**Is Racial Profiling Defensible Public Policy?**

**YES: Scott Johnson,** from “Better Unsafe Than (Occasionally) Sorry?” *The American Enterprise* (2003)

**NO: Wade J. Henderson and Karen McGill Lawson,** from “Restoring a National Consensus: The Need to End Racial Profiling in America,” *The Leadership Conference* (2011)

Learning Outcomes

**After reading this issue, you will be able to:**

* Develop a proper understanding of racial profiling as a law enforcement practice.
* Develop a clear understanding of the widespread utilization of racial profiling by law enforcement throughout the United States.
* Identify and explain who are the potential targets of this practice within a nation of diverse populations.
* Develop a clear and comprehensive understanding of the arguments in favor of racial profiling.
* Develop a clear and comprehensive understanding of the arguments in opposition to racial profiling.
* Identify and explain the potential impacts of racial profiling upon African Americans and other minority communities.
* Identify and explain the potential impacts of racial profiling upon police–community relations.

ISSUE SUMMARY

**YES:** Scott Johnson, conservative journalist and an attorney and fellow at the Clermont Institute, argues in favor of racial profiling. He claims that racial profiling does not exist “on the nation's highways and streets.”

**NO:** In the report, “Restoring a National Consensus,” Wade Henderson and Karen McGill Lawson argue that racial profiling is an unjust and ineffective method of law enforcement that makes us less, not more, safe and secure. However, profiling is pervasive and used by law enforcement at the federal, state, and local levels.

Throughout the history of the United States, the nation has struggled to live up to its claim as “the land of the free.” Many Americans, especially people of color, have been subjected to differential and unequal treatment within this country from the colonial era to the present. The first Americans to experience discrimination and other forms of mistreatment were the aboriginal people who settled on these lands.

Native Americans experienced ethnic cleansing, and are still fighting for treaty rights, mineral and water rights, and recognition as internal nations within the United States. Immigrants, including Latino Americans, are routinely subjected to nativism, color-based prejudice, and discrimination. Others, including Roman Catholics and people from Eastern and Southern Europe, have also experienced such bigotry.

African Americans have experienced enslavement, followed by racial segregation, and the current reality of mass incarceration. Vestiges of Jim Crow are readily visible throughout this country, especially within the sweltering ghettos and barrios of our cities. This is an important historical context for understanding racial profiling and its employment within society.

The issue of racial profiling has raised many questions concerning the society's commitment to the rule of Page 118law and the protection of individual rights as provided within the Constitution of the United States. This issue has gained greater salience in America in the wake of the events of September 11, 2001 that gave impetus to an overwhelming focus on national security both within and outside of government.

Scott Johnson suggests that racial profiling is a reasonable and appropriate response to the challenges that confront the nation in its attempts to prevent crime and to maintain social order effectively. In developing his argument in favor of profiling, Johnson contends that the data available on crime rates and arrests by race do not support the claim of racially biased policing as claimed by David Harris in “Profiles in Injustice: American Life Under the Regime of Racial Profiling,” in *Profiles in Injustice: Why Racial Profiling Cannot Work*, and others. Johnson views the opponents of racial profiling as undermining the effectiveness of law enforcement by denying them such a tool. He claims that the restrictions upon profiling will impact disproportionately upon the security of minority victims of crime. Thus, Johnson believes that the profiling of members of certain groups as potential perpetrators of crime is reasonable and effective. From his perspective, “better safe than sorry.”

Henderson and Lawson state that racial profiling, as a practice of law enforcement, is widespread within local, state, and federal levels of policing throughout the United States. According to them, prior to 9/11 “a national consensus had developed” to end the practice. This development and consensus on the matter was interrupted by the events of 9/11 and the emerging “war on terrorism,” which led to a spike in racial profiling. The emphasis on national security, counter-terrorism, and efforts to control immigration in the wake of 9/11 contributed significantly to the increase in the utilization of this practice.

The authors examined what they claim are harmful impacts of racial profiling, and present a significant rebuttal to the assumptions that underlie support for this practice. They claim that racial profiling does not contribute to effective law enforcement. They are also concerned that racial profiling violates civil rights that are protected by the U.S. Constitution. Further, they are concerned that racial profiling generates polarization between the police and minority communities which they serve, thus leading to suspicion, distrust, and noncooperation. They believe that a national consensus to ban racial profiling can be rebuilt at this time in history and are determined to achieve that goal.

To place this issue in perspective, readers must confront the topics of race, crime, national security, and criminal justice. How does our concern with effective law enforcement contribute to racial profiling? Does the culture of police contribute to racial profiling? Is racial profiling unequal treatment? Is the addition of minority police officers a solution to this problem? On the other hand, is there an anti-police culture within the African American culture? In a case of domestic terrorism, the actions of the Oklahoma City bomber in 1995, Timothy McVeigh, a white American, did not result in racial profiling. What does this tell us about racial profiling? Are members of antigovernment militias who congregate in remote areas of the country and sharpen their military skills with live arms being targeted in accordance with a “white” profile? How can America balance its egalitarian commitment with the profiling of Muslims?

