007).

Moreover, a negative emotional response to racial profiling can even occur when an observer does not personally know the target. Just seeing someone being harmed can generate intense anger and a sense of injustice (Hafer, 2000). It follows that the repercussions of racial profiling can be understood as radiating out from the target, affecting not just targets of racial profiling but also those who know them or even just know of them. Psychologists Tom Tyler and Yuen Huo discuss such problems in their book, *Trust in the Law* (2002). They find that "people generalize from their personal experiences to their broader views about the law, legal authorities, others in their community, and society" (p. 206) and that breaches of procedural justice negatively influence what people think of the police and their general respect for the law. To wit, public opinion data reveals that 61 percent of White individuals consider the "honesty and ethical standards" of police to be either "very high" or "high," while only 37 percent of Black individuals hold this view (Gallup Organization, 2010). The upshot is that when communities (e.g., racial or ethnic minority groups) do not trust police, they are less inclined to cooperate with law enforcement activities. This is particularly troublesome in the context of police reliance on assistance from community members during crime investigations.

Indeed, a survey conducted by the Consortium for Police Leadership in Equity (CPLÉ) found that among White and Latino residents (citizens, as well as documented and undocumented aliens), one in three would not report certain serious crimes if police officers had the authority to check citizenship status (Burbank, 2010). This should be a cause for serious concern among lawmakers considering the laws, like those in Arizona and Alabama, that require police departments to enforce immigration law and promote the use of ethnicity in identifying illegal immigrants.

Because it entails an unfair mechanism—using an individual's race or ethnicity as the basis for heightened scrutiny—racial profiling is procedurally unjust. By violating procedural justice, racial profiling is likely to erode trust in the police and results in decreased cooperation with law enforcement officers. In this way, the effectiveness of racial profiling as a crime reduction strategy is further diminished.

## CONCLUSION

In using race, ethnicity, or national origin as a basis of criminal suspicion, law enforcement officials engage in a practice that is especially pernicious because it engenders a false sense of effectiveness in the face of substantial harms that may not be readily evident. The goal of policing is to promote public safety. Insofar as it inflicts harm on particular segments of the population, racial profiling contravenes this goal. The objective here has been to explain the harms to both justice and effectiveness. Specifically, we contend that racial profiling not only violates the U.S. Constitution, but it violates core American principles of liberty and nondiscrimination. By subjecting members of historically disadvantaged groups to increased scrutiny, profiling contributes to the striking overrepresentation of African Americans and Hispanics in the criminal justice system. Moreover, proof of the effectiveness of racial profiling is lacking, especially considering the indications that it may increase crime through reverse deterrence and stifle cooperation with law enforcement as a result of procedural injustice. Taken altogether, the evidence presented here indicates that racial profiling falls far short of any reasonable threshold for trumping liberty in the name of public safety.

Indeed, racial profiling is so objectionable that it is insufficient merely to state that it should not be supported. Rather, affirmative policies to ban its practice, monitor its occurrence, and enforce prohibitions against it are warranted. This is imperative because racial profiling likely occurs, in large part, informally, spontaneously, and in many instances unintentionally. Thus, the mere absence of a formal pro-profiling policy or even the existence of an unenforced prohibition are likely to be insufficient for preventing it.

## REFERENCES AND FURTHER READING

- Ayres, I. (2002). Outcome tests of racial disparities in police practices. *Justice Research and Policy*, 4, 131–142.
- Banks, R. R. (2004, January). *The story of Brown v. City of Oneonta: The uncertain meaning of racially discriminatory policing under the equal protection clause* (Stanford Law School Research Paper No. 81). Stanford, CA: Stanford Law School.
- Batson, C. D., Kennedy, C. L., Nord, L.-A., Stocks, E. L., Fleming, D. A., Marzette, C. M., Lishner, D. A., Hayes, R. E., Kolchinsky, L. M., & Zerger, T. (2007). Anger at unfairness: Is it moral outrage? *European Journal of Social Psychology*, 37, 1272–1285.
- Bertrand, M., & Mullainathan, S. (2003). *Are Emily and Greg more employable than Lakisha and Jamal? A field experiment on labor market discrimination*. MIT Department of Economics Working Paper No. 03-22.
- Blumstein, A., Cohen, J., & Nagin, D. (Eds.). (1978). *Deterrence and incapacitation: Estimating the effects of criminal sanctions on crime rates, report of the panel of deterrence and incapacitation*. Washington, DC: National Academy of Sciences.
- Bonczar, T. P. (2003, August). *Prevalence of imprisonment in the U.S. population, 1974–2001* (Bureau of Justice Statistics Special Report). Retrieved from <http://bjs.ojp.usdoj.gov/content/pub/pdf/piusp01.pdf>
- Burbank, C. (2010, June 17). Testimony of Mr. Christopher Burbank, Chief of Police, Salt Lake City Police Department, to the Subcommittee on the Constitution, Civil Rights and Civil Liberties; Hearing on Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy. Retrieved from <http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg56956/html/CHRG-111hhrg56956.htm>
- Center for Constitutional Rights. (2009). *Racial disparity in NYPD stops-and-frisks: The Center for Constitutional Rights Preliminary Report on UF-250 data obtained for 2005 through June 2008*. Retrieved from [http://www.ccrjustice.org/files/Report\\_CCR\\_NYPD\\_Stop\\_and\\_Frisk\\_1.pdf](http://www.ccrjustice.org/files/Report_CCR_NYPD_Stop_and_Frisk_1.pdf)
- Clark, R. (1970). *Crime in America: Observations on its nature, causes, prevention, and control*. New York, NY: Simon & Schuster.

