

CLOSE UP IN CLASS: MONTHLY POLICY DISCUSSION

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RACIAL PROFILING AND CRIMINAL JUSTICE

CENTRAL QUESTION

Should Congress pass legislation to end the use of racial profiling in law enforcement, except in matters pertaining to national security?

BACKGROUND

In the year since Michael Brown, an unarmed black teenager accused of shoplifting and assault, was shot and killed by Darren Wilson, a white police officer in Ferguson, Missouri,¹ issues relating to race have moved to the forefront of American political and social debates.² The issues raised by the Black Lives Matter movement are wide-ranging; issues of economic and educational disparity among races and ethnicities, disparities in prosecution and incarceration rates, and the portrayal of racial minorities, particularly African Americans, in popular culture and media have all received significant attention.³ However, no issue has been more obviously thrust to the center of public discourse than the issue of the treatment of black people, and black men specifically, by law enforcement officials.⁴

Lawmakers and activists have put forward many proposals to address concerns that minorities raise about their treatment by police officers and other officials. Several of these proposals have been gathered together at the federal level in the BALTIMORE Act of 2015.⁵ These proposals include the Police CAMERA Act, the Democracy Restoration Act, and the End Racial Profiling Act. In this *Close Up In Class Legislative Update*, we will examine the End Racial Profiling Act of 2015.

Racial profiling is the use of an individual's race or ethnicity by law enforcement personnel as a key factor in deciding whether to engage in enforcement (for example, whether to stop, search, or arrest an individual).⁶ The relationships between police forces and black communities have been tense in the United States for years, but the shootings of Brown, Tamir Rice (Cleveland, Ohio), Anthony Hill (Chamblee, Ga.), Eric Harris (Tulsa, Okla.), Walter Scott (Charleston, S.C.), and Samuel Dubose (Cincinnati, Ohio), as well as the killings of Freddie Gray (Baltimore, Md.) and Eric Garner (New York, N.Y.), have forced those debates into a prominent national position.⁷

In addition, the stop-and-frisk programs in some urban areas of the country, particularly New York City, have also gained widespread attention, especially in the wake of the incidents mentioned above.⁸ Stop-and-frisk, sometimes referred to as a Terry stop or stop-and-question in other cities, is the practice of stopping individuals who police suspect are engaged in criminal activity. If, after the individual answers a few questions, the police officer still finds the individual to be suspicious, the officer is authorized to conduct a brief search. A federal court ruled in 2013 that the New York City program violated the rights of minorities, but debates about the role of race in police decision-making remain.



RACIAL PROFILING AND CRIMINAL JUSTICE: BACKGROUND

Many law enforcement officials and experts argue that racial profiling is a useful tool in preventing crime and apprehending criminals. **Supporters** of the practice argue that it is not about racism, it is about statistics. By examining data about who commits certain types of crimes, using information such as the average age range, gender, socioeconomic background, race, and level of education, police officers can more accurately narrow down a range of suspects. Supporters also argue that police officers do not act merely on the basis of race; instead, they consider a profile of characteristics that include race and other observed behaviors in order to determine whether or not someone is worthy of questioning.

In fact, some advocates of the practice argue that the term “racial profiling” is not accurate. They claim that police are using a broad range of data, of which race happens to be a part, to form a profile. In addition, they claim that law enforcement officials are profiling by location—for example, patrolling high-crime neighborhoods more frequently. That some of those neighborhoods are home to large numbers of minorities, they say, is a coincidence.

Opponents of racial profiling argue that its use is unfair to minorities, particularly young male minorities, because it makes them suspects for no reason other than their membership in a demographic group. They also argue that it is a violation of the 14th Amendment’s guarantee of equal protection under the law because it automatically means that certain groups will be treated individually. In addition, opponents of the practice claim that racial profiling diminishes community trust because it causes members of minority groups to become suspicious of police officers and city officials more generally.

This bill, the End Racial Profiling Act, is designed to stop federal law enforcement agencies (such as the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco, Firearms, and Explosives; and the Marshals Service) from using racial profiling in their police work. The bill also provides funding through grant programs to encourage local police forces to stop using racial profiling practices. The bill makes the Department of Justice responsible for tracking uses of racial profiling across the country, allows the Department of Justice to investigate police departments and state agencies using the practice, and makes it easier for victims of racial profiling to sue the agency that they feel wronged them.

Versions of this bill have been introduced in both the Senate and the House of Representatives.

Note: This bill does not relate to the use of racial profiling in efforts to combat terrorism or protect national security.

RACIAL PROFILING AND CRIMINAL JUSTICE: MODEL BILL

“End Racial Profiling Act”⁹
114th CONGRESS
1st Session
“H.R. 1933” “S. 1056”

April 22, 2015

A BILL

To eliminate racial profiling by law enforcement, and for other purposes.

