Prohibiting Racial Profiling: The ACLU'S Orchestration of the Missouri Legislation

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PROHIBITING RACIAL PROFILING: THE ACLU’S ORCHESTRATION OF THE MISSOURI LEGISLATION

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INTRODUCTION

Racial profiling is prevalent in America. Despite the civil rights victories of thirty years ago, official racial prejudice is still reflected throughout the criminal justice system. For people of color in cities large and small across this nation, north and south, east and west, Jim Crow “justice” is alive and well.1

Racial profiling occurs when the police target an individual for investigation on the basis of race or ethnicity rather than individualized or particularized factors that would constitute a legitimate basis for believing that the person has engaged in unlawful activities or is about to do so. While some studies attribute the proliferation of racial profiling to the war on drugs in the 1980s,2 the practice is long-standing and well-known among those who have been its victims. The roots of racial profiling can be traced to the post-Reconstruction, Jim Crow era of the late 19th century when vagrancy, loitering, and other laws were used as an excuse to harass and intimidate African-Americans in the South.3 This pernicious conduct has been a fact of everyday life for generations of African-Americans, Latinos, Asians, and other people of color. What is different now is the long overdue attention that it has received from the public at large.4

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2. See, e.g., DAVID A. HARRIS, PROFILES IN INJUSTICE: WHY RACIAL PROFILING CANNOT WORK (2002).
4. In a poll released in 1999, more than half of the individuals responding stated that police engaged in racial profiling. Eighty-one percent of them stated that they disapproved of the practice. Of the adults that were polled, fifty-nine percent said that racial profiling was widespread. Fifty-six percent of whites and seventy-seven percent of the blacks stated that they...
Racial profiling has received a considerable amount of media attention. It has been the focus of a nationwide effort organized by the American Civil Liberties Union (ACLU). Law-enforcement officials in several jurisdictions have yielded to demands to collect data that will allow researchers to determine whether police are targeting a disproportionate percentage of minority motorists for traffic stops. A recently enacted Missouri law prohibits profiling outright.

This article examines the campaign of the American Civil Liberties Union’s eastern Missouri affiliate to outlaw racial profiling in Missouri, an effort that led to prohibition of the practice in that state. Additionally, the article explores some of the legal and public policy implications of this practice that provided the backdrop for the ACLU’s campaign.

THE DECISION TO CHALLENGE RACIAL PROFILING IN MISSOURI

The campaign to eliminate racial profiling in Missouri began in June of 1999, when the ACLU’s National Office released a comprehensive study of racial profiling. The report, *Driving While Black: Racial Profiling on the Nation’s Highways*, was authored by David Harris, a law professor at the University of Toledo. It was distributed to all of the ACLU’s local affiliates. The report analyzed the legal issues presented by the practice and included extensive empirical data. At the time this report was issued, racial profiling had received a considerable amount of attention in the media. Two widely-publicized studies conducted by Dr. John Lamberth, of Temple University, contained data and findings that confirmed what many observers had long suspected; African-Americans and other people of color were being systematically targeted by law enforcement officials based solely on their race and ethnicity. In a study done in New Jersey in which drivers along a stretch of Interstate 95 were observed, Dr. Lamberth found that blacks and whites violated the traffic laws at essentially the same rate. However, 73.2% of the motorists stopped and arrested were black, while only 13.5% of the vehicles had a black driver or passenger. Data from a study in Maryland provided similar findings to those from the New Jersey study. Drivers along a stretch of Interstate 95 in Maryland were observed over a period of several months. Dr. believed that racial profiling was pervasive.

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7. HARRIS, supra note 1.

Lamberth found that only 17.5% of the traffic code violators were black, but 72% of the individuals stopped and searched were black.9 Lamberth concluded that the likelihood that this could have occurred by chance was “substantially less than one in one billion.”10 Studies conducted in other localities contained similar findings.11

When the ACLU’s 1999 report was released, I was vice president of the ACLU’s eastern Missouri affiliate (“ACLU/EM”), and a member of the National Board of Directors. The report provoked some deep-seated feelings within me. Like most African-Americans, I had personal experiences with profiling. I decided that ACLU/EM should look for ways to implement the racial profiling campaign at the local level. After discussions with other members of ACLU/EM’s Board of Directors, it was suggested that the matter be presented for discussion at an annual retreat of ACLU/EM’s Board where the organization decided its priorities for the upcoming year.