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**YES
Scott Johnson**

**Better Unsafe Than (Occasionally) Sorry?**

David Harris is the University of Toledo law professor who provided much of the intellectual heft behind the war on racial profiling. His 1999 report for the American Civil Liberties Union, which has filed most of the anti-profiling law suits, was entitled “Driving While Black: Racial Profiling on the Nation's Highways.” In 2002 he expanded his argument into a book.

The national ruckus Harris helped stir up has, among other results, made it hard for security personnel to use intelligent profiles to uncover potential terrorists in airports, at our national borders, and at visa offices abroad. That is a mistake that has already come to haunt the U.S. horribly…. And so long as anti-profiling crusaders prevent law enforcement officials from carefully applying profiling tools, Americans will continue to be needlessly exposed to potential re-runs of September 11.

Harris and his compatriots are clever enough to present themselves as friends of law enforcement, who are just trying to help the police do a better job. Harris himself purports to object to racial profiling mostly because it's “ineffective.” But the reality is that he has launched a broad and misguided attack on America's law enforcement and criminal justice systems. Like most of the activists who have turned the campaign against racial profiling into a crusade, Harris practices a shoddy form of racial politics with which we have become all too familiar.

The thesis at the heart of the anti-profiling complaint—that racial disparities in crime rates and arrests reflect racially biased policing—is torn to shreds by basic criminological data. David Harris argues that crime rates are equal among racial groups, and arrests, convictions, and incarcerations are unequal simply because police, prosecutors, and courts systematically pick on minorities because of the color of their skin. The logic of his argument ends in a demand for justice by racial quota.

The contention that crime is committed at equal rates by members of various ethnic groups is the central premise of the ACLU's anti-profiling argument. If that premise is false, their argument fails. And the stakes are high. The issue of alleged ethnic discrimination by police has taken on a heightened importance amidst the war on terrorism. Many of the profiling issues that began as farce over traffic enforcement stops are now replaying themselves in the war on terror as potential tragedies.

Contrary to the view of the world propounded by David Harris and the ACLU, racial disparities in law enforcement generally reflect racial disparities in crime rates. It is true that racial disparities exist at many stages of our criminal justice system. Blacks have been arrested, convicted, and incarcerated at rates far exceeding those of whites for as long as official data on the subject have been compiled. Middle Eastern Arabs have been disproportionately associated with air terrorism for more than a generation.

These disparities have been studied for evidence of systematic discrimination, and it is now widely accepted among serious scholars, such as Professor Michael Tonry of the University of Minnesota Law School, that higher levels of arrests and incarceration in the U.S. by ethnicity result substantially from higher levels of crime, not racial bias. Sometimes the magnitude of the racial disparities in crime rates is huge. The black murder rate is seven to ten times the white murder rate.

Harris claims that disparities in arrest and incarceration rates are a function of systemic law enforcement bias. Finding that the best national data do not agree, he arbitrarily declares the data wrong: Citing statistics from the National Crime Victimization Survey, he correctly states that more than 50 percent of violent crimes are unreported. Harris then absurdly implies that it is among these unreported crimes that the otherwise undetected white criminals are hiding.

Harris's argument on this basic point does not reflect well on his methods. He makes such claims not only against cops, but against all parts of our justice system. According to him, “Just as with arrest statistics, incarceration rates measure not crime but the activity of people and institutions responsible for determining criminal sentences.” In other words: Judges are racists too, just trust me.

Page 120Harris implies that if law enforcers just weren't so darn fixated on Arabs, blacks, and other minority groups, officials would discover that comparable levels of crime and terrorism are committed by whites, and just left unpunished. But we have statistics on the race of perpetrators as identified by the victims of unreported crimes. And guess what? They closely track the racial identity of perpetrators in reported crimes. Harris omits this inconvenient fact brought to light by the National Crime Victimization Survey, even though he relies on that same survey to build other parts of his argument.

The anti-profilers’ campaign against law enforcement is particularly bizarre and perverse given that minorities are vastly more likely to be victims of crimes. What kind of “civil rights campaign” prevents the police from incapacitating criminals who prey on minority groups? If police flinch from law enforcement for fear of generating bad arrest data that will label them racist, the great harm that follows will fall disproportionately on law-abiding residents of lower-income neighborhoods.

The controversy over “racial profiling” originated in data regarding traffic stops and airport searches that disproportionately affect blacks and ethnic minorities. In his book, Harris traces profiling back to Operation Pipeline, the 1986 Drug Enforcement Administration effort to enlist highway police in interdicting illegal drugs as they are transported by distributors on the nation's highways. Harris's argument that Operation Pipeline resulted in unfair racial profiling by highway patrollers in New Jersey, Maryland, and elsewhere is predicated on studies that falsely assume there are no ethnic differences in driving behavior, and that all ethnicities violate traffic laws at the same high rate. It is also based on the assertion that drug violations are roughly equal across groups.

