

## From Anecdotes to Analyses:

### A Look into Racial Profiling in Memphis Traffic Stops

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**profile** (prō'fil), n., v., a set of characteristics or qualities that identify a type or category of person or thing<sup>2</sup>

-Random House Webster's Collegiate Dictionary

#### I. Introduction

In *United States v. Restrepo* (1995), the United States Supreme Court addressed racial profiling on state highways in Tennessee. In this case, a stop for a petty traffic violation resulted in the search of a Mexican-American's vehicle. This search was later found to have violated the citizen's rights under the fourth and fourteenth amendments. Ultimately the court feared that this practice would create an incentive for police to use minor or nonexistent violations for otherwise unlawful searches. The courts feared the potential consequences of racial profiling disguised as traffic stops. The term "profiling" was first adopted in the United States Drug Enforcement Agency (DEA) as a means to identify characteristics of potential drug traffickers during the late 1970s. Critics suggest that the DEA fostered the use of racially biased drug courier profile that specifically targeted minorities.<sup>3</sup> As these characteristics trickled down through state and local agencies, the profiling became distorted. Officers began to target African-American and Hispanic male drivers and used relatively minor traffic violations as a pretext for searches of their person and vehicle. According to David Code, "this is neither surprising nor

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<sup>2</sup> "Profile," Random House Webster's Collegiate Dictionary,

<sup>3</sup> "Driving While Black: Racial Profiling On Our Nation's Highways" American Civil Liberties Union, June, 1999. quoted. in United States General Accounting Office "Racial Profiling." 4.

problematic, but simply reflects the unfortunate fact that the drug problem itself disproportionately burdens the black community.”<sup>4</sup> This practice of racial profiling has had a negative affect the on public opinion of law enforcement. The phenomenon had become so common that it was labeled DWB, meaning “Driving While Black” or “Driving While Brown.” For decades African-Americans and Hispanics have been victims of racial profiling. Their stories have been told in class rooms, barber shops, and family gatherings. This article, “From Anecdotes to Analyses” examines the evolution of racial profiling and it affects on individuals, law enforcement, and society en route to understanding the development of anti-profiling legislation in Memphis, Tennessee.

#### Anecdote

I was traveling in a predominately white area that I was unfamiliar with. I stopped and asked for directions at a gas station and a lady volunteered to lead me back to the interstate to get home. I was pulled over. I sat in the car for literally 20 minutes before the officer even came to my car. The officer walks up to the car and he taps on the hood and fenders. I was driving a late model Lexus with chrome wheels. [The officer] said ‘Nice car. Nice car. Whose car is this?’ I told [the officer] it was my car. At this point the officer asked me to get out of the car, and I did. He and another officer started to search the car. I knew it was a violation of my rights, so I asked if there was anything in that they were looking for. One of the officers told me that they had a call earlier and I “fit the profile.” They didn’t find anything and gave me a ticket for a minor traffic violation. **It was racial profiling at its best.**<sup>5,6</sup>

-Dwan, 29, college administrator

## II. Definition of Racial Profiling

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<sup>4</sup> Cole, David. “The Color of Punishment.” quoted in Charles A. Gallagher, *Rethinking the Color Line: Readings in Race and Ethnicity* (New York NY: McGraw-Hill, 2004), 235 .

<sup>5</sup> emphasis added

<sup>6</sup> Dwan, *Interview with college administrator*, 12 July 2006.

Racial profiling in traffic stops refers to a standard police practice of basing the decision to search a vehicle on how well the motorist fits the description (profile) of a typical law-breaker. A U.S. Department of Justice publication defines racial profiling as “any police-initiated action that relies on 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.”<sup>7</sup> Gross and Barnes suggest that racial profiling occurs when a law enforcement officer questions, stops, arrests, searches, or otherwise investigates a person because the officer believes that members of that person’s racial or ethnic group are more likely than the population at large to commit the sort of crime the officer is investigating.<sup>8</sup> Racial profiling is a result of the discretion that law enforcement has in identifying, characterizing, or pursuing certain individuals over others. According to Hernandez-Murillo and Knowles,

Racial profiling is an example of *statistical discrimination* in which the police are racially unbiased, in the sense that they do not care about race directly, but only as an instrument to predict criminality. However, police might also be racially biased in the sense that they care about race directly...in which case statistical discrimination will lead them to search minorities at a higher rate than if they were unbiased.<sup>9</sup>

Racial profiling, as defined above, violates several Constitutional Amendments and federal statutes. The Fifth and Fourteenth Amendments prohibit discriminatory acts in federal law enforcement and in state and local law enforcement, respectively. The

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<sup>7</sup> Deborah Ramirez, Jack McDevitt, and Amy Farrell, “A Resource Guide On Racial Profiling Data Collection Systems, Promising Practices and Lessons Learned” (Northwestern University, 2000), 3. <[http://www.usdoj.gov:80/cops/pdf/cp\\_resources/pubs\\_prod/police\\_practices\\_handout/Section6.pdf](http://www.usdoj.gov:80/cops/pdf/cp_resources/pubs_prod/police_practices_handout/Section6.pdf)>, (May 2006).

<sup>8</sup> Samuel R. Gross, Katherine Y Barnes. “Road Work: Racial profiling and drug interdiction on the highway” (Michigan Law Review 101.3, 2002), 651-754.

<sup>9</sup> Ruben Hernandez-Murillo and John Knowles. “Racial Profiling or Racist Policing: Bounds Test in Aggregate Data” International *Economic Review*, August 2004, 960.