The Board retreat was convened at the University of Missouri-St. Louis in September 1999. I proffered a motion that ACLU/EM make racial profiling a top priority in the upcoming year. After some discussion, long-time Board member Fred Epstein moved to amend my motion to state that the ACLU/EM should eliminate racial profiling in Missouri in the upcoming year. I can recall thinking that it would be impossible to realize that goal, however commendable it was; but I kept that thought to myself, and consented to the modification. The Board approved the resolution as amended.

During the next few weeks, meetings of ACLU/EM’s Race and Equality Committee were convened to discuss the implementation of the resolution. The ACLU/EM staff set up a “hotline,” a special telephone number to receive racial profiling complaints similar to one that had been established by the National Office. Despite the constraints imposed by a three person staff in the midst of transition resulting from the search for a new Executive Director, our Legal Director, Denise Leiberman, provided critical support, attending all of the meetings and coordinating our efforts. Contacts were made with local community groups, including the NAACP, to request the referral of profiling complaints and to identify the localities where the problem seemed to be most severe.

Within the area in which ACLU/EM operates, St. Louis County is one of the most populous regions, existing immediately adjacent to the City of St. Louis, and containing scores of small municipalities, many of which maintain their own police departments. Because the staff received multiple complaints

9. Id. at 280-81.
10. Id. at 279. See also, Angela J. Davis, Race, Cops and Traffic Stops, 51 U. MIAMI L. REV. 425, 432 (discussing empirical evidence of profiling).
11. See Harris, supra note 8, at 281-88.
about certain of those jurisdictions, the Committee began to consider litigation against one or more of the localities identified in the complaints. We also pursued other tactics. A number of police departments in other states volunteered to collect data regarding traffic stops. Steve Ryals, a civil rights attorney and member of the ACLU/EM’s legal steering committee, suggested that we meet with local police officials to suggest voluntary data collection. Denise Lieberman, Steve Ryals, and I met several times with the president of a local police chiefs’ organization to discuss data collection. Law enforcement officials had an interesting response to our suggestions. They claimed, on the one hand, that their officers did not engage in racial profiling, and on the other hand, that profiling was justified since racial minorities were more likely than whites to engage in criminal activities, positions both inconsistent and illogical.12 Our efforts to persuade St. Louis County municipalities to agree to data collection were unavailing. We had more success with the City of St. Louis. In the fall of 1999, Steve Ryals contacted Edward Roth, a member of the St. Louis Police Commission (a civilian oversight board), and persuaded him to meet with representatives of ACLU/EM to discuss racial profiling.

Additionally, we made efforts to heighten public awareness of the abuses of racial profiling. On October 7, 1999, a commentary, Racial Profiling Cannot be Tolerated, appeared in the St. Louis Post-Dispatch.13 Our efforts in this area mirrored the national organization’s efforts. As a result of ACLU’s national campaigns, articles about racial profiling appeared in newspapers and periodicals in localities across the country. The ACLU’s National Office developed advertisements that were published in the New York Times, the New Yorker magazine, and other highly respected publications.

THE LEGISLATIVE CAMPAIGN

In late 1999, Matt LeMieux, who had been recently hired as the Executive Director of ACLU/EM, suggested that we consider introducing an anti-racial profiling bill in the state legislature. My reaction to this recommendation was similar to the skepticism I felt when Fred Epstein suggested that we could eliminate racial profiling in Missouri in one year. I can recall thinking how improbable it would be to get an anti-racial profiling law enacted in a

12. Former ACLU Executive Director Ira Glasser explained: “Most players in the NBA are black. But if you were trying to get a team together, you wouldn’t go out in the street and round up random African-Americans. Most jazz musicians are black. But if you went to hire a band, you wouldn’t go out in the street and round up random blacks and ask them if they played the saxophone. It wouldn’t be a good way to find what you wanted. It’s a very simple, logical fallacy. The fact that most drug dealers are X does not mean that most X are drug dealers.” Ira Glasser, American Drug Laws: The New Jim Crow, 63 ALB. L. REV. 703, 712-13 (2000).

jurisdiction as conservative as Missouri, but, again, kept that thought to myself. I decided that a legislative campaign would at least heighten public awareness of the problem. We ultimately decided to pursue the legislative approach. ACLU/EM’s lobbyist identified a sponsor for the legislation, Representative Russell Gunn, an African-American legislator from St. Louis.

