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LAW ENFORCEMENT AND RACIAL AND ETHNIC BIAS

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I. INTRODUCTION

ON the morning of March 3, 1991, the American public awoke to the spectacle of a tall, heavy-set black man, later identified as a habitual criminal, being kicked and clubbed by four Los Angeles police officers as he lay on the ground. More than twenty other Los Angeles police officers simply watched. Later that week, police department tapes were released replete with racial slurs against the victimized African-American citizen.¹ For nonwhite America, the brutalization of Rodney King was no surprise. What was surprising was the capture of that brutalization on video tape. White America, after the Rodney King brutalization, has learned of other police brutalizations of American citizens captured on video tape.²

This brief Article does not attempt to explain the Rodney King brutalization; it instead reviews some of the literature that has examined police-minority relations in the United States. First reviewed are the Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission, issued on December 11, 1990.³ The Article next discusses the three key elements of differential enforcement of the law: police discretion, police discrimination, and police violence, and then concludes with a summary of the three evolving strategies of law enforcement interaction with America's minority community. Through this review of some of the basic literature on police-minority relations, one can better understand the dynamics of the brutalization of King by sworn law enforcement officers, as well as why white America was surprised by that event while nonwhite America was not. The review of the police-minority literature also will help put into perspective the Study Commission findings about law enforcement.

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1. Diane Brady & Anne Gregor, *The LAPD Video*, MACLEAN's, Apr. 1, 1991, at 42.

2. Melinda Beck et al., *Video Vigilantes*, NEWSWEEK, July 22, 1991, at 42.

3. REPORT AND RECOMMENDATIONS OF THE FLORIDA SUPREME COURT RACIAL AND ETHNIC BIAS STUDY COMMISSION (1991), reprinted in 19 FLA. ST. U. L. REV. 591 (1992) (reprinted with permission) [hereinafter STUDY COMMISSION].

II. THE FLORIDA SUPREME COURT RACIAL AND ETHNIC BIAS STUDY COMMISSION: LAW ENFORCEMENT INTERACTION WITH MINORITIES

The Florida Supreme Court Racial and Ethnic Bias Study Commission found five fundamental problems concerning the relationship between Florida's law enforcement agencies and minorities:⁴ 1) minorities are too often subjected to the threat of abuse and brutality by law enforcement organizations;⁵ 2) relationships between police officers and minorities are adversely affected by cultural differences and misunderstandings;⁶ 3) African-Americans and Hispanics are under-represented in Florida's law enforcement agencies and apparently are losing ground;⁷ 4) minority police officers are under-promoted and under-represented in the managerial and supervisory ranks of police agencies;⁸ 5) current training is insufficient to demonstrate the State's commitment to ensuring culturally sensitive law enforcement action toward racial and ethnic minorities.⁹

Based upon these findings, the Study Commission made several recommendations. First, law enforcement organizations should plan to recruit, hire, retain, and promote minorities.¹⁰ A state minority career development program should be formed.¹¹ A Civil Rights Division should be created in the Attorney General's office to bring injunctive and compensatory suits against individuals and agencies, including law enforcement agencies, that engage in harassment or other inappropriate conduct on the basis of race or ethnicity.¹²

Second, law enforcement agencies should adopt a policy that regulates and minimizes the use of force and domination on investigatory stops.¹³ The forty centers that presently provide training to law enforcement officers throughout the State should be reviewed to determine whether program offerings can be improved through closer collaboration among the centers.¹⁴

Third, the responsibilities of the recently created "Criminal Justice Executive Institute" should be expanded to include design and implementation of research projects that would combine the talents of com-

4. *Id.* at 599.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 600.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

munity colleges and universities to improve law enforcement efforts with regard to the minority community.¹⁵ Finally, law enforcement training should be improved to include specific training on racial and ethnic bias-related topics.¹⁶

III. POLICE-MINORITY RELATIONS

Most criminal justice studies of law enforcement interaction with minorities focus on three areas: police discretion, police discrimination, and police violence.¹⁷ Most legal studies of law enforcement interaction with minorities focus on two areas: Supreme Court findings involving minority defendants and procedural or substantive issues related to capital punishment, including the disproportionate number of minorities sentenced to death.¹⁸

A. Police Discretion and Discrimination

Ronald Barri Flowers' excellent review of minorities, crime, and criminal justice, *Minorities and Criminality*,¹⁹ notes that the issue of police discretion centers on the wide latitude that officers are given in disposing of criminal investigations and in responding to a given call, especially one involving a minor offense. Flowers states that the officers must first make a good faith determination that an offense is taking place or has taken place, especially in the case of a felony.²⁰ The police must ultimately decide to charge or not to charge the suspect

15. *Id.*

16. *Id.* at 600-01.