Civil Rights Act of 1964<sup>10</sup> prohibits discrimination on the basis of race, color, or nation origin by any agency that receives federal financial assistance. The Omnibus Crime Control and Safe Streets Act of 1968<sup>11</sup> prohibit discrimination on the basis of color, national origin, sex, or religion by law enforcement agencies that receive federal financial assistance. But law enforcement agencies that do not receive federal funding were exempt from these Federal Acts until 1994. In 1994, a statue granted the Attorney General the authority to take action against any agency that violates the Constitution or federal law even if the agency did not receive federal funding.<sup>12</sup>

The Fourth Amendment protects citizens against unlawful search and seizure. When a law enforcement officer initiates a traffic stop, the temporary detention of the individual(s) falls within the realm of the Fourth Amendment. In 1996, the Supreme Court held that the stop of an automobile is constitutional under the Fourth Amendment when the officer has probable cause to believe that a traffic violation has occurred.<sup>13</sup> The Court omitted the definition of probable cause and introduced the “probable cause loop-hole” to the Fourth Amendment for law enforcement as it applied to vehicle stops.

#### Anecdote

Some friends and family came to visit me. A few of them are professional athletes, but they were all big, tall, jewelry-wearing brothers. We all went to eat at a restaurant in Cordova. A police officer was also at the restaurant. When we left, the police officer followed us out of the restaurant. We were riding in a brand new BMW 745. Shortly after leaving the restaurant we were pulled over by the same police officer. The police began to search the car and there was a large amount of money in the glove compartment. Another police officer, who happened to be a brother, told the first officer that the man driving was Reggie Howard, a Cordova resident and for the Carolina Panthers. At that point, the White officer looked pretty bad. He let us go pretty quickly.

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<sup>10</sup> 42 U.S.C. 2000d.

<sup>11</sup> 42 U.S.C. 3789d(c).

<sup>12</sup> 42 U.S.C. 14141.

<sup>13</sup> see Whren v. U.S., 116 S. Ct. 1769 (1996).

**It happens so much, it becomes second nature.**<sup>14</sup> I've gotten to a point where it doesn't bother me.<sup>15</sup>

-Gerald, 26, graduate student

### III. How Racial Profiling “Works”

Racial profiling is a systematic process based on an erroneous assumption that any individual member of one race is more likely to commit civil misconduct than any other individual of another race. According to Knowles et al., “(1) police choose search rates by race to maximize overall find rates, (2) the race of motorists is related to their probability of carrying contraband at a given search probability.”<sup>16</sup> Many law enforcement agencies act in compliance with this premise. In the case of racial profiling, the assumption is that African-Americans and Hispanics are more likely to be involved in drug trafficking than Whites. This assumption is erroneous. A more valid assumption is that gang members are more likely to be involved in drug trafficking than ordinary citizens. According to the 2006 National Drug Threat Assessment, midlevel and retail-level distribution of drugs in most cases is controlled primarily by organized gangs.<sup>17</sup>

Moving violations (speeding, tailgating, failure to signal, etc.) and vehicle equipment violations (broken headlight/taillight, expired license plate tags, etc.) are the most common pretexts for vehicle stops. In most cases these stops result in a warning or citation, but some serve as the pretext for a search. In the opinion of the court for *Whren*

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<sup>14</sup> emphasis added

<sup>15</sup> Gerald, *Interview with graduate student*, 12 July 2006.

<sup>16</sup>J. Knowles, N. Perisco, and P. Todd. “Racial Bias in Motor Vehicle Searches: Theory and Evidence,” *Journal of Political Economy* 109 (2001), pp. 203-29.

<sup>17</sup> National Drug Threat Assessment 2006, National Drug Intelligence Center (NDIC) January 2006. <<http://www.dea.gov/concern/18862/18862p.pdf>>, (26 July 2006), pp. 12-13.

*v. United States*, Supreme Court Justice Scalia describes a fundamental problem in racial profiling and traffic stops. Justice Scalia suggests the following:

The use of automobiles is so heavily and minutely regulated that total compliance with traffic and safety rules is nearly impossible, a police officer will almost invariably be able to catch any given motorist in a technical violation. This creates the temptation to use traffic stops as a means of investigating other law violations, as to which no probable cause or even articulable suspicion exists.”<sup>18</sup>

Richard Cohen of the *Washington Post* argues that “when blacks or Hispanics are disproportionately stopped, it defies logic to claim that it’s for any reason other than race or ethnicity.”<sup>19</sup> Even a flawless driver can be lawfully stopped and questioned. If a law enforcement officer has a reasonable suspicion that a driver is engaged in criminal activity, he/she can initiate a “Terry Stop.”<sup>20</sup> A Terry Stop is a limited investigation into a specific activity and usually includes nothing more than a brief detainment and a weapons frisk. Terry Stops, like moving and equipment violations, can also serve as the pretext for a search.

#### Anecdote

I had a couple of young people with me and I was coming out of the Peabody garage after eating downtown. I made a left out of the garage and when I came to the stop sign, I turned left again. Before I got to the next light, I was being pulled over. This day is a Saturday, so I have on my sweat suit and my hat cocked to the side. I was dressed like the ‘prototypical hood dude.’ He took my license, registration, etc. and went back to his patrol car. When he returns, he has a ticket. I know that he was doing this because of the way I was dressed. He gave me a ticket for not coming to a complete stop at a stop sign.

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<sup>18</sup> Antonin Scalia, “Court Opinion on *Whren v. United States*,” Supreme Court of the United States, No. 95-5841, 10 June 1996, <<http://www.law.cornell.edu/supct/html/95-5841.ZO.html>>, (25 July 2006).

<sup>19</sup> Cohen, Richard. “Targets Behind the Wheel.” *Washington Post* (March 4, 1999): A21.