As part of our public education activities, Brad Pierce, an ACLU/EM Board member and former affiliate president, organized a continuing legal education program sponsored by the Bar Association of Metropolitan St. Louis. During the planning of this event, we contacted the ACLU’s National Office. Steve Shapiro, the National Legal Director, agreed to sponsor staff attorney Reginald Shuford’s trip to St. Louis to participate in the continuing legal education program. The National Office had designated Shuford as the ACLU’s lead attorney for racial profiling cases. He was handling several highly publicized profiling cases at that time. In February 2000, the program was convened at the offices of the Bar Association of Metropolitan St. Louis. I was pleasantly surprised to see Edward Roth, one of the Police Commissioners for the City of St. Louis, in the audience, as well as Missouri Supreme Court Judge Ronnie White, the first African-American to serve in that capacity.

At the conclusion of the Bar Association program, Shuford and I rushed off to the University of Missouri’s campus where we were guests on a weekly call-in radio program hosted by St. Louis Post-Dispatch reporter, Gregory Freeman. The program was broadcast on WKMU, the local National Public Radio affiliate. During the course of the broadcast, we received several telephone calls, some of which were hostile and openly racist. A surprising number of them, however, were supportive. Several of the callers discussed their personal experiences as the victims of racial profiling. Other callers, who identified their race as white, described episodes of racial profiling that they had observed. That evening, a reception was held at ACLU/EM’s offices where it was announced that Representative Gunn would introduce a profiling bill in the Missouri legislature. Guests from local community organizations, including the Urban League and the NAACP, attended that event, and agreed to support the legislative effort. During his visit, Shuford also made a formal presentation on racial profiling at a program that was convened at St. Louis University School of Law.

On February 15, 2000, the St. Louis Police Commission, at the prompting of Commissioner Edward Roth, adopted a policy banning racial profiling. This was reported in front-page headlines in the St. Louis Post-Dispatch. Representative Gunn introduced an anti-racial profiling bill in the House in February 2000. On February 23, 2000, a press conference was held in St.

Louis to announce the introduction of the legislation. The press conference was attended by representatives of community groups supporting the bill, including the ACLU/EM, the Urban League, the NAACP, the Mound City Bar Association (a black lawyer’s organization), the St. Louis Clergy Coalition, the Organization of Black Struggle, and the Midwest Council of the Union of American Hebrew Congregations. Shortly thereafter, without consulting us Senator Wayne Goode introduced a similar measure in the Missouri Senate.15

In March, hearings were held at the state capital in Jefferson City, Missouri. Several members of the legislature’s black caucus spoke passionately about their personal experiences as victims of profiling. The Senate approved the bill on March 28, 2000.16 In April 2000, on the last day of the legislative session, Senator Goode’s bill was enacted into law by the legislature. Under the law, every police agency in Missouri is required to record information after every traffic stop, including the race and age of the driver, the violation leading to the stop, whether a search was conducted, the legal basis for any search, the result and duration of the search and whether any citation was issued. The law also required Missouri law enforcement agencies to adopt policies prohibiting officers from using violations of vehicle laws as a pretext to detain minority motorists. The law requires this data to be used to identify officers in need of re-training. It also authorizes the governor to withhold state funding from any agency that fails to comply with the law.17

On June 5, 2000, representatives of ACLU/EM took part with others in a public signing ceremony that was convened by Missouri’s governor, the late Mel Carnahan, at the University of Missouri-St. Louis.18 In a press release, the ACLU’s National Office stated the Missouri legislation is “the strongest and

18. Eric Stern, Carnahan Signs Law Barring Racial Profiling by Police; Officers Will Be Required to Keep Log of Traffic Stops; Ban Takes Effect Aug. 28, ST. LOUIS POST-DISPATCH, June 6, 2000, at B1. ACLU/EM’s legislative campaign may have been aided by local political dynamics. Representative Russell Gunn, an African American state legislator from St. Louis, sponsored the bill supported by ACLU/EM. Shortly after Gunn’s bill was introduced in the House of Representatives, Wayne Goode, a white state Senator, introduced a separate, but very similar, bill in the Senate. Gunn’s House district and Goode’s Senate district are located in overlapping areas in north St. Louis County. Goode had served in the state legislature for several years. His district, which was originally largely white, had a large and growing black population. Gunn planned to run for Goode’s Senate seat. It has been suggested by some observers that Goode used the racial profiling bill to appeal to his black constituency and to forestall Gunn’s challenge.
most comprehensive state law combating racial profiling by law enforcement officers.”