- Clayton, S., & Opatow, S. (2003). Justice and identity: Changing perspectives on what is fair. *Personality and Social Psychology Review*, 7, 298–231.
- Correll, J., Park, B., Judd, C., Wittenbrink, B., Sadler, M. S., & Keesee, T. (2007). Across the thin blue line: Police officers and racial bias in the decision to shoot. *Journal of Personality and Social Psychology*, 92, 1006–1023.
- Council of Economic Advisors. (1999). *Changing America: Indicators of social and economic well-being by race and Hispanic origin*. Retrieved from <http://w3.access.gpo.gov/eop/ca/index.html>
- Darley, J. M., & Gross, P. H. (1983). A hypothesis-confirming bias in labeling effects. *Journal of Personality and Social Psychology*, 44, 20–33.
- Devine, P. G. (1989). Stereotypes and prejudice: Their automatic and controlled components. *Journal of Personality and Social Psychology*, 56, 5–18.
- Eberhardt, J. L., Goff, P. A., Purdie, V. J., & Davies, P. G. (2004). Seeing black: Race, crime, and visual processing. *Journal of Personality and Social Psychology*, 87, 876–893.
- Fagan, J. (2010). *Floyd, et al. v. City of New York, et al.*, Report to the U.S. District Court, Southern District of New York. Retrieved from [http://ccrjustice.org/files/Expert\\_Report\\_JeffreyFagan.pdf](http://ccrjustice.org/files/Expert_Report_JeffreyFagan.pdf)
- Finzen, M. E. (2005, Summer). Systems of oppression: The collateral consequences of incarceration and their effects on black communities. *Georgetown Journal on Poverty Law & Policy*, 12(2), 299–324.
- Fiske, S. T., & Taylor, S. E. (1991). *Social cognition* (2nd ed.). New York, NY: McGraw-Hill.
- Franklin, B., & Franklin, W. T. (1818). *Memoirs of the life and writings of Benjamin Franklin*. London, UK: H. Colburn.
- Gallup Organization, Inc. (2010, November 19–21). Respondents' ratings of the honesty and ethical standards of police. In *Sourcebook of criminal justice statistics table online*. Retrieved from <http://www.albany.edu/sourcebook/pdf/t2212010.pdf>
- Geller, A., Garfinkel, I., & Western, B. (2006). *The effects of incarceration on employment and wages: An analysis of the Fragile Families Survey* (Working Paper 2006-01-FF). Princeton, NJ: Center for Research on Child Wellbeing. Retrieved from <http://www.saferfoundation.org/files/documents/Princeton-Effect%20of%20Incarceration%20on%20Employment%20and%20Wages.pdf>
- Gelman A., Fagan, J., & Kiss, A. (2007, September 1). An analysis of the New York City Police Department's "stop-and-frisk" policy in the context of claims of racial bias. *Journal of the American Statistical Association*, 102(479), 813–823.
- Glaser, J. (2006). The efficacy and effect of racial profiling: A mathematical simulation approach. *Journal of Policy Analysis and Management*, 25, 395–416.
- Gross, S. R., & Barnes, K. Y. (2002, December). Road work: Racial profiling and drug interdiction on the highway. *Michigan Law Review*, 101(3), 651–754. Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=331260](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=331260)
- Gross, S. R., & Livingston, D. (2002). Racial profiling under attack. *Columbia Law Review*, 102(5), 1413–1438.
- Hackney, A., & Glaser, J. (2009). *Reverse deterrence in racial profiling: Increased transgressions by the non-profiled group* (Working Paper No. GSPP09-003). Berkeley, CA: Goldman School of Public Policy.
- Hafer, C. L. (2000). Do innocent victims threaten the belief in a just world? Evidence from a modified Stroop task. *Journal of Personality and Social Psychology*, 79, 165–173.
- Hamilton, D. L., & Gifford, R. K. (1976). Illusory correlation in interpersonal perception: A cognitive basis of stereotypic judgments. *Journal of Experimental Social Psychology*, 12, 392–407.
- Harcourt, B. E. (2004). Rethinking racial profiling: A critique of the economics, civil liberties, and constitutional literature, and of criminal profiling more generally. *University of Chicago Law Review*, 71. Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=471901](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=471901)
- Harris, D. (2002). *Profiles in injustice: Why racial profiling cannot work*. New York, NY: The New Press.
- Harris, D. (2003). Racial profiling redux. *St. Louis University Public Law Review*, 22, 73.
- Hirabayashi v. United States, 320 U.S. 81, 100 (1943).
- Johnson, R. C., & Raphael, S. (2006, June). *The effects of male incarceration dynamics on AIDS infection rates among African American women and men* (Working Paper 22). Ann Arbor, MI: National Poverty Center, University of Michigan. Retrieved from [http://www.npc.umich.edu/publications/working\\_papers/?publication\\_id=84&](http://www.npc.umich.edu/publications/working_papers/?publication_id=84&)
- Johnston, D. (1995). Effects of parental incarceration. In K. Gabel & D. Johnston (Eds.), *Children of incarcerated parents* (pp. 59–88). New York, NY: Lexington Books.
- Johnston, L. D., O'Malley, P. M., & Bachman, J. G. (2001). *Demographic subgroup trends for various licit and illicit drugs, 1975–2000* (Monitoring the Future Occasional Paper 53). Bethesda, MD: National Institute on Drug Abuse. Retrieved from <http://monitoringthefuture.org/pubs/occpapers/occ53.pdf>
- Jones-Brown, D., Gill, J., & Trone, J. (2010, March). *Stop, question & frisk policing practices in New York City: A primer*. Retrieved from Center on Race, Crime and Justice website: [http://www.jjay.cuny.edu/web\\_images/PRIMER\\_electronic\\_version.pdf](http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf)
- Jost, J. T., Rudman, L., Blair, I. V., Carney, D. R., Dasgupta, N., Glaser, J., & Hardin, C. (2009). The existence of implicit bias is beyond reasonable doubt: A refutation of ideological and methodological objections and executive summary of ten studies that no manager should ignore. *Research in Organizational Behavior*, 29, 39–69.