<sup>20</sup> Note: In *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the Supreme Court ruled that the Fourth Amendment to the U.S. Constitution permits a law enforcement officer to stop, detain, and frisk persons who are suspected of criminal activity without first obtaining their consent, even though the officer may lack a warrant to conduct a search or probable cause to make an arrest. <[www.legal-definitions.com](http://www.legal-definitions.com)>.

He could get anyone he wanted for doing what I did. But in this case it was me and three of my young people, so everyone in the car was Black and young.<sup>21</sup>

-Earl, 27, Memphis theologian

#### **IV. Direct Results of Racial Profiling**

Racial profiling is the manifestation of a larger historical conflict between the police, their policies, and the disproportionate effects these policies have on people of color. According to Meyer and Grant, “decisions to selectively enforce or not enforce the law with respect to certain categories of people can not only have life-changing consequences for the individuals involved, but can harm public perceptions of the legitimacy and fairness of the criminal justice system as well.”<sup>22</sup> With unlimited discretion, law enforcement officers could directly control the demographics of America’s prisons. Checks on police discretion include the court system, but accused individuals often lack the evidence needed to convince the judge that they were unconstitutionally profiled.

The entry point for the criminal justice system is typically contact with the police. Racial profiling in vehicle stops is more about who is getting stopped and searched not necessarily who is committing the crime. Ultimately it is an issue of discrimination. Discrimination can be defined in a social context as “actions or practices carried out by members of dominant racial or ethnic groups that have a differential and negative impact on members of subordinate racial and ethnic groups.”<sup>23</sup> The ideal sociological

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<sup>21</sup> Earl, *Interview with Memphis theologian*, 12 July 2006.

<sup>22</sup> Meyer and Grant, 261.

<sup>23</sup> Joe R. Feagin. “The Continuing Significance of Race” *American Sociological Review*, February 1991, 1-2, quoted in Charles A. Gallagher, *Rethinking the Color Line: Readings in Race and Ethnicity* (New York NY: McGraw-Hill, 2004), 161.

assumption is that a given crime is proportionally committed across all racial demographic and that the crime is not specific or limited to any one group. By using a preconceived profile, police can choose to target or pursue one specific race that they believe to be perpetrators of a specific crime. But, when a specific group is targeted, members of that group are more likely to be found in violation of the law. Anthropologist, Vincent N. Parrillo argues that “an emphasis on minority-group would naturally result in minority arrests, but evidence shows that 85 percent of drug users are white”.<sup>24</sup> As of 1996, one of every 180 White men in the U.S. was incarcerated, but the rate of incarceration for African-American men was one in 20 (Human Rights Watch, 2000).<sup>25</sup> The US Department of Justice projected that 28.5 percent of African-American men will go to prison in their lifetimes, as compared to 4.4 percent of White men (Bureau of Justice Statistics, 1997).<sup>26</sup>

#### Anecdote

I was leaving the movie theatre in Bartlett at around 11:50 pm, headed towards my home in Cordova. There were five of us in my car. We were all black males, and we were all between the ages 16 and 19. I was doing the speed limit, so when I saw a cop, I didn't expect to get pulled over. As soon as I passed the cop, he pulled on to the street and immediately pulled us over. As the cop approached the car I told everybody to be still. My dad told me never to be a fool. I saw the Rodney King tape, I knew what cops could do. The cop kept shining his flashlight in everyone's faces. He kept saying “are there any drugs or firearms in the car? Do you have drugs? Are there any firearms?” He said that I was speeding but I know I wasn't. He let me go with a warning. **I guess that he stopped me because it was five Black guys in a nice car in Cordova at 11:50 at night.**<sup>27 28</sup>

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<sup>24</sup> Charles A. Gallagher, *Rethinking the Color Line: Readings in Race and Ethnicity* (New York NY: McGraw-Hill, 2004), 97.

<sup>25</sup> Jack Glaser. “The Efficacy and Effect of Racial Profiling: A mathematical Model Approach. *Goldman School of Public Policy*, University of California, Berkley, 12 June 2003, <[www.econ.berkeley.edu/users/webfac/koszegi/e218\\_s04/glaser.pdf](http://www.econ.berkeley.edu/users/webfac/koszegi/e218_s04/glaser.pdf)> (14 June 2006), 2.

<sup>26</sup> John Glaser. 3.

<sup>27</sup> Emphasis added

<sup>28</sup> Nick, *Interview with undergraduate student*, 11 July 2006.

-Nick, 21, undergraduate student

## **V. Racial Profiling and Drug Trafficking**

Racial profiling in vehicle stops stem from the sale, purchasing, and transportation of illegal drugs. The United States Department of Justice created Operation Pipeline in 1984. Pipeline, which operates under the Drug Enforcement Agency, is a nationwide highway interdiction program that focuses on drug trafficking through private motor vehicles. Pipeline coordinates drug task forces in local, state, and federal law enforcement agencies. Under the direction of the United States Drug Enforcement Agency (DEA), the El Paso Intelligence Center (EPIC) conducts annual classes at local law enforcement agencies across the nation. According to the United States Drug (DEA), “training classes focus on: (1) the law, policy, and ethics governing highway stops and drug prosecution; and (2) drug trafficking trends and key characteristics, or indicators, that are shared by drug traffickers.”<sup>29</sup> Operation Pipeline relies on training law enforcement officers to use a set of common characteristics to identify potential drug traffickers. This collection of characteristics creates a profile. According to RAND Director, Jack Riley, Operation Pipeline taught law enforcement to look for characteristics including “nervousness, an abundance of cash, lack of luggage for long trips, and inconsistent passenger and driver stories about such things as destination, purpose for the trip, and the names of fellow passengers.”<sup>30</sup> It is important to note that

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<sup>29</sup> Operation Pipeline and Convoy

<sup>30</sup> Jack Riley, “Racial Profiling: Lessons from the Drug War,”  
<<http://www.rand.org/publications/randreview/issues/rr.08.02/profiling.html>>.

creating a profile violates no laws or statutes, and is common practice in all levels of law enforcement.