But a definitive study commissioned by the New Jersey attorney general and designed by the Public Service Research Institute of Maryland found that on the New Jersey Turnpike blacks speed twice as much as white drivers—and are actually stopped less than their speeding behavior would predict. (The study was released after Harris's book had been published.) Elsewhere, Harris conflates statistics on drug use among racial groups (roughly equal) with statistics on drug distribution (as far as we can tell, not close to equal). It is drug distributors that highway patrol officers are seeking out, not drug users.

Several of the studies used by profiling opponents to indict police show nearly equal “hit” rates between whites and blacks despite the fact that blacks were searched at higher rates. (Hit rates are the rates at which searches result in the discovery of contraband.) In Maryland, “73 percent of those stopped and searched on a section of Interstate 95 were black, yet state police reported that equal percentages of the whites and blacks who were searched had drugs or other contraband,” groused the *New York Times.* “Studies have shown that being black substantially raises the odds of a person being stopped and searched by the police—even though blacks who are stopped are no more likely than whites to be carrying drugs,” complained the *New Republic* last year. What these statistically misleading statements overlook is that if the hit rates are about equal, there is no discrimination. It appears the police are focusing on legitimately suspicious behavior, and not simply picking on people by ethnicity.

The war on racial profiling has obscured two important facts: Racial profiling does not exist where the ACLU has persuaded everyone it does, such as on the nation's highways and streets. And it does not exist where it should, in the nation's airports and airlines.

Unfortunately, the facts have yet to catch up with the myths promoted by opponents of criminal profiling. Many Americans—including many of our leaders in politics and law enforcement—continue to treat profiling as illegitimate, as if it were disproved and discredited. That is the product of a political campaign, not of scholarly research. And it is a policy which leaves innocent Americans far more exposed to danger than they ought to be.

**SCOTT JOHNSON** is a conservative journalist and an attorney and fellow at the Clermont Institute.

Johnson, Scott. “Better Unsafe Than (Occasionally) Sorry?” *The American Enterprise*, February 2003. Copyright © 2003 by American Enterprise Institute. Used with permission.

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 **Wade J. Henderson and Karen McGill Lawson NO**

**Restoring a National Consensus: The Need to End Racial Profiling in America**

**Executive Summary**

Racial profiling—which occurs when law enforcement authorities target particular individuals based not on their behavior, but rather on the basis of personal characteristics, such as their race, ethnicity, national origin, or religion—is an unjust and ineffective method of law enforcement that makes us less, not more, safe and secure. The practice is nonetheless pervasive and used by law enforcement authorities at the federal, state, and local levels.

By way of example, a U.S. Congressman tells the Department of Homeland Security that Muslims should be profiled at airports. A county sheriff conducts a sweep of an Arizona Hispanic community that involves more than 100 deputies, a volunteer posse, and a helicopter. A prominent African-American professor charges he was a victim of racial profiling after he was arrested in his Massachusetts home.

In the months preceding September 11, 2001, a national consensus had developed on the need to end “racial profiling.” The enactment of a comprehensive federal statute banning the practice seemed imminent. However, on 9/11, everything changed. In the aftermath of the terrorist attacks, the federal government focused massive investigatory resources on Arabs and Muslims, singling them out for questioning, detention, and other law enforcement activities. Many of these counterterrorism initiatives involved racial profiling.

In the 10 years since the terrorist attacks, the antiracial profiling consensus that had developed prior to 9/11 evaporated and the use of racial profiling has expanded, not only in the counterterrorism context, but also in the context in which it originally arose—the fight against drug trafficking and other “street-level” crimes—as well as in the effort to enforce immigration laws.

Now is the time to re-establish a national antiracial profiling consensus and take the steps necessary to end the practice in all contexts at the federal, state, and local levels. The purpose of this report is to assist in that effort.

In this report, we present quantitative and qualitative evidence to demonstrate the widespread use of racial profiling in each of the three contexts referenced above—*i.e.,* street-level crime, counterterrorism, and immigration law enforcement. We also present evidence to show how racial profiling in the counterterrorism and immigration contexts is encouraged by misguided federal programs that incentivize law enforcement authorities to engage in the practice.

In the counterterrorism context, these problematic federal programs include the National Security Entry-Exit Registration System (which requires certain individuals from Muslim countries to register with the federal government, as well as to be fingerprinted, photographed, and interrogated) and Operation Front Line (which allows federal law enforcement authorities to target immigrants and foreign nationals for investigation in order to “detect, deter, and disrupt terrorist operations”). The federal government claims that these programs do not involve racial profiling, but the actions taken—from the singling out of Arabs and Muslims in the United States for questioning and detention to the selective application of immigration laws to nationals of Arab and Muslim countries—belie this claim.