It shall be enacted that:

1. The use of racial profiling practices by law enforcement officials will be prohibited;
2. Individuals or groups injured by racial profiling will be granted the right to sue for damages (declaratory and injunctive);
3. The attorney general will be required to:
 - Maintain adequate policies and procedures to eliminate racial profiling and to cease existing practices that permit racial profiling;
 - Award grants and contracts for the collection of data relating to racial profiling and for the development of best practices and systems to eliminate racial profiling;
 - Issue regulations for the collection and compilation of data on racial profiling and for the implementation of this Act;
4. State or local governmental entities or state, local, or tribal law enforcement agencies that apply for grants under the Edward Byrne Memorial Justice Assistance Grant Program and the Cops on the Beat Program must certify that they maintain adequate policies and procedures for eliminating racial profiling and have eliminated any practices that permit or encourage racial profiling.

BILL INFORMATION

Support: Senator Benjamin Cardin, D-Md., introduced S. 1056. It currently has 18 Democratic co-sponsors and 0 Republican co-sponsors. Representative John Conyers, D-Mich., introduced the House bill. It currently has 97 Democratic co-sponsors and 0 Republican co-sponsors.

Committee Assignment: Senate Judiciary Committee; House Committee on the Judiciary, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations

RACIAL PROFILING AND CRIMINAL JUSTICE: DEBATE

Should Congress pass legislation to end the use of racial profiling in law enforcement, except in matters pertaining to national security?

YES: Racial profiling is unfair and antithetical to American values.

In a 2004 study, approximately 32 million Americans reported that they had been the victims of racial profiling at some point in their lives.¹⁰ This is an unfair abuse of the rights of American citizens. In addition, there is no evidence to suggest that these laws are effective or lead to higher rates of arrest of serious criminals.

According to the National Association for the Advancement of Colored People, “It is difficult for our faith in the American judicial system not to be challenged when we cannot walk down the street, drive down an interstate, go through an airport, or even enter into our own homes without being stopped merely because of the color of our skin.”¹¹

In the United States, we believe that a person is innocent until proven guilty. But racial profiling assumes that anyone who fits a certain profile, largely based on race or ethnicity, is guilty and deserves to be searched. These policies breed distrust and fear between law enforcement personnel and the communities they are supposed to serve.

This distrust makes policing in minority communities more difficult and dangerous, because residents in such neighborhoods are less likely to report crimes or to turn in known criminals. One protester’s sign at a recent Baltimore rally read, “Who do you call when the murderer wears a badge?”¹² Yet almost all police officers are good, hard-working people doing a dangerous, thankless job.

As President George W. Bush said in 2001, “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.”¹³

However, in this highly partisan era when even the insistence that “Black Lives Matter” is viewed as controversial, Republicans are unlikely to act on what was, at one time, a commonsense notion—the notion that we are all created equal.

NO: Racial profiling is a necessary strategy police use to find and arrest criminals.

Racial profiling is a necessary tool of law enforcement to keep communities safe. The system is an inconvenience to some but it is done in the service of many.

Race is never used as the only factor in determining who to stop, interrogate, or arrest. Race is one of many factors that is used to develop a profile of a suspect. Kathleen Parker, in a column about the Trayvon Martin–George Zimmerman episode, explained, “African Americans are right to perceive that Martin was followed because he was black, but it is wrong to presume that recognizing a racial characteristic is necessarily racist. It has been established that several burglaries in Zimmerman’s neighborhood primarily involved young black males.... In the courtroom, it’s called profiling. In the real world, it’s called common sense.”¹⁴

Michael Bloomberg, the former mayor of New York City, argued, “There is just no question that Stop-Question-Frisk has saved countless lives. And we know that most of the lives saved, based on the statistics, have been black and Hispanic young men.”¹⁵

New York City Police Commissioner Bill Bratton added, “Stop-and-frisk is such a basic tool of policing. It’s one of the most fundamental practices in American policing. If cops are not doing stop-and-frisk, they are not doing their jobs. It is a basic, fundamental tool of police work in the whole country. If you do away with stop-and-frisk, this city will go down the chute as fast as anything you can imagine.... You have to take action against minor offenses. It has to be done respectfully, and it has to be done consistently...time and again. But it has to be done.”¹⁶

The tragic story of the city of Detroit offers policymakers a warning of what can happen when cities abolish their stop-and-frisk laws. When Detroit ended its stop-and-frisk policy in 1973, crime rates—specifically murder rates—spiked, causing many residents to flee the city for the safety of the suburbs.¹⁷

RACIAL PROFILING AND CRIMINAL JUSTICE: QUESTIONS TO CONSIDER

What is your position on the End Racial Profiling Act?

What are the strongest points raised by each side of the argument?

Consider the problem that the End Racial Profiling Act is attempting to address. Do you think this is the best possible solution? If not, what other policies would you propose?

RACIAL PROFILING AND CRIMINAL JUSTICE: ENDNOTES

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- ¹² "Black Lives Matter Activists in South Carolina Demand Reform After Police Killing of Walter Scott." Democracy Now! 14 Apr. 2015. Web. 6 Aug. 2015. http://www.democracynow.org/2015/4/14/black_lives_matter_activists_in_south.
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