17. See Dale Dannefer & Russell K. Schutt, *Race and Juvenile Justice Processing in Court and Police Agencies*, 87 AM. J. SOC. 1113 (1982) (discussing police discretion and discrimination); James J. Fyfe, *Race and Extreme Police-Citizen Violence*, in RACE, CRIME AND CRIMINAL JUSTICE 89 (R.L. McNeely & Carl E. Pope eds., 1981) (discussing police violence and discrimination); Arthur L. Kobler, *Police Homicide in a Democracy*, 31 J. OF SOC. ISSUES 163 (1975) (discussing police violence); Douglas A. Smith & Jody R. Klein, *Police Control of Interpersonal Disputes*, 31 SOC. PROB. 468 (1984) (study of police discretion); Douglas A. Smith et al., *Equity and Discretionary Justice: The Influence of Race on Police Arrest Decisions*, 75 J. CRIM. L. & CRIMINOLOGY 234 (1985) (discussing police discretion and discrimination).

18. See WILLIAM J. BOWERS, *LEGAL HOMICIDE: DEATH AS PUNISHMENT IN AMERICA, 1864-1982* (1984) (discussing Supreme Court cases and their impact on the death penalty); David C. Baldus et. al., *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J. CRIM. L. & CRIMINOLOGY 661 (1983) (discussing the impact of Supreme Court cases on discrimination in death penalty sentencing); Raymond Paternoster, *Race of Victim and Location of Crime: The Decision To Seek the Death Penalty in South Carolina*, 74 J. CRIM. L. & CRIMINOLOGY 754 (1983) (discussing discrimination in death penalty sentencing).

19. RONALD B. FLOWERS, *MINORITIES AND CRIMINALITY* 149 (1988).

20. *Id.* at 149-51.

with an offense. For example, the officer must decide if the offense is an unauthorized use of a motor vehicle or grand theft. Similarly, an offense may be disorderly conduct or simple assault. Another offense may be vagrancy, felony burglary, or criminal trespass. The menu of potential charges is formidable.

Police discretion is, essentially, selective law enforcement,²¹ potentially impacted by police discrimination based on the race, ethnicity, and social class of the victim and alleged assailant.²² Flowers notes the phenomenon of social distance and the factors that impact social distance.²³ Social distance is "the degree of closeness or remoteness one desires in interaction with members of a particular group."²⁴

Race, ethnicity, and social class are factors that impact the social distance experienced by an officer toward both a suspect and an alleged victim. In turn, these three factors affect the officer's decision whether to arrest or charge the suspect. Whether the race of the alleged victim or the race of the suspect is more important in the creation of social distance is not settled.²⁵ It is virtually impossible to disaggregate the role of social class from those of race and ethnicity in the social distance dynamic, and it is equally difficult to disaggregate the impact of the officer's personal likes and dislikes, both of which impact the police officer's exercise of discretion. The potential impact of the aforementioned variables, which were also noted by the Study Commission,²⁶ cannot be denied.

The need to systematically compare the race of the officer with the race of the suspect and the race of the alleged victim while examining the social distance dynamic's impact on police discretion during law enforcement interactions with minorities has yet to be recognized. For instance, what is the significance of nonverbal body language cues exhibited by all of the protagonists during the intervention? Do these nonverbal body language cues precipitate hostile or violent actions by the protagonists? How common are petit apartheid interventions by police officers when interacting with minority suspects and alleged victims? These petit apartheid actions—rudeness, insensitivity, insult, and indiscretion—are what create the primary reality of the negative

21. *Id.*

22. *Id.* at 151-52.

23. Daniel E. Georges-Abeyie, *Race, Ethnicity, and the Spatial Dynamic: Toward a Realistic Study of Black Crime, Crime Victimization, and Criminal Justice Processing of Blacks*, 16 Soc. JUST. 35, 38-39 (1989).