In the immigration law enforcement context, the federal government has shifted significant responsibility for the enforcement of civil immigration laws to state and local law enforcement authorities through Agreements of Cooperation in Communities to Enhance Safety and Security (known as ICE ACCESS programs). The most notable of these programs is the 287(g) program, the stated purpose of which is to enable state and local law enforcement authorities to identify suspected undocumented immigrants “who pose a threat to public safety.” Page 122In point of fact, the 287(g) program has been widely misused by state and local law enforcement authorities to stop, detain, question, and otherwise treat as suspected undocumented immigrants vast numbers of persons—primarily Hispanics—most of whom are U.S. citizens or legal residents.

Although perhaps the most well-known, the 287(g) program is not the only ICE ACCESS program that raises concerns about racial profiling. Other such programs include the Criminal Alien Program (which involves an immigration screening process within federal, state, and local correctional facilities to identify undocumented immigrants “who pose a threat to public safety”) and the Secure Communities program (which allows local law enforcement authorities to run fingerprint checks against Department of Homeland Security databases, not just FBI databases).

Federal inaction on comprehensive immigration reform has prompted a flurry of activity by state lawmakers seeking to fill the void left by Congress. The most sweeping and controversial of these state laws is Arizona's S.B. 1070, which is widely seen as encouraging racial profiling.

This report makes the case against racial profiling by showing that the assumptions underlying racial profiling—*i.e.,* that certain crimes are more likely to be committed by members of a particular racial, ethnic, national origin, or religious group, and that members of that group are more likely than non-members to be involved in that type of criminal activity—are false. We also demonstrate the devastating impact that racial profiling has on individuals, families, and communities that are subject to the practice; and explain why racial profiling is in all contexts a flawed law enforcement method that diverts and misuses precious law enforcement resources and destroys the relationship between local law enforcement authorities and the people that they must rely on in carrying out their law enforcement activities.

The End Racial Profiling Act of 2010 (ERPA 2010) was introduced into the House of Representatives during the 111th Congress. The 111th Congress took no action on ERPA 2010, and it died with the adjournment of that Congress on December 22, 2010. However, ERPA 2010 warrants continued attention because it provides an appropriate model for an anti-racial profiling statute in the 112th Congress, addressed the major concerns about racial profiling expressed in this report, and would have gone a long way toward ending the practice.

Finally, we offer recommendations that are designed to end racial profiling. The key point of each of these recommendations—which are addressed to Congress, the president, Executive Branch agencies, and civil and human rights organizations—is summarized below:

**Congress**

* The 112th Congress should enact an anti-racial profiling statute modeled on ERPA 2010.

**The President**

* The president should urge the 112th Congress to enact an anti-racial profiling statute modeled on ERPA 2010, and make enactment of such a statute one of his administration's highest legislative priorities.
* Pending enactment by Congress of an anti-racial profiling statute, the president should issue an executive order that prohibits federal law enforcement authorities from engaging in racial profiling or sanctioning the use of the practice by state and local law enforcement authorities in connection with any federal program.

**Executive Branch Agencies**

* The U.S. Department of Justice (DOJ) should revise its June 2003 guidance on racial profiling to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of racial profiling.
* The DOJ Office of Legal Counsel should issue an opinion stating that the federal government has exclusive jurisdiction to enforce federal immigration laws, and should rescind its 2002 “inherent authority” opinion, which takes a contrary position.
* The DOJ Civil Rights Division should make the remediation of racial profiling a priority.
* The U.S. Department of Homeland Security (DHS) should terminate the 287(g) program.
* DHS should suspend operation of the Criminal Alien Program, the Secure Communities Program, and other federal programs pursuant to which authority to engage in the enforcement of federal immigration laws has been delegated to state and local law enforcement authorities, until a panel of independent experts has reviewed the programs to ensure that they do not involve racial profiling.
* DHS should terminate the National Security Entry-Exit Registration System.
* Other federal counterterrorism programs, including Operation Front Line, should be reviewed by a panel of independent experts to ensure that they do not involve racial profiling.

**Civil and Human Rights Organizations**

* Civil and human rights organizations should urge the 112th Congress to enact an anti-racial profiling Page 123statute modeled on ERPA 2010, and provide the American public with accurate information about racial profiling.

**Introduction and Background**

During a February 2011 hearing of the U.S. House of Representatives Homeland Security Committee, Rep. Paul Broun, R. Ga., told U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano that he recently went through screening at an airport in front of a man that was of “Arabian, or Middle Eastern descent.” According to Broun, neither the man nor Broun was patted down; but behind the man was an elderly woman with a small child, both of whom were patted down. “This administration and your department seems to be very adverse to focusing on those entities that want to do us harm,” Broun stated. “And the people who want to harm us are not grandmas and it's not little children. It's the Islamic extremists … I encourage you to maybe take a step back and see how we can focus on those people who want to harm us. And we've got to profile these fellas.”