One problem with the DEA's profile was the importance of race. The United States Drug Enforcement Agency rejects profiling by race or ethnic background but can and does use both race and ethnicity as factors in their profile. According to Riley, "[r]ace indirectly entered the equation in that DEA characterized certain retail and wholesale markets as controlled by racial and ethnic groups, such as Jamaicans, Haitians, Colombians, Nigerians, and Puerto Ricans.<sup>31</sup> Even though the DEA's profile was not race-based, it was clearly race-weighted.

Racial profiling did not start with the inauguration of President Nixon's war on drugs in the 1971. African-American and Hispanics had been profiled long before Nixon decided to take action against the illegal drug trade in the United States. Racial profiling merely provided a name to an unconstitutional practice that had been in place for decades prior to Nixon, decades prior to the war on drugs. Before the term "racial profiling" was coined, African-Americans and Hispanics complained about police harassment. These complaints often came from large metropolitan cities with strong racial divides--cities like Detroit, Birmingham, and Memphis. African-Americans in these cities claimed that they were being unfairly targeted, unlawfully searched, and scrutinized by law enforcement officers. Citizens called for a change in attitude. A 1978 newspaper article entitled *Can Attitudes Change?* suggested that "Memphis police are a long way from meeting the acceptance of African-American citizens. That is largely because old African-American attitudes perceive that the man in blue will fear of a past era. [P]olice

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<sup>31</sup> Jack Riley.

relations with citizens must be freed from any taint of discrimination.<sup>32</sup> But attitudes did not change, the methods changed.

## **VII. Societal Problems with Racial Profiling**

Racial profiling is a form of institutional racism. According to Black Nationalist, Stokely Carmichael, institutional racism is “the collective failure of an organization to provide an appropriate and professional service to people because of their color, culture or ethnic origin.”<sup>33</sup> In the case of racial profiling, the organization is law enforcement and the people are African-Americans and Hispanics. The Department of Justice’s *Fact Sheet: Racial Profiling* suggests that “racial profiling sends the dehumanizing message to our citizens that they are judged by the color of their skin and harms the criminal justice system by eviscerating the trust that is necessary if law enforcement is to effectively protect our communities.”<sup>34</sup> The Department of Justice suggests that America has a moral and constitutional obligation to prohibit profiling. The main problem with racial profiling practices is that they promote negative stereotypes. These stereotypes are detrimental in that they limit efforts to maintain societal justice. Attorney General John Ashcroft suggested that racial profiling created a “lose-lose” situation. Racial profiling destroys the potential for underlying trust between law enforcement and society. A trust that Ashcroft says “should support the administration of justice as a societal objective, not just as a law enforcement objective.”<sup>35</sup>

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<sup>32</sup> “Can Attitudes Change?” *Commercial Appeal*. 20 January 78.

<sup>33</sup> Richard W. Race, Analysing ethnic education policy-making in England and Wales (PDF), *Sheffield Online Papers in Social Research*, University of Sheffield, p.12. <[http://www.shef.ac.uk/socst/Shop/race\\_article.pdf](http://www.shef.ac.uk/socst/Shop/race_article.pdf)>, (27 July 2006).

<sup>34</sup> “Fact Sheet: Racial Profiling,” United States Department of Justice, US DoJ Online, 17 June 2003, <[http://www.usdoj.gov/opa/pr/2003/June/racial\\_profiling\\_fact\\_sheet.pdf](http://www.usdoj.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf)>, (16 June 2006), 1.

<sup>35</sup> “Fact Sheet: Racial Profiling,” 1.

Racial profiling not only creates a misperception of minorities, it also creates a misconception of law enforcement. The Department of Justice suggests that “the overwhelming majority of law enforcement officers perform their jobs with dedication, fairness and honor, but any instance of racial profiling by a few damages our criminal justice system.”<sup>36</sup> The vast majority of law enforcement officers are hard-working public servants who protect and serve in the face of danger. A problem arises when a member or members of law enforcement misuse their power. Unrelated incidents augment themselves into the perception that law enforcement practices are biased or unfair. This creates a conflict between law enforcement and those perceived to be targeted by law enforcement. Glaser suggests the following:

The inclination by police to use race as a factor in determining probable cause may explain fully why 42 percent of African Americans (compared to 6 percent of European Americans), and 72 percent of African American men aged 18-34, in a national Gallup Poll reported having been stopped by police on the basis of skin color [Newport, 1999]. Sixty-nine percent of the African American who reported having been stopped on the basis of skin color reported that it had happened to them three times or more.<sup>37</sup>

Not only did a large percent of African-Americans believe that they have been profiled but an overwhelming majority of African-American males (age 18-34) believed that they have been profiled. The Department of Justice suggests that “racial profiling is discrimination.”<sup>38</sup> Racial profiling has had a direct affect on the behavior of targeted groups. According to a Congressional report, “because traffic stops can happen

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<sup>36</sup> “Fact Sheet: Racial Profiling,” 1.

<sup>37</sup> Glaser, 3-4.

<sup>38</sup> “Fact Sheet: Racial Profiling,” 1.

anywhere and anytime, millions of African-Americans and Hispanics alter their driving habits in ways that would never occur to most white Americans.”<sup>39</sup>

Racial profiling creates a vicious cycle in which discrimination and scrutiny perpetuate each other. Racial profiling is based on the fallacious premise that drug offenses, especially trafficking, are committed by minorities (usually African-Americans and Hispanics) in higher rates than Whites. If this premise is followed, law enforcement would target African-Americans and Hispanics as drug offenders while relaxing their pursuit of Whites. Increased focus on African-Americans and Hispanics would inevitably lead law enforcement to find more contraband. This leads to an increase in the arrest, prosecution, conviction, and imprisonment of African-Americans and Hispanics. This phenomenon provides the justification for profiles that target African-American and Hispanic drivers. Whites, on the other hand, benefit from decreased police attention since they are seen as less likely to commit drug offenses. The justification is the result and the result ratifies the justification.