24. VINCENT PARILLO, STRANGERS TO THESE SHORES 491 (1985); *see also id.* at 5-7 for a discussion of social distance.

25. *Id.* at 5-7.

26. STUDY COMMISSION, *supra* note 3, at 636-37.

social context of police interactions with minorities.²⁷ Examples of this negative social context abound: 1) the infamous Philadelphia Operation Cold Turkey roundup of more than 100 Hispanic youth because of the murder of a white police officer in the predominantly Hispanic neighborhood of Spring Garden,²⁸ 2) the 1987 Homestead, Pennsylvania incident of late-night door-to-door requests of male African-American citizens to provide blood or fingerprints because of a series of rapes of elderly white females and one elderly African-American female by a man wearing a ski mask and having a "black sounding voice,"²⁹ and 3) the Lower Providence, Pennsylvania police department's "alleged practice of stopping automobiles with 'black interiors,' that is with black motorists."³⁰

The informal petit apartheid indignities faced by nonwhite Americans are the key determinants of the negative, often violent encounters between law enforcement agents and minority citizens. These indignities are apparent in traffic stops, requests by minority citizens for assistance, and countless investigatory stops and searches. Racism, ethnocentrism, and xenophobia are seldom legally mandated. What had been legal realities, such as the segregation of housing and of public facilities, have become de facto indignities similar to those involved in the situations noted above.

Cultural insensitivity or outright ethnocentrism and xenophobia may be the roots of negative, highly emotional, seemingly unstructured law enforcement-minority community encounters. Police discretion turns into police discrimination. For example, middle-class white police officers or middle-class Eurocentric African-American officers—the type of officer New York State Supreme Court Judge Bruce Wright refers to as an Afro-Saxon in his highly amusing and informative book *Black Robes, White Justice*³¹—may encounter a group of lower-class or working-class nonwhite Hispanic, Caribbean, or African-American men sitting on a stoop or at a folding table engaged in a rousing game of cards, or dominos, while consuming an alcoholic beverage in an open container. The group may even be gambling. What should the officers do? From the officers' perspective not only are crimes taking place before their very eyes, but also the boisterous

27. Georges-Abeyie, *supra* note 23, at 46-47; Daniel E. Georges-Abeyie, *The Myth of a Racist Criminal Justice System?*, in RACISM, EMPIRICISM AND CRIMINAL JUSTICE 12 (Brian D. MacLean & Dragan Milovanovic eds., 1990).

28. Georges-Abeyie, *supra* note 23, at 47.

29. *Id.*

30. *Id.*

31. BRUCE WRIGHT, *BLACK ROBES, WHITE JUSTICE* 65 (1987).

game and public consumption of alcohol may be unseemly or outright offensive. From the perspective of the nonwhite players, however, their actions are proper and respectful of the women and children safely ensconced in the nearby tenement. After all, there is no basement game room or backyard, and the living room has been converted to an all-purpose sleeping and meeting facility dominated by the women and children. Moreover, for many working class Caribbeans, Hispanics, and African-Americans, single-sex recreational activities are normal.³²

Although the officers are confronted with what seems to be contracultural criminally significant behavior,³³ from the perspective of the game players their behavior is predominantly subcultural, not contracultural.³⁴ Subcultural means exhibiting learned values, beliefs, and actions different from, but not in conflict with, the dominant culture. Contracultural means exhibiting learned values, beliefs, and actions different from, and in conflict with, the dominant culture.³⁵ This is a classic example of an anomic situation in which multidimensional value space reigns and in which values are in conflict.³⁶ The officers feel duty bound to enforce the cultural mandates, or the laws, of the dominant society. Because minority subcultural values, beliefs, and actions have been criminalized by the dominant society, agents of that society may feel duty-bound to intervene formally and act forcefully, possibly precipitating a violent encounter.

B. Police Violence

Unfortunately, police discretion converted to police discrimination too often transmutes into the third common manifestation of law enforcement interaction with minorities—police violence. Police violence is frequently referred to as excessive use of force and includes the unjustified use of deadly force. The justified, as well as the unjustified, use of force by the law enforcement community against racial and ethnic minorities has been studied and analyzed by numerous scholars³⁷ and has triggered some of America's most brutal riots.³⁸ Police vio-

32. Georges-Abeyie, *supra* note 23, at 46.

33. *Id.*

34. *Id.*

35. LYNN A. CURTIS, *VIOLENCE, RACE, AND CULTURE* 24 (1975).

36. *Id.* at 43-47.