Sheriff Joe Arpaio of Maricopa County, Arizona, has received widespread attention for his stops of Hispanic drivers and sweeps of Hispanic communities in an attempt to identify undocumented immigrants. In April 2008, in the most notorious of his neighborhood sweeps, more than 100 deputies, a volunteer posse, and a helicopter descended upon and terrorized a community of approximately 6,000 Yaqui Indians and Hispanics, in an attempt to identify undocumented immigrants. By the end of the two-day operation, only nine undocumented immigrants were arrested. In addition to his profiling of drivers and neighborhoods, Arpaio has also led raids on area businesses that employ Hispanics.

On July 16, 2009, James Crowley, an 11-year police department veteran responded to a 911 call reporting a possible break-in at a home on Ware Street in Cambridge, Massachusetts. The address, Crowley would later learn, was the home of Harvard professor Henry Louis Gates, Jr., one of the most prominent African-American scholars in the United States. Within a few minutes of Crowley and Gates’ encounter, Crowley had arrested Gates for disorderly conduct and placed him in handcuffs at his own home. Gates charged that he was a victim of “racial profiling,” claiming that the actions of the police were dictated by the fact that he was African American, and that they would have behaved differently if he were White. The Cambridge Police Department denied the charge, asserting that its actions were prompted by Gates’ confrontational behavior.

Because of Gates’ prominence, this particular incident captured the attention of the media and sparked a much-needed national dialogue about racial profiling in America. Though the national dialogue may not have resolved the narrow question of whether Gates was or was not a victim of racial profiling, it provided ample support for the broader proposition that racial profiling is pervasive and used by law enforcement authorities at the federal, state, and local levels. As President Obama put it during a nationally televised press conference on July 24, 2009, “What I think we know—separate and apart from [the Gates] incident—is that there is a long history in this country of African Americans and Latinos being stopped by law enforcement disproportionately, and that's just a fact.” Lt. Charles Wilson, chairman of the National Association of Black Law Enforcement Officers and a 38-year veteran of law enforcement, stated that “[t]his is an issue that occurs in every single place in this country.” The factors that account for this troubling reality provide a framework for the analysis in this report and are summarized below.

For years, African Americans, Hispanics, and other minorities complained that they received unwarranted police scrutiny in their cars and on the streets, yet their complaints were routinely ignored. By early 2001, this had changed. Rigorous empirical evidence developed in civil rights lawsuits and studies of law enforcement practices revealed that the so-called “Driving While Black or Brown” phenomenon was more than anecdotal. Minority drivers were in fact stopped and searched more than similarly situated White drivers. The data also showed that minority pedestrians were stopped and frisked at a disproportionate rate, and that, in general, federal, state and local law enforcement authorities frequently used race, ethnicity, and national origin as a basis for determining who to investigate for drug trafficking, gang involvement, and other “street-level” crimes.

Polls showed that Americans of all races, ethnicities, and national origins considered racial profiling widespread and unacceptable. Government actions and words mirrored the public's concern about the practice. In the mid-1990s, the Civil Rights Division of the U.S. Department of Justice entered into far-reaching settlement agreements in response to racial profiling by certain state and local law enforcement agencies, including the New Jersey State Police and the Los Angeles Police Department. Many states and localities instituted data collection and other requirements to address disparities in law enforcement based upon race and other personal characteristics. And, in 1996, the U.S. Supreme Court held that the Equal Protection Clause of the Constitution “prohibits selective enforcement of the law based on considerations such as race.”

Page 124By early 2001, concerns about racial profiling were voiced at the highest levels of the federal government. Then-Attorney General John Ashcroft publicly condemned racial profiling, and on February 27, 2001, President Bush told a joint session of Congress that the practice was “wrong and we will end it in America.”

Backed by a strong national consensus to end racial profiling, on June 6, 2001, Sen. Russell Feingold, D. Wisc., and Rep. John Conyers, D. Mich. introduced the bipartisan End Racial Profiling Act of 2001, and the enactment of a comprehensive federal anti-racial profiling statute seemed imminent.

However, on September 11, 2001, everything changed. The 19 men who hijacked airplanes to carry out the attacks on the World Trade Center and the Pentagon were Arabs from Muslim countries. The federal government immediately focused massive investigative resources and law enforcement attention on Arabs and Muslims—and in some cases on individuals who were perceived to be, but in fact were not, Arabs or Muslims, such as Sikhs and other South Asians. In the years that followed, the federal government undertook various initiatives in an effort to protect the nation against terrorism. The federal government claimed that these counterterrorism initiatives did not constitute racial profiling, but the actions taken—from the singling out of Arabs and Muslims in the United States for questioning and detention to the selective application of immigration laws to nationals of Arab and Muslim countries—belie this claim.