The vicious cycle also applies to the relationships between law enforcement and minorities. The practice of racial profiling creates distrust between law enforcement and those targeted by law enforcement. African-Americans in Memphis are often seen as uncooperative and untrusting when it comes to interactions with law enforcement. Logic would suggest that law-abiding African-Americans would have no reason to fear or distrust police. History and first-hand experiences have told African-Americans

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<sup>39</sup> The Library of Congress. “Traffic Stops Statistics Study Act of 2000.” House Report 106-517. 106<sup>th</sup> Congress 2d Session. 13 March 2000. p 3.< <http://thomas.loc.gov/cgi-bin/query/D?c106:2:./temp/~c106AH5ey7::>> (20 July 2006).

otherwise. African-Americans in the 1930s and 1940s watched as Boss Crump<sup>40</sup> used law enforcement to manipulate the justice system. An article from the *Press-Scimitar* addressed this corruption suggesting that “the Memphis police commissioner did not deny that two Memphis Negroes, Dr. J.D. Martin, a druggist, and Elmer Atkinson, a pool room operator, had been under police surveillance or harassment...they complained that harassment resulted from political activities that displeased the Memphis political boss, Ed Crump.”<sup>41</sup> African-Americans in the 1950s and 1960s watched the police beat (or were beaten), hosed, and attacked by the police developed a disdain for law enforcement. According to an article in the *Press-Scimitar*, “civil disobedience drives of the 1950s and 1960s resulted in many young people hating the police.”<sup>42</sup> African-Americans who suffered from harassment, prejudice, and profiling as a result of the “war on drugs,” also developed a contempt for law enforcement. Conversely, with every cycle, politicians and law enforcement officers become weary of African-Americans.

### **VIII. Why Memphis has been Targeted**

According to Department of Justice “the distribution and abuse of drugs threaten the security of Tennessee residents. Drug trafficking organizations and criminal groups transport large quantities of drugs through Tennessee en route to other states.”<sup>43</sup> Memphis is a crossroads for drug trafficking. The United States Department of Justice

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<sup>40</sup> Note: Edward Hull Crump, known as Boss Crump, was a Memphis politician and the head of Memphis’ most notorious political machine. Boss Crump used manipulation, scare tactics, and brute force to influence African-American population to vote for his candidates. As mayor of Memphis, Crump often used the police as his muscle. Boss Crump’s influence in Memphis would last from the early 1900s to the late 1940s.

<sup>41</sup> John T. Moutoux, “Negro Probe Report: What J-Man Found,” *Press-Scimitar*, 9 January 1941.

<sup>42</sup> Kay Pittman Black, “Mrs. Smith Says Police Viewed With ‘Distrust—Maybe Hate,’” *Press-Scimitar*, 8 April 1975.

<sup>43</sup> Tennessee Drug Assessment.

identified Memphis as one of Tennessee's centers for drug trafficking because of its location and its high numbers of kilos of powdered cocaine and distribution centers.<sup>44</sup> Memphis is located in the south center part of the United States and rests on The Mississippi River. The centrality of Memphis is its primary attractiveness for drug traffickers. According to the United States Department of Justice, cocaine and heroin are transported through Tennessee in private vehicles while marijuana is transported in commercial vehicles.<sup>45</sup> Two of the United States' largest interstates pass through Memphis. Interstate 40 extends from North Carolina through Memphis and out to California and interstate 55 extends from Louisiana through Illinois. Smaller organizations like the West Tennessee Drug Task Force<sup>46</sup> focus on limiting trafficking, on I-40 and I-55. According to the Department of Justice,

Mexican criminal groups and African American street gangs both based in Tennessee are the primary transporters and wholesale distributors of powdered cocaine. African American street gangs and local independent dealers convert most of the powdered cocaine in Tennessee to crack cocaine locally and are the primary retail distributors.<sup>47</sup>

Memphis criminal defense attorney Ryan Feeney suggests that "if you are Hispanic or Black and traveling on I-40, your chances of being stopped go up tremendously."<sup>48</sup> Due to recent focus on border patrol and the increased drug trafficking through Mexico, Hispanic drivers have slightly higher chance of being stopped than Blacks.

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<sup>44</sup> Tennessee 2006. U.S. Drug Enforcement Administration. June 2006.

<<http://www.usdoj.gov/dea/pubs/states/tennessee.html>>, (15 June 2006), 12.

<sup>45</sup> Tennessee Drug Assessment. United States Department of Justice. May 2002, <<http://www.usdoj.gov/ndic/pubs1/1017/1017p.pdf>>. (15 June 2006).

<sup>46</sup> The West Tennessee Task Force is comprised of the 25<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup> Judicial District Drug Task Forces under the direction of David McGriff. This task force monitors trafficking in Shelby, Tipton, Fayette, Crockett, Gibson, Haywood, Dyer, McNairy, Lake, Lauderdale and Hardeman Counties. (see <http://www.tnnoa.org/dtfdirectory.htm>).

<sup>47</sup> Tennessee Drug Assessment. United States Department of Justice. May 2002, <<http://www.usdoj.gov/ndic/pubs1/1017/1017p.pdf>>, 11.

<sup>48</sup> Ryan Feeney, *Interview with criminal defense attorney*, 26 July 2006.

