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CHALLENGING OPPRESSION, RECLAIMING JUSTICE

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As a law professor, one often gets the opportunity to sit on panels and publicly discuss legal issues. Just after an Albany jury acquitted the four New York City Police Officers who shot Amadou Diallo to death, I participated in a discussion panel at an eastern law school to discuss the case and the verdict.

One of the most memorable aspects of the panel discussion for me was a comment made by a law professor on the panel. This professor taught criminal law and had the reputation of being very socially progressive. Yet his response to the acquittal of the policemen was that “before ‘rushing to judgement’ in condemning the four policemen, we should all recognize the ‘terrible whirlwind’ that the police department was in.”

This bizarre, apologetic response to the acquittal of four policemen seemed chilling considering that four policemen shot an unarmed person to death with nineteen bullets out of the forty-one shots fired in a Bronx hallway. It indicated something that I had not previously seen, but would come to see in a number of subsequent legal discussions: an increasing tolerance by very normal people of criminally abusive and illegal behavior by police, when the violence was directed at minority victims.

This past summer I sat on a panel at a national law conference on Racial Profiling with four other lawyers. As mine was the first presentation, I discussed racial profiling from a historical perspective. I explained how in ante-bellum America, racial profiling was used, in connection with slave codes, as a mechanism to oppress both enslaved and in particular, free African Americans. It was designed to limit their capacity to travel, to relocate, to assemble, to conduct funerals and even to be unemployed.

When African Americans were convicted of violating slave codes, which held them as a community of people who were a latent danger to society, they lost their freedom and were reduced to chattel status. I related this process to one of our society’s current problems. With the spread of the “prison industrial complex,” incarcerated minority youth can end up working for companies while imprisoned. Outside of prison, these same youth have very little chance of getting a job with these same companies, due in large part to the presumption of their being “hard-core unemployed.”

The next panelist presented data about racial profiling of minorities in Europe. The third panelist brought forward very powerful statistical data about the widespread practice of racial profiling by police forces across the country. She presented an intriguing statistic which showed that only a small number of white police and white civilians believe that racial profiling is a serious problem in American society, despite the data.

Then, as if to accentuate this point, two lawyers on the panel who had successfully defended clients charged with racial profiling spoke next. Based on their successful defenses in court, these lawyers' presentations exhibited a certain contempt for the criticisms of racial profiling. They both implied that racial profiling was a defamatory tool often used by politically motivated "hustlers" against hard-working, dedicated police departments.

As our society continues to examine and engage in dialogue about race relations in America, it is critical that there be an openness among all parties to engage with more than the traditional narrative of the status quo. We must begin to engage with the stories and research of the racially victimized segments of America. In order to empower this public dialogue, new areas of research and scholarship must be developed. Latino Critical Theory in general, and the three articles in this section in particular, significantly contribute to this societal dialogue. These articles look at some of the most significant challenges facing American minority communities today: the relationship between minority social stereotypes and the violation of minority legal rights, constitutional violations of minority rights through illegal stops and searches, and finally, the complex issue of police in schools, where school safety must be balanced against the violation of minority youth rights.

Mary Romero's article, *State Violence, and the Social and Legal Construction Latino Criminality: from El Bandido to Gang Members*, explores an extremely important issue in American social analysis: if a minority community is generally perceived as a social menace, can police abuses and oppressive behavior directed at the minority community be seen as anything other than appropriate protection for the majority? Romero also examines the link between mass media and the proliferation of racist stereotypes of Latinos, which propagandized the majority into perceiving the Hispanic community as "the criminal other."

The article identifies for the reader the terrible conundrum which exists where a community, defamed for decades by a media establishment beyond its control, must deal with misconceptions about them held by both the majority society outside their community and the individuals who police them. Those individuals, for the most part, come from that outside majority and are burdened with the same stereotypical concepts.

In David Seawell's *Wardlow's Case: A Call To Broaden The Perspective Of American Criminal Law*, Seawell explores a very critical issue in our society's discourse on the relationship between police and minority communities: the ramifications of government-compiled crime statistics about minority communities and the determinations of definitions flowing from that data. Seawell exemplifies this through his analysis of how defining a community as "high crime" creates a slippery slope of questionable police practices such as racial profiling and illegal stops. This "tough on crime" approach by a municipality can also lead to the creation of special police task forces designed to operate in these "high crime areas," which can sometimes put law-abiding citizens at risk, as in the case of Amadou Diallo.

Tragically, law-abiding people who reside in these police-defined "high crime areas," are subjected to a process where "the cop on the beat" is empowered to make judgement calls as to which residents deserve Fourth Amendment rights simply because they happen to live in a poor neighborhood. They are reduced to a subordinated status of "citizen suspects" based on their race, class and address, rather than from of any criminal behavior on their part.

In *Police In Schools: The Struggle For Student And Parental Rights*, Norberto Valdez, Marcia Fitzhorn, Cheryl Matsumoto and Tracey Emslie address the crisis in American high schools. Recent violence by students has resulted in an increased police presence in high schools, but without the proper concern of school officials for the protection of students' rights in their encounters with police in the schools.

Their research on the Colorado school system very powerfully presents the tragedies that can result from teenagers in school being thrust into police encounters without an adult advocate. The study shows that this problem is magnified in cross-cultural encounters between police and minority students. When put into a national perspective, additional disturbing results can be seen. For example, student encounters with school police which "go wrong," can result in students developing police records or "being out into the system," for minor offenses. Should the student later have any subsequent police encounters, this school police record will be taken into consideration

In New York City, in addition to police in schools, there are also police outside of schools, empowered to detain students who are more than ten minutes late for school and to cite them for truancy. A nefarious byproduct of this practice is that large numbers of minority students have police records for non-criminal acts. This practice triggered the New York suit, *Colon-Berezin v. Guiliani*.¹

1. 88 F. Supp. 2d 272 (S.D.N.Y. 2000).

Therefore, in reading these articles, one will not only be exposed to important lines of inquiry into the range of complexities which American minority groups encounter in relation to the criminal justice system. They will also be able to greater appreciate the important research done by the Sentencing Project on the high incarceration rates of minority juveniles, the issue of racial profiling, and the impact of the prison industrial complex on minority communities.

For additional reading materials please see any of the following:

Garrett, Brandon, *Standing While Black: Distinguishing Lyons in Racial Profiling Cases*, 100 COLUM. L. REV. 1815 (2000).

Harris, David A., *Driving While Black Matters: Racial Profiling On Our Nation's Highways*, An American Civil Liberties Union Special Report.

Johnson, Sheri Lynn, *Race and the Decision To Detain a Suspect*, 93 YALE L.J. 214 (1993).

Knight, Camille, *The Realities of Racial Profiling: Broad Interpretations of High Court Decisions Lead To Fourth Amendment Abuses*, 15 CRIM. JUST. 22 (2000).

Lyle, Peter A., *Racial Profiling and the Fourth Amendment: Applying the Minority Victim Perspective To Ensure Minority Victim Perspective To Ensure Equal Protection Under the Law*, 21 B.C. THIRD WORLD L.J. 243 (2001).

Maclin, Tracey, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333 (1998).

Paris, Margie, *A Primer in Profiling: The Merger of Civil Rights and Criminal Defense*, 15 CRIM. JUST. 4 (2000).

Ramirez, Deborah, et al., *A Resource Guide On Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, Monograph for the U.S. Department of Justice, http://www.usdoj.gov/pdf/cp_resources/pubs_prod/police_practices_handout/Section.pdf

Russell, Katherine K., *Driving While Black: Corollary Phenomena and Collateral Consequences*, 40 B.C.L.REV. 717 (1999).