More recent initiatives by federal, state, and local law enforcement authorities to enforce immigration laws have further encouraged racial profiling. Immigration and Customs Enforcement (ICE) within DHS has shifted significant responsibility for the enforcement of civil immigration laws to state and local law enforcement authorities. And many state and local law enforcement authorities misuse these programs—particularly the Delegation of Immigration Authority, known as the 287(g) program—to stop, detain, question, and otherwise target Hispanics and other minorities as suspected undocumented immigrants, although most of them are U.S. citizens or legal residents. Federal inaction on comprehensive immigration reform has prompted some states to undertake initiatives of their own—including most notably Arizona's S.B. 1070, which is widely seen as encouraging racial profiling.

The short of the matter is this: The anti-racial profiling consensus that had developed prior to 9/11 evaporated in the aftermath of the terrorist attacks, and the use of racial profiling—in the street-level context in which it originally arose, and in the new contexts of counterterrorism and immigration law enforcement—has expanded in the intervening years.

During the 2008 presidential campaign, candidate Barack Obama promised that, if elected, “Obama and [vice presidential running mate Joe] Biden will ban racial profiling by federal law enforcement agencies and provide federal incentives to state and local police departments to prohibit the practice.” During his 2009 confirmation hearing, Attorney General Eric Holder similarly declared that racial profiling was “simply not good law enforcement,” and that ending the practice was a “priority” for the Obama administration. Now is the time for the Obama administration to make good on these promises and take the steps necessary to end racial profiling in all contexts at the federal, state, and local levels.

The purpose of this report is to assist in the effort to end racial profiling. In the chapters that follow, we explain what does and does not constitute racial profiling (Chapter II); examine quantitative and qualitative evidence regarding the use of racial profiling in the street-level crime, counterterrorism, and immigration law enforcement contexts (Chapter III); debunk the assumptions that are advanced in an effort to justify racial profiling, and discuss the devastating consequences of racial profiling for persons and communities that are subject to the practice and its adverse impact on effective law enforcement (Chapter IV); review the End Racial Profiling Act of 2010, which was introduced in the House of Representatives during the 111th Congress and died with the adjournment of that Congress on December 22, 2010, but which provides an appropriate model for an anti-racial profiling statute in the 112th Congress (Chapter V); and conclude with recommendations designed to end racial profiling in America (Chapter VI).

**WADE J. HENDERSON** is an attorney and president of the Leadership Conference on Civil and Human Rights. **KAREN MCGILL LAWSON** is executive vice-president and chief executive officer of the Leadership Conference on Civil and Human Rights.

Henderson, Wade J.; McGill Lawson, Karen. “Restoring a National Consensus: The Need to End Racial Profiling in America,” *The Leadership Conference*, March 2011. Copyright © 2011 by The Leadership Conference. Used with permission.

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EXPLORING THE ISSUE

Is Racial Profiling Defensible Public Policy?

**Critical Thinking and Reflection**

1. Explain the significance of referring to the U.S. Constitution for discussing and analyzing this issue.
2. What do you think is meant by the term “shopping while black”?
3. What do you think is meant by the term “driving while black”? Connect these terms with racial profiling.
4. How can profiling exist in a post-racial America?

**Is There Common Ground?**

The debate over racial profiling serves to illuminate a major division in American politics between the advocates of human rights and individual liberties and others who are willing to relinquish the protection of certain rights in the interests of law and order and national security. Racial minorities tend to view such policies as unwarranted assaults on their human dignity, and counterproductive to achieving the goals of the war on drugs, crime, and terrorism. Others are concerned that instead of promoting national security, this policy has alienated minorities and immigrant groups, and has raised serious concerns around the world. There is a growing perception within the international community that racial profiling is compromising the U.S. government's commitments to the role of law and to equal rights and social justice.

It is difficult to find common ground in the examination of this issue presented by Scott Johnson and Henderson and Lawson. Both sides agree that racial profiling is a practice that is engaged in by law enforcement. Also, they recognize that racial profiling is a controversial methodology employed by police that has attracted increasing scrutiny and criticism within our society. However, they tend to disagree on significant aspects of the treatment of this issue presented in their articles.

There is a significant divergence in the views presented by Johnson and these critics in their assessment of racial profiling. They disagree on the scope of this practice within law enforcement across the nation. There is also disagreement over the effectiveness of racial profiling as a method of policing. Additionally, there is no convergence of the views expressed by these analysts concerning the impact of racial profiling upon African Americans and other minority communities, and the American society as a whole.

Currently, the American nation is facing the development of a major social protest movement led by Black Lives Matter that is illuminating police killings of unarmed black citizens and other injustices faced by people of color within the nation's criminal justice system. The pressure to effect meaningful criminal justice reform is growing in intensity across the nation. Time will tell whether racial profiling can withstand this increasing scrutiny and demands for reform in law enforcement practices and policy within the United States.