37. See, e.g., WILLIAM G. DOERNER, *INTRODUCTION TO LAW ENFORCEMENT* 316-19 (1992); FLOWERS, *supra* note 19, at 152-55.

38. ANTHONY M. PLATT, *THE POLITICS OF RIOT COMMISSIONS* 32 (1971); Hubert Williams & Patrick V. Murphy, *The Evolving Strategy of Police: A Minority View*, *PERSP. ON POLICING*, Jan. 1990, at 1, 3.

lence has also resulted in the landmark Supreme Court holding in *Tennessee v. Garner*.³⁹

The reality of police violence against minorities in the form of both lethal and nonlethal force is beyond dispute.⁴⁰ The dynamics of the violence remain to be explained, as does the disproportionate violence perpetrated against specific racial and ethnic minorities.⁴¹ Is the allegation correct that the violence "was more likely to be against those showing disregard or disrespect for police authority after arrest"⁴² rather than selectively focused on blacks, or is it that "[v]ariations in the degree and incidence of police violence against minorities are often a matter of not only personal discretion and discrimination but also differences from city to city in the relative power of minority members, police department organization, and departmental administrative directives"?⁴³

IV. PERSPECTIVES ON LAW ENFORCEMENT INTERACTION WITH MINORITIES

Law enforcement interaction with minorities during the 1980s and 1990s must be placed in perspective if the findings and recommendations of the Study Commission are to be interpreted and used effectively.

A strategic history of American policing falls into three eras: 1) political, 2) reform, and 3) community.⁴⁴ Yet traditional scholars of American strategic policing fail to take account of:

how slavery, segregation, discrimination, and racism have affected the development of American police departments—and how these factors have affected the quality of policing in the Nation's minority communities. . . . [The scholars are] silent on the important role that minorities have played in the past, and will play in the future, in affecting and improving the quality of policing in America.⁴⁵

39. 471 U.S. 1 (1985) (holding unconstitutional a Tennessee statute providing that a police officer, having given a criminal suspect notice of intent to arrest, "may use all the necessary means to effect the arrest" if the suspect flees or forcibly resists).

40. PLATT, *supra* note 38.

41. CATHERINE H. MILTON ET AL., POLICE USE OF DEADLY FORCE 19, 22 (1977); James J. Fyfe, *Race and Extreme Police-Citizen Violence*, in RACE, CRIME AND CRIMINAL JUSTICE 104 (R.L. McNeely & Carl Pope eds., 1981); James J. Fyfe, *Blind Justice: Police Shootings in Memphis*, 73 J. CRIM. L. & CRIMINOLOGY 707, 708-09 (1982).

42. FLOWERS, *supra* note 19, at 154; see also ALBERT REISS, THE POLICE AND THE PUBLIC 141-50 (1971).

43. FLOWERS, *supra* note 19, at 154.

44. Williams & Murphy, *supra* note 38, at 1.

45. *Id.*

The political era of policing extending from the 1840s through the 1910s was denoted by the legal and political empowerment of various ethnic and racial groups and their consequent domination of the law enforcement and social control functions in their own blatant interests.⁴⁶ Unfortunately for African-Americans, "minority communities received virtually none of the benefits of policing that were directed to those with more political clout. . . . American police derived both their authority and their resources from local political leaders."⁴⁷ For the African-American, the political era was denoted by slave patrols and the postbellum police enforcing racially biased laws. The political era taught the African-American to fear the police, a lesson learned well and passed from one generation to the next.

The reform era evolved from the early 1900s and was in full swing by the 1930s.⁴⁸ This era codified the criteria for the appointment and promotion of police officers and introduced such "objective" appointment and promotion criteria as civil service examinations, background investigations, and the abolition of residence requirements—the same criteria used today. Unfortunately for African-Americans, laws without justice merely legalized the de facto oppression of America's nonwhite population. How could minorities relegated to inferior schools and subjected to discriminatory and often overtly punitive practices in the military, in the school, in the workplace, and at the hands of the police hope to pass background investigations or compete successfully against whites on civil service examinations?

Not until the current community era beginning in the late 1970s and early 1980s,⁴⁹ characterized by policing originating with the election or appointment of progressive mayors of any color, have minorities had direct access to responsive politicians and, consequently, to responsive law enforcement agencies. This era was, and is, denoted by the policing of disintegrating communities with limited economic resources, especially in the inner city.