## **IX. Public Chapter 910 and Anti-Profiling Legislation in Tennessee**

Pressure from communities of color has led to the development of national awareness resulting in profiling investigations and anti-profiling legislation. In Tennessee, the American Civil Liberties Union (ACLU) helped apply the pressure. Launched in January 2000, the ACLU of Tennessee's "Campaign Against Racial Profiling," a program designed to spread awareness and encourage anti-profiling legislation. The ACLU sponsored town hall meetings; provided training for law enforcement agencies; and lobbied for anti-profiling legislation. The ACLU's campaign stressed the need for data collection on racial profiling. Hedy Weinberg, the Executive Director of the ACLU of Tennessee, reported that "data collection is critical for discerning any patterned practice of racial profiling by law enforcement. Data collection takes the racial profiling debate beyond accusations and denials by enabling systematic monitoring of Tennessee highways."<sup>49</sup>

On June 6, 2000 The Tennessee General Assembly passed Public Acts Chapter No. 910. Public Chapter 910 created a one-year pilot project in which Tennessee law enforcement agencies voluntarily collected vehicle stop data. The program was designed to gather empirical data on vehicle stops. The pilot program ran from January 1, 2001 until December 31, 2001. Public Chapter 910 required participating law enforcement officers to record the following information on all of their vehicle stops:

- (1) The number of persons stopped for traffic violations;
- (2) Characteristics or race, color, ethnicity, gender and age of such persons;
- (3) The nature of the alleged traffic violation that resulted in the stop;
- (4) Whether a warrant or citation

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<sup>49</sup> "ACLU of Tennessee's 'Campaign Against Racial Profiling' Achieves Another Success With Passage of Traffic Stops Bill," American Civil Liberties Union Online, 12 May 2005, <<http://www.aclu.org/racialjustice/racialprofiling/15908prs20050512.html>> (12 June 2006).

was issued, an arrest made or a search conducted as a result of the stop; and (5) If a search was conducted, the type of search and the legal basis for that search, and whether contraband was discovered and property was seized.<sup>50</sup>

The Memphis Police Department was one of the 44 Tennessee Police Departments that volunteered for this pilot program and recorded 162,773 of the 450,366 vehicle stops during the twelve-month pilot program.<sup>51</sup> The Memphis Police Department stopped more vehicles than any other department and represented 36.4 percent of the state's total stops.

At the conclusion of the pilot program, the Comptroller of the Treasury, John G. Morgan analyzed the data gathered. Morgan's report provided empirical evidence for accusations and suspicions of racial profiling in Tennessee. The report suggested that law enforcement officers stopped drivers in proportions that differed from their racial representation in the overall population.<sup>52</sup> In the state of Tennessee, Whites represented 63.1 percent of the population but only accounted for 55.3 percent of those stopped.<sup>53</sup> In contrast, African-Americans represented 31.0 percent of the state population but accounted for 39.1 percent of all stops.<sup>54</sup> In 2000, the Memphis licensed driving population was comprised of 49.3 percent African Americans, yet African-Americans made up 63.7 percent of all of Memphis' traffic stops.<sup>55</sup> Whites, on the other hand, made up 38.4 percent of the Memphis population and were 31.6 percent of all Memphis traffic stops.<sup>56</sup>

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<sup>50</sup> "Public Acts 2000 Chapter No. 910/Senate Bill No. 2415"  
<<http://www.state.tn.us/sos/acts/101/pub/pc910.pdf>>, 1-2.

<sup>51</sup> John Morgan. "Vehicle Stops and Race: A Study and Report in Response to Public Chapter 910 of 2000." <<http://www.comptroller.state.tn.us/orea/reports/racialprofiling.pdf>>, (14 June 2006), 39.

<sup>52</sup> John Morgan, 13.

<sup>53</sup> Note: 2000 census data consists of ages 18 and over.

<sup>54</sup> John Morgan, 45.

<sup>55</sup> John Morgan, 45.

<sup>56</sup> John Morgan, 45.

The evidence gathered by Public Chapter 910 also suggested that officers' reasons for vehicle stops vary by race. As part of the pilot program, officers recorded the reasons for initiating traffic stops. The three possible options were criminal suspicion, moving violations, and vehicle equipment violations. According to Morgan, a higher percentage of officers reported criminal suspicions as the basis for stopping Hispanics and African-Americans.<sup>57</sup> Regardless of the reason for the stop, officers searched Hispanic and African-American drivers, at the highest percentage of all groups. In Tennessee, officers conducted searches in approximately 7 percent of all traffic stops. But statewide, searches were conducted in 8.1 percent of African-American stops and 16.8 percent of Hispanic stops.<sup>58</sup> The Memphis Police Department conducted searches in approximately 4 percent of all of their traffic stops. African-Americans and Hispanics were searched 4.8 percent and 9.3 percent respectively.<sup>59</sup>

Tennessee Public Chapter 910 revealed discrepancies in the rates and reasons for searching vehicles. Morgan suggested that the differences in the reasons officers reported for stopping vehicles did not explain all of the racial variations in the rates of search. African-Americans were searched 16 percent more than the statewide average and Hispanics were searched 14 percent more.<sup>60</sup> Officers searched African-Americans and Hispanics more when the stop was for criminal reasons, not minor traffic citations. Officers searched African-Americans and Hispanics in the highest rates.

Critics of the report suggest that differences in the disposition of stops can verifiably affect racial variation in stop percentages. According to Morgan, this is not

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<sup>57</sup> John Morgan, 13-14.

<sup>58</sup> John Morgan, 15.

<sup>59</sup> John Morgan, 63.