- Kahneman, D., & Tversky, A. (1973). On the psychology of prediction. *Psychological Review*, 80, 237–251.
- Kennedy, R. (1999, September 13). Suspect policy. *The New Republic*, pp. 30–35. Retrieved from <http://www.tnr.com/article/suspect-policy>
- Knowles, J., Persico, N., & Todd, P. (2001). Racial bias in motor vehicle searches: Theory and evidence. *Journal of Political Economy*, 109, 203–229.
- Lind, E. A., & Tyler, T. R. (1988). *The social psychology of procedural justice*. New York, NY: Plenum.
- Lyle, P. A. (2001). Racial profiling and the Fourth Amendment: Applying the minority victim perspective to ensure equal protection under the law. *Boston College Third World Journal*, 21(2). Retrieved from <http://lawdigitalcommons.bc.edu/twlj/vol21/iss2/2> or [http://www.bc.edu/bc\\_org/avp/law/lwsch/journals/bctwj/21\\_2/02\\_TXT.htm](http://www.bc.edu/bc_org/avp/law/lwsch/journals/bctwj/21_2/02_TXT.htm)
- Macrae, C. N., Bodenhausen, G. V., Milne, A. B., & Jetten, J. (1994). Out of mind but back in sight: Stereotypes on the rebound. *Journal of Personality and Social Psychology*, 67, 808–817.
- Massoglia, M. (2008, March). Incarceration as exposure: The prison, infectious disease, and other stress-related illnesses. *Journal of Health and Social Behavior*, 49(1), 56–71.
- Newport, F. (1999). *Racial profiling is seen as widespread, particularly among young black men*. Retrieved from Gallup website: <http://www.gallup.com/poll/3421/racial-profiling-seen-widespread-particularly-among-young-black-men.aspx>
- Office of the Attorney General of the State of New York. (1999). *The New York City Police Department's "stop & frisk" practices: A report to the people of the State of New York from the Office of the Attorney General*. Retrieved from <http://www.nysl.nysed.gov/scandoclinks/ocm43937374.htm>
- Pager, D. (2003). The mark of a criminal record. *American Journal of Sociology*, 108(5), 937–975.
- Park, B., & Rothbart, M. (1982). Perception of out-group homogeneity and levels of social categorization: Memory for the subordinate attributes of in-group and out-group members. *Journal of Personality and Social Psychology*, 42, 1051–1068.
- Persico, N. (2002). Racial profiling, fairness, and effectiveness of policing. *The American Economic Review*, 92(5), 1472–1497.
- Petit, B., & Western, B. (2004, April). Mass imprisonment and the life course: Race and class inequality in U.S. incarceration. *American Sociological Review*, 69, 151–169.
- Quinnipiac University. (2006, August). *Voters back profiling in security checks, wiretaps* [News Release]. Retrieved from <http://www.quinnipiac.edu/x1295.xml?ReleaseID=952>
- Sabol, W. J., & West, H. C. (2011, December 15). *Prisoners in 2009 (Revised)* (Prisoners Series, NCJ 231675). Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. Retrieved from <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2232> (See p. 30, Appendix Table 16c; p. 32, Appendix Table 17c.)
- Sagar, H. A., & Schofield, J. W. (1980). Racial and behavioral cues in black and white children's perceptions of ambiguously aggressive acts. *Journal of Personality and Social Psychology*, 39, 590–598.