It is in this community era of policing that the Study Commission issued its findings and recommendations. In this era of shrinking financial resources, intensified community disorganization, inner city poverty, and renewed and intensified de facto segregation via white flight to suburbia or inner city homesteads, one notes the claims of police abuse and brutality, lack of respect for Florida's minority citi-

46. *Id.* at 3.

47. *Id.* at 2-3.

48. *Id.* at 6.

49. *Id.*

zens, Eurocentrism, ethnocentrism, and disrespect for cultural differences exhibited by Florida's law enforcement agencies;⁵⁰ one notes under-representation of African-Americans and Hispanics in Florida's police agencies,⁵¹ the under-representation of minority officers among the ranks of those promoted,⁵² as well as amongst the management and supervisory ranks;⁵³ one notes insufficient training in the areas of cultural sensitivity and multiculturalism for police personnel.⁵⁴ Also during this era, one notes that while the Study Commission makes recommendations to address the aforementioned findings, a virtual dearth in funds fails to turn lipservice and noble platitudes into remedial action.

The mere hiring of thousands of nonwhite or non-Anglo law enforcement officers, albeit an unlikely happening in a Florida frantically paring its social service commitment in the 1990s,⁵⁵ will not necessarily result in greater law enforcement sensitivity to cultural difference during law enforcement interactions with minorities. The Study Commission recommendation calls for not only a reduction in Eurocentrism and ethnocentrism, but also for an intensified awareness and sensitivity to a culturally, ethnically, and racially pluralistic rural, suburban, and urban landscape.⁵⁶ This is the same era, in this author's opinion, in which the American judiciary, from the United States Supreme Court to the local municipal courts, has decided to embrace a profound color-race-ethnic-cultural blindness, a blindness certain to result in the institutional subordination of America's non-Anglo, nonwhite minorities. A law enforcement initiative that reflects the current judiciary's color-race-ethnic-cultural biases objectively via police panel screening only ensures Eurocentrism and Anglosaxon cultural domination via professionalism. Similarly, objective entrance and promotion criteria may result in more racially and ethnically diverse law enforcement agencies in regard to phenotype, but the end result will be what Judge Bruce Wright calls the Afrosaxonification and Hispanosaxonification of America's criminal justice "system."⁵⁷

A community era for policing without the social commitment to multiculturalism and cultural pluralism, or the financial resources for

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. Mark Silva, *Lawmakers Lament Own Budget Plans: 'Patchwork' Tax System Can't Meet State's Needs, Many Say*, MIAMI HERALD, Apr. 4, 1991, at 12A.

55. Mark Silva, *State Plan Puts Jobs in Jeopardy*, MIAMI HERALD, Feb. 5, 1991, at 1A.

56. STUDY COMMISSION, *supra* note 3, at 643-44.

57. WRIGHT, *supra* note 31.

meaningful, immediate implementation of reform, likely means unfulfilled expectations. It also sounds ominously like a formula for social contagion and civil unrest.

V. CONCLUSION

Racial and ethnic intolerance have been an integral part of American social, cultural, and political reality. American values such as brotherhood, fair play, individual initiative, and equal justice under the law have frequently clashed with the application of those values in specific racial and ethnic contexts. This is especially true in cases involving police use of discretion and deadly force, situations documented in the text and footnotes of this Article.

Equitable and humane law enforcement necessitates appreciation and comprehension of cultural difference, as manifested in speech, body language, and overt physical action. The obligations to temper behavior and speech and to act with compassion, respect, and forethought rest primarily with the law enforcement officer, not with the irate, impassioned, or terrified citizenry. Police training and respect for ethnic and cultural difference in a trying and potentially dangerous situation must temper police discretion and eliminate discriminatory, brutal, or excessive use of force by law enforcement officers. Police officers must become more cognizant of not only what they do, but how they do it. The conflicting police role expectations of law officer versus peace officer, of fighting crime versus interacting with citizens, of enforcing law versus maintaining order, and of crook catching versus peace-keeping must be resolved through greater understanding of the community. Ultimately, this understanding will lead to a greater cooperation between the police—often of a different race and ethnicity than the people they police—and the citizenry they have sworn to serve and protect.