**Additional Resources**

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**This is the website for the National Institute for Justice. The NIJ is dedicated to improve knowledge and understanding of crime and justice issues through science. It offers an excellent statement about “Race, Trust, and Political Legitimacy.”**

<http://www.nij.gov/topics/law-enforcement/legitimacy/pages/welcome.aspx>

**This is the website for the American Civil Liberties Union. The ACLU works to defend individual rights and liberties guaranteed by the U.S. Constitution.**

<https://www.aclu.org/>

**This is the website for the Leadership Conference (“The Nation's Premier Civil and Human Rights Coalition”). It offers a link to “The Guidance Regarding the Use of Race By Federal Law Enforcement Agencies” that was issued by the U.S. Department of Justice in 2003.**

<http://www.civilrights.org/>

# Race Still Matters

***T****he people of modern societies are conditioned to believe in the existence of different races. It is routine within American society and throughout the world to hear references to “the white race, the black race, and other color-coded races.” It is an article of faith within prevailing systems of belief that these distinct races exist. However, a critical examination of the evolution of the concept of race and its application within society reveals that “race” evolved as a biological concept. Members of society who are interested in developing a more advanced understanding of “race” concluded that humans are members of a number of different, separate, and distinct races. The evidence upon which they base their claim was physical in nature and included characteristics such as hair texture, skin color, prognathism, and cranial configuration. These were the criteria that were employed to place human beings within separate, distinct racial categories. Today, we continue to accept the existence of these color-coded races without question. The vocabulary remains unchanged.*

*At a time when an African American is the president of the United States, one may find it difficult to accept that race still matters in this country. Issues of race have challenged the nation from the colonial era to the present. Traditionally, race developed as a biological concept. The criteria that were established to place human beings within distinct racial categories were biological in nature and included such features as skin color, prognathism, and cranial configuration, among others. As a result of research and scientific discovery, including the Human Genome Project that is currently under way, the biological basis of racial categories has been refuted. Despite the scientific evidence to the contrary, it is unlikely that we will be able to wean Americans and others from their belief that separate but distinct races do exist. Yet, the idea of race has been retained as a social construction that provides a basis for distinguishing and treating human groups other than one's own differently and most often unequally. Clearly, race still matters. How does it matter? Race affects where one lives, goes to school, and worships. Race is a significant factor in the distribution of income and wealth. Race is a factor in terms of crime and punishment. Race influences one's life chances. There are so many recent developments that indicate how salient race still is in influencing intergroup relations. Some conservatives and libertarians have questioned the sanctity of the Fourteenth Amendment, which serves as the basis for African American citizenship. Similarly, some have challenged the public accommodations clause of the Civil Rights Act of 1964 and asserted that proprietors should have the right to deny service to whomever they please. How will such thinking and proposals impact race relations? It should also be noted that civil rights advocates are concerned with certain legislative initiatives that they believe have the potential to reverse some of the racial progress that has been achieved. With all of these developments and concerns in mind, one can conclude that race still does matter.*

*Readers should be reminded that placing groups in the category of the “other” can have destructive impacts upon societies, especially in the areas of inter-group relations. The potential outcomes of this tendency to categorize out-groups in negative terms can lead to stereotyping, prejudice, and discrimination. These phenomena are significant sources of the racial, ethnic, and class-related inequalities that currently confront the nation. The issues in this unit explore the persistence of the tendency to engage in racial categorization and racism within American society.*

**Is Racism a Permanent Feature of American Society?**

**YES: Linda Greenhouse,** from “The End of Racism, and Other Fables,” *New York Times* (2000)

**NO: Russell Niele,** from “‘Postracialism’: Do We Want It?” *Princeton Alumni Weekly* (vol. 110, no. 7, January 13, 2010)

**Learning Outcomes**

**After reading this issue, you will be able to:**

* Develop a sophisticated understanding of the influence of racism in the development of American society.
* Develop a conceptual distinction between discrimination and racism.
* Comprehend different forms of racism, including individual and institutional racism.
* Understand the reification of racism.
* Explain Niele's idea of a post-racist society.
* Understand why Niele promotes meritocracy as a goal.

**ISSUE SUMMARY**

**YES:** Linda Greenhouse writes on the Supreme Court for the *New York Times*. A Pulitzer Prize winner in 1998, she also teaches at Yale Law School. Greenhouse is author of *The U.S. Supreme Court: A Very Short Introduction* and *Becoming Justice Blackmun*. In her review of Derrick Bell's *Faces at the Bottom of the Well: The Permanence of Racism*, Greenhouse points out that Bell believes that the prospects for achieving racial equality in the United States are “illusory” for blacks.

**NO:** Russell Niele, a lecturer in politics at Princeton, works for the Executive Precept Program sponsored by Princeton's James Madison Program. He has written on affirmative action and the origins of an urban black underclass. Niele argues that American society is moving toward a meritocracy, which is post-racist (not post-racial). For him, race, ethnicity, and religious identity are less determinant than they were in earlier American history.