- Sanga, S. (2009). Reconsidering racial bias in motor vehicle searches: Theory and evidence. *Journal of Political Economy*, 117, 1155–1159.
- The Sentencing Project. (2011). *Felony disenfranchisement laws in the United States*. Retrieved from [http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=15](http://www.sentencingproject.org/detail/publication.cfm?publication_id=15)
- Silke, A. (2001). Chasing ghosts: Offender profiling and terrorism. In D. P. Farrington, C. R. Hollin, & M. McMurrin (Eds.), *Sex and violence: The psychology of crime and risk assessment* (pp. 242–258). London, UK: Routledge.
- Silke, A. (2011). The psychology of counter-terrorism: Critical issues and challenges. In A. Silke (Ed.), *The psychology of counter-terrorism* (pp. 1–18). London, UK: Routledge.
- Skitka, L. J. (2002). Do the means always justify the ends, or do the ends sometimes justify the means? A value protection model of justice reasoning. *Personality and Social Psychology Bulletin*, 28(5), 588–597.
- Tyler, T., & Huo, Y. J. (2002). *Trust in the law: Encouraging public cooperation with the police and courts*. New York: Russell Sage Foundation.
- Tyler, T., & Lind, E. A. (1990). Intrinsic vs. community-based justice models: When does group membership matter? *Journal of Social Issues*, 46(1), 83–94.
- Uggen, C., & Manza, J. (2002, December). Democratic contraction? Political consequences of felon disenfranchisement in the United States. *American Sociological Review*, 67(6), 777–803.
- U.S. Census Bureau. (2010). *State and county QuickFacts*. Retrieved from <http://quickfacts.census.gov/qfd/index.html>
- U.S. Customs Service. (2000, October 19). *Customs releases end-of-year personal search statistics: New data suggest internal reforms are beginning to work* [Press release]. Retrieved from <http://www.cbp.gov/hot-new/pressrel/2000/1019-02.htm>
- U.S. Department of Health and Human Services. (2007). *Results from the 2007 National Survey on Drug Use and Health: National findings*. Retrieved from <http://www.oas.samhsa.gov/nsduh/2k7nsduh/2k7Results.pdf>
- U.S. Department of Labor, Bureau of Labor Statistics. (2009). Labor force characteristics by race and ethnicity, 2008: Table 10. Unemployment rates by sex, race, and Hispanic or Latino ethnicity, 1972–2008 annual averages. Retrieved from [http://www.bls.gov/cps/race\\_ethnicity\\_2008\\_10.htm](http://www.bls.gov/cps/race_ethnicity_2008_10.htm)

- Wakefield, S., & Wildeman, C. (2011). Mass imprisonment and racial disparities in childhood behavioral problems. *Criminology & Public Policy, 10*, 791–792.
- Weaver, V., & Lerman, A. (2010, November). Political consequences of the carceral state. *American Political Science Review, 104*(4), 817–833. Retrieved from <http://www.princeton.edu/~alerman/LermanPolCons>
- Weber, R., & Crocker, J. (1983). Cognitive processes in the revision of stereotypic beliefs. *Journal of Personality and Social Psychology, 45*, 961–977.
- Winerman, L. (2004). Criminal profiling: The reality behind the myth. *Monitor on Psychology, 35*, 66.
- Withrow, B. L. (2006). *Racial profiling: From rhetoric to reason*. Upper Saddle River, NJ: Pearson/Prentice Hall.

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