JUDICIAL REACTION TO PROFILING CLAIMS

The Fourth Amendment of the United States Constitution guarantees the “right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures. . . .” A police officer is allowed to temporarily detain an individual if the officer has a “reasonable suspicion” that a person has committed a crime or is about to do so. Reasonable suspicion consists of “a particularized and objective basis for suspecting the person stopped of criminal activity.” Furthermore, the officer must be able to “articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity.” As the Supreme Court explained, “While reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop.”

The Fourth Amendment rights of automobile drivers and passengers have been undermined by a series of Supreme Court decisions that gave police officers broad authority to detain, question and search vehicle occupants even when there is no firm basis for believing that a crime has been committed. As longtime civil rights lawyer David Rudovsky observed, after a car has been stopped for a minor traffic offense, the driver and passengers can be ordered to stand outside of the vehicle without any evidence that they pose a danger to the officer. At any time during the traffic stop, police officers (who are usually armed) can request authorization to search the occupants or the vehicle without advising the affected individuals that their consent is not obligatory, or that they are free to leave at any time. Any drugs or other contraband in “plain view” can be seized and used as the basis for a determination of cause to

20. U.S. CONST. amend. IV.
24. *Id.* at 123 (internal citations omitted).
27. *Id.* at 317-18 (citing Ohio v. Robinette, 519 U.S. 33 (1996)).
arrest the vehicle’s occupants. Any person who appears to the officer to present a danger can be frisked. If there is an arrest, a full-scale search of the interior of the vehicle and all containers, whether belonging to the driver or the occupants is permissible. Police officers are also authorized to question the occupants of the car during a traffic stop without providing Miranda warnings.

The Fourth Amendment rights of automobile occupants were weakened further by a 1996 Supreme Court decision, *Whren v. United States*, which endorsed the practice of “pretext stops.” In *Whren*, plainclothes officers patrolling a well-known drug trafficking area in Washington D.C. observed a vehicle waiting at a stop sign for “an unusually long time.” The vehicle turned suddenly and sped off at what the officers described as an “unreasonable” speed. The officers stopped the vehicle allegedly to cite the driver for a traffic violation but in the course of doing so, observed plastic bags of crack cocaine in the possession of one of the occupants. After their arrest, the defendants moved to suppress the admission of the drugs as evidence, arguing that the stop had not been justified by probable cause to believe that they were engaged in illegal drug activities, and that the officers’ justification for stopping them was a pretext for a drug investigation. The court upheld the validity of the search, stating that when police have probable cause to believe that a traffic violation has occurred, an officer’s actual motivation for initiating the stop is irrelevant. This decision opens the door to abuses such as racial profiling. It allows officers to stop motorists suspected of being involved in any type of unlawful conduct, even when they lack an adequate cause to legally justify the suspicion and detention, as long as they can find a traffic-related excuse to detain them.

The Supreme Court’s analysis in *Whren* reflects what Professor Alan Freeman described as the “perpetrator’s perspective.” This is the dominant

29. *Id.* (citing Michigan v. Long, 463 U.S. 1032, 1035 (1983)).
33. *Id.* at 808.
34. *Id.* at 808-09.
35. *Id.* at 813.
voice in judicial analysis of civil rights issues. Analysis that proceeds from this premise views discriminatory activities from the perspective of the dominant majority, but fails to account for the consequences of the conduct on the victim. The victim perspective, however, considers the conditions resulting from discriminatory practices. This perspective was not reflected in *Whren*.

Consider one of my own experiences with racial profiling. Some years ago I worked for a law firm in Atlanta, Georgia. Occasionally, I would vacation at resorts on the Georgia Coast, not far from Savannah. At the time, travel by automobile from Atlanta required one to travel south and then east for several miles through a series of small towns in southeast Georgia.

On the return from one such trip, I was traveling west on a Georgia state highway. As I reached the crest of an incline in the road I noticed, some distance ahead, a police officer on the side of the road questioning a motorist he had pulled over. It was a clear day and I could see that the officer did not notice my approach because his back was turned in my direction. Although I had not been speeding, I checked my speedometer to be certain that I was traveling within the speed limit. Eventually, I passed the officer who was still questioning the African-American driver he had stopped.