**T**he persistence of ideological and institutional racism within the United States has given rise to a debate over the prospects for ridding American society of this glaring contradiction. On one side of this debate are those who believe that a proper examination of the American experience and the treatment of African Americans and other peoples of color throughout history lead to the conclusion that racism is unlikely to be eroded in this country and will continue to challenge the American creed. The other side comprises those who advance the more optimistic view concerning race relations within the United States. Members of this camp claim that the destructive impact of racism is declining in this country, and that any lagging progress of African Americans is due to factors other than racial discrimination.

Page 130Racist ideology has been employed throughout the nation's history in attempts to justify institutional policies and practices such as slavery and segregation. Despite the substantial efforts of supporters of a racially egalitarian society, the reification of racism is a continuing reality of this nation.

In her article concerning this issue, Linda Greenhouse discusses and assesses the contributions of the late Derrick Bell to the scholarship and discourse on race and racism on America. She states that “both in his writing and by his actions, Mr. Bell, one of the country's most prominent scholars of race and the law, has spent years trying to bring this message both to other blacks and to the white-majority institutions in which he has worked.”

Bell believes that race consciousness is so embedded in whites that it is virtually impossible to rise above it. He argues that “few whites are able to identify with blacks as a group” and tend to view them through “comforting racial stereotypes.” Bell cites a number of examples of the destructive impact of racial bonding among whites upon blacks’ efforts to progress within society. He points out that even poor whites have tended to support institutions such as slavery and segregation rather than coalescing with blacks to fight against common class-based social disadvantages such as unemployment and poverty. Given this record of race relations, it is impossible for Bell to accept the claim that racism has been largely overcome in the United States. To the contrary, he feels strongly that a critical and proper examination of the history of black–white relations supports the conclusion that racism is a permanent feature of American society.

In the YES selection, Greenhouse points out that Bell is not alone among black scholars and social justice advocates who believe that blacks will never gain equal standing with whites in this country. For him the legacy of institutional discrimination that was reflected in slavery continues through the exclusionary policies of racial segregation that has left blacks “at the bottom of the well.” Additionally, Bell views certain roles that blacks play in the society, such as the scapegoat, as contributing to the permanence of racism. Who will play these roles? He also views the color-coded perceptions and behaviors that dominate social interaction between the “races” as so culturally imbedded as to be virtually impossible to overcome.

In the NO selection, Russell Niele does not agree with Bell that racism is a permanent strain of the fabric of American society. Niele believes that America is moving toward a meritocracy based on talent and hard work, which neutralizes racism. Thus, he opposes Bell's position that racism is a permanent feature of American society. Niele views American society as post-racist. Traditional forms of identity, in his view, are less determinant of opportunity for social advancement today than they were in earlier American history. He cites progress within the institutions of society that have been achieved by blacks and other minorities as strong evidence of a post-racist America.

The reader would benefit from expanding his or her perspective for dealing with the issue to include ideas and concepts dealing with social and cultural values. This is a debate in itself. That is, do structural conditions such as racism, discrimination, and lack of opportunity lead to inequality and poverty? Or, is poverty attributed to individual factors including socialization and value formation? Bell makes a structural argument to explain the permanence of racism. Niele cites Harvard sociologist, William Julius Wilson's thesis of the declining significance of race, which is reflected in more opportunities for formal education, including higher education leading to significant social and economic advantages. Niele places more emphasis on the individual, hence his argument for meritocracy.

Racism has played a major role in the formation and ongoing development of the American society. Given this existential reality, it is not difficult to understand that some observers and analysts of American race relations, when confronted with the inequality that persists between blacks and whites in society, would blame this phenomenon on racial discrimination. Those who support this argument view racism as a continuing and permanent reality of American society.

In reconsidering their views on this issue, it is important that students analyze the revelations of persistent racism that have received expansive media coverage recently. They have observed the persistent racism that impacts some law enforcement officers in their treatment of blacks and other minorities, and the pervasive racial inequality within the criminal justice system. The disturbing images of unarmed black men and others being shot by police officers have raised serious questions concerning the quest for racial equality in America.

American presidents who have addressed the state of race relations in the United States have tended to state some variant of the following assessment: we have made significant progress but that we have a long way to go. Even President Obama, the nation's first African American president, acknowledges that substantial racial progress has been made in the United States. His election is a Page 131testament to this fact. However, he does not embrace the claim that the United States has become a post-racial society, that is, a society where racial egalitarianism is the organizing principle of race relations. Considering this point, students are reminded that the idea of meritocracy has been more of an ideal than a reality for the African American experience. Prior to the civil rights era, the nation was challenged to apply the meritocratic ideal. Americans continue to struggle to achieve the vision of an egalitarian society.