<sup>60</sup> John Morgan, 19.

true. Morgan concluded that even though members of all races had the potential to be stopped and searched by the police, Hispanics and African-Americans were searched more in all studied rates. Of the stops in which officers gave verbal warnings, citations (without arrests), and written warnings, Hispanics and African-Americans were searched in the highest rates. This information suggests that officers were “fishing” for contraband by profiling minorities. While some critics may suggest that “fishing” is often based on the instinct of a law enforcement officer, empirical data suggests the opposite. According to Morgan, evidence was seized more in the search of Whites (20.1%) automobiles than in Blacks (19.2) and Hispanics (10.3).<sup>61</sup>

In his conclusion, Morgan warns of the role of race in the practice of search and seizure and suggests that “[t]he General Assembly may wish to require policies and procedures specifically related to profiling in all state and local law enforcement agencies.”<sup>62</sup> In light of this report and pressures from the community, Tennessee Senate Bill 2214, which is consistent with the pilot program, was drafted. The bill requires the Tennessee highway patrol to participate in vehicle stop data collection. Senate Bill 2214, drafted by Senator Doug Jackson (Jackson County) and Representative Henri Brooks (Shelby County), passed in large margins in the Tennessee House of Representatives and the Tennessee Senate. Senate Bill 2214 requires Tennessee Highway Patrol to gather information on all vehicle stops from July 1, 2006 through March 1, 2007. The data collection guidelines mimic those of the pilot program, Public Chapter 910. The report filed by the Comptroller of the Treasury suggested that racial profiling was possibly a

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<sup>61</sup> John Morgan, 19.

<sup>62</sup> John Morgan, 20.

practice, but it fell well short of making a full assertion. This report was one of the key elements in the development of Bill 2214, but the bill did not pass without controversy.

## **X. Critics of Anti-Profilng Legislation**

Not everyone supports anti-profilng legislation like Public Chapter 910 and Senate Bill 2214. Critics suggest that the uproar surrounding racial profilng could have a negative affect on law enforcement by making police officers hesitant to pull minorities over even when they have good reason to suspect wrongdoing. Some critics suggest that Public Chapter 910 and Senate Bill 2214 limit the efficiency of police officers in vehicle stops. They argue that making law enforcement officers record the details of their traffic stops is time-consuming and distracts officers from their primary goal—to protect and serve. Some of the most vocal critics of this legislation are members of law enforcement. Some officers are inconvenienced by these data collection programs. Tequila Sane, a veteran officer in the Memphis Police Department, participated in the Public Chapter 910 program. Officer Sane was against the Public Chapter 910. According to Officer Sane, recording data was “very time consuming. The justification for every traffic stop had to be recorded. A routine traffic stop should only last a few minutes. In some cases [recording data] doubled the time of the traffic stop.”<sup>63</sup> Supporters for anti-profilng legislation suggest that data collection is the best way to gather empirical evidence and that the benefits severely outweigh the inconvenience to officers.<sup>64</sup>

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<sup>63</sup> Tequila Sane, *Interview with Officer*, 13 June 2006.

<sup>64</sup> Ryan Feeney, *Interview*.

Some critics of anti-profiling legislation argue that racial profiling is not racist or discrimination. In an article for the *Wall Street Journal*, sociologist Toby Jackson suggests the following:

[I]f drug traffickers are disproportionately black or Hispanic, then police don't need to be racist to stop many minority motorists; they simply have to be efficient in targeting potential drug traffickers. It is an unfortunate fact that much higher proportions of black children than white grow up at a social disadvantage and are more tempted to break society's rules. [Minorities are overrepresented in the prisons]. Why should they not be equally overrepresented in drug trafficking.<sup>65</sup>

In his assertion Jackson makes several false assumptions and ignores contrary evidence. Minorities, specifically Blacks and Hispanics, are overrepresented in America's prisons, but it is not necessarily because they commit more crimes than whites. There is no statistical evidence that suggests African-Americans and Hispanics commit more crimes than whites. Jackson overlooks several facets of the criminal justice system that affect prison demographics. Firstly, by targeting African-Americans and Hispanics, law enforcement officers inevitably increase the probability of a minority arrest. African-Americans and Hispanics are more likely to be represented by court-appointed legal counsel than Whites. According to a 2000 study by the United States Department of Justice, "77 percent of Blacks and 73 percent of Hispanics had publicly-financed attorneys compared to 69 percent of Whites."<sup>66</sup> Court-appointed counsels are notoriously overburdened with numerous cases and cannot devote as much time to individual cases as independent counsels. The United States Department of Justice also reported that "those represented by publicly-financed attorneys were incarcerated at a higher rate than those

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<sup>65</sup> Toby, Jackson, " 'Racial Profiling' Doesn't Prove Cops Are Racist." *Wall Street Journal* (March 11,1999).

<sup>66</sup> Harlow, Caroline W. "Special Report: Defense Counsel in Criminal Cases," Bureau of Justice Statistics, November 2000, <[www.ojp.usdoj.gov/bjs/pub/pdf/dccc.pdf](http://www.ojp.usdoj.gov/bjs/pub/pdf/dccc.pdf)>, (2 July 2006), 6.

defendants who paid for their own legal representation 71 percent to 54 percent.”<sup>67</sup> At trial, minorities rarely face a jury of their “peers.” Even in cities with large African-American populations like Memphis, very few juries are composed of African-Americans or Hispanics. As stated earlier, the introduction to the legal system is contact with law enforcement officers. Targeting minorities is discrimination and racial profiling targets minorities.