My sports car and dark complexion apparently attracted the officer’s attention. After proceeding some distance down the road, I saw flashing lights in my rear-view mirror. When I pulled over, the officer approached my vehicle. The African-American motorist I had previously observed being questioned by the officer was in the back seat of the officer’s vehicle, apparently under arrest. I asked, as politely as I could, whether there was a problem. The officer responded in a deep Southern drawl that he had to “drive 80 miles an hour” to catch up with me, implying that I had been speeding. I handed him my driver’s license, my bar card (indicating that I was licensed to practice law in Georgia), and my business card, which bore the name of a well-known civil rights law firm. I told the officer that as it had been sometime since I had passed him, he would necessarily have had to exceed the speed limit to catch up with me. I also said that I had seen him long before he had noticed me, so that even if I had been speeding, I would have slowed down. The officer looked at me somewhat warily. I pointed to my visibly pregnant wife, and said I wouldn’t speed with her in the car. The officer apparently decided that his pretext (that I was speeding) would not stand up in court, and that citing or arresting me would create legal problems for him (which was the unspoken message I intended to convey with my bar and business cards). The officer reluctantly allowed me to proceed. Had I not been a lawyer I probably would have been compelled to join my less fortunate brother in the back seat.

37. *Id.*
of the officer’s car. It is easy to understand Whren’s potential for encouraging police misconduct when one has been the victim of such behavior.

ROUNDING UP THE USUAL SUSPECTS

Although Whren suggested in dicta that singling out individuals solely on the basis of their race would violate the Fourteenth Amendment, the courts have not been receptive to claims asserted by profiling victims. In Brown v. City of Oneonta, the Court of Appeals for the Second Circuit held that police officers could legitimately rely on race in a criminal investigation that involved questioning every young, African-American male in a town in upstate New York. The facts in Brown indicate that in 1992, someone broke into a house near Oneonta and attacked a seventy-two-year-old woman. The woman told police that she could not identify her assailant, but that he was a “black man, based on her view of the forearm, and that he was young, because of the speed with which he crossed her room. She also told police that, as they struggled, the suspect had cut himself on the hand with a knife.” The police officers first secured a list of the black, male students at the nearby State University of New York College at Oneonta and questioned every one of them. After failing to identify a suspect at the college, the police stopped and questioned every young, black male in Oneonta.

A class action was filed on behalf of black males alleging, among other things, racial profiling in violation of the Equal Protection Clause of the Fourteenth Amendment. The court held that the consideration of race in determining whom to question was legitimate based on the physical description given by the victim of the attack. The court also found that targeting young, black males was not a classification based on race, since age and gender were also factors. The court conceded that the Police Department’s approach, questioning every young, black in the town, might well have had a disparate impact on African-Americans. The court suggested that such an adverse impact was permissible, speculating that if the community were primarily black, with very few white residents, and the search were for a young white male, the disparate impact would have been the same (although it acknowledged that such an investigation was highly unlikely).

38. Whren, 517 U.S. at 813 (“[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.”).
40. Id. at 334.
41. Id.
42. Id. at 337.
43. Id. at 337.
44. Id. at 338.
In another case, *Chavez v. Illinois State Police*, the plaintiffs challenged the validity of a drug interdiction program, “Operation Valkyrie,” which was employed by the Illinois State Police. The plaintiffs claimed that the State Police engaged in racial profiling by using racial classifications in deciding whom to stop, detain, and search. The plaintiffs relied on the testimony of blacks and Latinos who had been stopped by the Illinois State Police as well as statistical evidence that indicated that Hispanics were being stopped at disproportionate rates compared to similarly situated white motorists. The Court of Appeals affirmed the trial court’s ruling that the plaintiffs had failed to establish a *prima facie* case of intentional discrimination. The court found that the statistical evidence on which the plaintiffs relied was methodologically flawed for several reasons including, among other things, plaintiffs’ use of census data of all Illinois residents to determine the racial composition of a subset of residents—drivers on Illinois roads. The court also found that the statistical samples were too small, and that there were other flaws in the ways the studies were developed and executed. The court concluded that “expert analysis must be both relevant and reliable, and the statistics here are neither.”

The decisions in *Chavez and Brown* reflect the skepticism that profiling claims are receiving in the courts. Contrary to the court’s conclusion in *Brown*, that there was no racial classification involved, the police employed an explicit racial classification—young, black males. The police relied upon a vague description that fit hundreds of thousands of individuals. This level of generality is not an adequate basis for believing that every young, black male in the area may have perpetrated the crime. Too many innocent individuals were targeted.