In addition to Jackson, Some critics also suggest that racial profiling is not wrong. Patrol Officer Sane of the Memphis Police Department argued in support of the practice. According to Officer Sane, “racial profiling does occur. It’s an invaluable tool in law enforcement. Any good officer racially profiles.”<sup>68</sup> Officer Sane, an African-American, suggested that he would consider a White person driving in a Black neighborhood suspicious. When asked about a reverse situation, a Black person driving in a White neighborhood, the officer said that he would see no reason for suspicion. Officer Sane made the same mistake many Americans make in their view of racial profiling—it is okay, as long as it is not me. Unfortunately, this attitude leads to laws and practices that isolate individuals and specific groups. According to sociologists Chesler et al., “almost all interpretation and typologies of attitudes and identities focus on their view of ‘the other’ rather than on views of oneself or one’s own racial group.”<sup>69</sup> The same argument has been made earlier in American history and the same arguments are being made today. During World War II, more than 100,000 people of Japanese descent living the Western

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<sup>67</sup> Caroline W. Harlow “Defense Counsel in Criminal Cases.” 6.

<sup>68</sup> Sane interview

<sup>69</sup> Mark A. Chesler et al., “Blinded by Whiteness: The Development of White College Students’ Racial Awareness,” quoted in Ashley Doane and Eduardo Bonilla-Silva, ed., *White Out: The Continuing Significance of Racism*, (New York: Routledge, 2003), 217.

United States were placed in detention centers.<sup>70</sup> In hindsight, America realized the injustice of government practices and legislation that target specific races. Recently America has faced similar circumstances including anti-terrorism practices and legislation that target Arab-Americans. Legislation and these practices are conditional. Targeted minorities argue that there was no anti-terrorism legislation targeting middle-aged White men after the 1995 Oklahoma City Bombing and there was no narcotic profiles targeting the White men after the indictment of White drug traffickers like George Jung.<sup>71</sup> These men were seen as the exception not the norm. The reverse is true about the racial profiling of minorities; they are seen as the rule not the exception.

## **XI. Conclusion**

Racial profiling must be eliminated. Race must be eliminated as a sole factor in routine or spontaneous law enforcement. In his March 2001 Address to Congress, President George W. Bush discussed racial profiling. President Bush suggested the following

As government promotes compassion, it also must promote justice. Too many of our citizens have cause to doubt our nation's justice when the law points a finger of suspicion at groups, instead of individuals. All of our citizens are created equal and must be treated equally. [Racial Profiling] is wrong and we will end it in America. In so doing, we will not hinder the work of our nation's brave police officers.<sup>72</sup>

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<sup>70</sup> "The Use of Profiling in the Fight Against Terrorism," *Issues & Controversies*, 9 September 2005, <[www.facts.com](http://www.facts.com)>, (7 March 2006).

<sup>71</sup> George Jung was an infamous narcotics trafficker in the 1960s and 1970s and the inspiration for the movie *Blow* (Paramount 2001). He was initially involved in the cross-country transportation of marijuana but gained notoriety with his involvement in cocaine trafficking and distribution. In his life Jung made over a hundred million dollars transporting narcotics in and through the United States. When Jung was finally captured, he became a FBI informant. See PBS Frontline Drug Wars Interview "George Jung" <<http://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/jung.html>>.

<sup>72</sup> "George W. Bush's Budget Address to Congress: Transcript," *Facts on File World News Digest*, 1 March 2001, <<http://www.facts.com/facts-db-ref-modules.htm#digest>>, (7 March 2006).

Ending racial profiling is a long process. More information must be gathered before an all-encompassing solution can be generated. Law enforcement agencies, like those mentioned in this paper, are on the right track by making their officers record the sex, race, and age of the individuals stopped. Many states, like Tennessee have taken action against profiling. For example, California, Colorado, Massachusetts, Minnesota, and Missouri have developed training for officers to prevent profiling; Rhode Island and Minnesota have developed advisory committees; and Minnesota, Missouri, North Carolina, and Rhode Island have consulted outside experts to analyze data.<sup>73</sup> Once data has been collected the practice of racial profiling becomes tangible to authorities and critics. This is evident in the success of Tennessee's Public Chapter 910. Collected data can be analyzed and law enforcement agencies and their officers will be forced to deal with empirical evidence. This evidence becomes the foundation for anti-profiling legislation like Tennessee's Senate Bill 2214. The resulting legislation holds law enforcement agencies and their officers accountable for racial profiling by providing empirical evidence of racial profiling and discriminatory actions. Once Tennessee made the decision to investigate racial profiling, the jump from a pilot program to a law occurred quickly. Citizens complained of racial profiling and in 2000 the Tennessee legislature began the data collection Chapter 910. Using data collected by Chapter 910, the Tennessee Comptroller of the Treasury filed a report in May 2002. This analysis led to undeniable empirical evidence and ultimately, to the anti-profiling legislation Tennessee Senate Bill 2214 in June 2005.

Stereotyping races as being more likely to commit a crime is wrong and has to be prohibited. "Being black or Hispanic is not probable cause," writes Richard Cohen in a

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<sup>73</sup> John Morgan, 7.

column for the *Washington Post* (March 4, 1999). Many scholars have suggested that overall discrepancies in race serve as a justification for using race in the enforcement of laws. These conclusions often ignore the fact that racial discrepancies often exist because of unfair practices like profiling (including racial and socio/economic profiling). Lawmakers and law enforcement agencies on all levels must end their reliance on stereotypes. “[R]acial profiling is a problem that all of us can have a role in solving,” says Ellen Scrivner, deputy director at the U.S. Department of Justice Community Oriented Policing Services Office. “Racial Profiling can’t be solved in a vacuum.”<sup>74</sup> Racial profiling has been evident anecdotally for decades, but the addition of analytical evidence provides momentum for change.

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<sup>74</sup> Eileen O’Connor, “Psychology responds to racial profiling,” *Monitor on Psychology*, Volume 32, No. 5, May 2001, < <http://www.apa.org/monitor/may01/raceprofile.html>> (25 July 2006).

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