At least one Circuit has recognized the constitutional problems with this over-inclusive approach to criminal investigations. In *United States v. Montero-Camargo*, the Court of Appeals for the Ninth Circuit held that border patrol agents could not rely on ethnicity as a factor in deciding to detain motorists in southern California. In *Montero-Camargo*, the defendants were driving separate automobiles near the Mexican border. They both made U-turns at a place where the view of border patrol agents stationed at a checkpoint was obstructed. Both cars later stopped in an area that was used as a drop-off point for undocumented aliens and contraband. The automobiles had Mexican license plates. Both men appeared to be Hispanic. Based on these and other considerations, the patrol agents decided to intercept the

46. *Id.* at 656.
47. *Id.* at 641.
automobiles and found a quantity of marijuana after a search. In an en banc opinion, the Court of Appeals condemned the agents’ reliance on ethnicity as a factor for determining probable cause because it failed to satisfy the “particularity” requirement of the Fourth Amendment.49

The court emphasized that reasonable suspicion only exists when “an officer is aware of specific . . . facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion.”50 Moreover, there must be a “reasonable suspicion that the particular person being stopped has committed or is about to commit a crime.”51 When a substantial number of people share a specific characteristic such as race or ethnicity, that characteristic is of little or no probative value. While it is permissible to consider race when the suspected perpetrator of a specific offense has been identified as having that appearance, “persons of a particular racial or ethnic group may not be stopped and questioned because of such appearance, unless there are other individualized or particularized factors which, together with the racial or ethnic appearance identified, rise to the level of reasonable suspicion or probable cause.”52 The requisite level of specificity was missing in Brown v. City of Oneonta.53

One of the Court’s reasons for rejecting the ethnicity criterion in Montero-Carmargo was the high percentage of Hispanic persons residing in southern California.54 This made Hispanic ethnicity too common to be given any weight in deciding “reasonable suspicion.” There were only a small number of African-Americans in the locality involved in Brown v. City of Oneonta, but the Ninth Circuit’s reasoning still applies to the actions of the Oneonta police. They proceeded solely on the basis of race and age, using criteria that applied to every young, black male in America. There were no “individualized or particularized” characteristics in the description on which they had relied. The officers did not look for a knife wound until after the young men were detained. They simply rounded up the usual suspects: every young, black male they could find. This approach to law enforcement fails the specificity requirement of the Fourth Amendment. It also “send[s] a clear message that those who are not white enjoy a lesser degree of constitutional protection - that they are in effect assumed to be potential criminals first and individuals

49. Id. at 1135. See also Young Ho Choi v. Gaston, 220 F.3d 1010 (9th Cir. 2000). (reversing summary judgment where evidence was sufficient to create a jury question as to whether officers had reasonable suspicion to stop the suspect or probable cause to arrest him, or acted instead on the basis of racial profiling).
50. Montero-Carmargo, 208 F.3d at 1129.
51. Id.
52. Id. at 1134, n.22.
53. See supra text accompanying notes 39-44.
54. Montero-Carmargo, 208 F.3d at 1131.
This attitude has infected the thinking in law enforcement circles for decades. Racial profiling is merely one manifestation of this mindset. It is a practice that cannot be condoned under any circumstances.

CONCLUSION

Racial profiling is well known among African-Americans and other people of color who, for generations, have been the victims of this pernicious form of police misconduct. This conduct has been an unfortunate fact of everyday life for African-Americans. Latinos in the southwest and border areas have also been targets for this form of abuse, as have Asian Americans. The attention that racial profiling is now receiving is welcome, but long overdue.

To address the issue directly, in 1999 the ACLU/EM chose a legislative path to reform that led to a rule of general applicability that is binding on all law enforcement agencies in the state of Missouri. The law expressly prohibits racial profiling and requires all of the state’s law-enforcement agencies to collect data concerning traffic stops. If ACLU/EM had pursued the litigation route, as originally anticipated, we would have devoted several months and considerable financial and other resources to pursuing civil actions against one or two small localities in St. Louis County. The Chavez case in nearby Illinois highlighted the expense and difficulty in gathering data on traffic stops. Furthermore, there was no guarantee that we would have prevailed, given the difficulties racial profiling cases have encountered in the courts.

The successful effort to outlaw racial profiling in Missouri shows how a small organization with limited resources can achieve a forceful result. ACLU/EM formed coalitions with other community groups that supported a statutory prohibition of the practice. The organization’s lobbying and public education efforts benefited from the public attention generated by the National Office. The National Office’s goals were advanced by the affiliate’s activities at the local level. Together, our efforts produced a result in Missouri that would have been far more difficult to achieve had the affiliate or the National Office worked on this matter alone. Today, racial profiling by law enforcement officials is banned in Missouri.

55. Id. at 1134.