Racial Profiling by Store Clerks and Security Personnel in Retail Establishments

An Exploration of “Shopping While Black”

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This article examines Shopping While Black (SWB), which is the practice of racial profiling in retail settings. The study couches this form of racial profiling under the following three criminological perspectives: labeling theory, conflict theory, and the colonial model. Based on a review of the literature and an analysis of appellate cases at the state and federal levels, the author concludes that, like racial profiling in automobiles, the concept of Shopping While Black requires serious scholarly attention. Given the nature of the problem, the following represent viable strategies to reduce such profiling: require clerks and security personnel to receive education on the perils of racial profiling, encourage victims of profiling to sue retailers who engage in these practices, and work with civil rights groups to organize boycotts. The article concludes by urging federal officials to increase current levels of funding to study and remedy these discriminatory practices.

Keywords: Racial profiling, Shopping While Black, retail security, discrimination, false arrest

In the 1990s, racial profiling, often referred to as DWB, or Driving While Black, became an indelible concept in American life (Harris, 2002; Russell, 1999). According to the federal government (Ramirez, McDevitt, & Farrell, 2000),

racial profiling is defined as any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity. (p. 3)

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Although the practice, the singling out of people of color (particularly Black Americans) for increased scrutiny by criminal justice officials was not new (Higginbotham, 1978, 1996; McIntyre, 1992), the increasing concerns regarding drug trafficking led some to believe that the answer to the problem could be resolved by singling out the perceived major transporters of these drugs, Black Americans. This led to states such as Maryland targeting Black drivers on Interstate 95 for frivolous pretextual stops in hopes of making a big bust. During the 1990s, 77% of the drivers stopped by Maryland state troopers for traffic violations were African Americans; however, only 17% of the drivers on the Maryland portion of Interstate 95 were African American (Russell, 1998, pp. 40-43). So although some of those stopped were in fact caught with drugs, most were not and were improperly targeted for these intrusive stops. Since the Maryland case became public, other jurisdictions have also come under scrutiny by courts for their use of racial profiling (couched within the “drug-courier profile”) in the so-called “war against drugs” (Harris, 2002).

Once these controversial practices were brought to the national spotlight, public opinion polls began to consider how Americans viewed the issue. A December 1999 Gallup Poll found that most Americans believed that such activity was regularly engaged in by police (Ramirez et al., 2000). In addition, 81% of those surveyed felt the practice was wrong. There was more than a 20-point difference between Whites (56%) and Blacks (77%) when they were queried about the pervasiveness of profiling. Although only 6% of White respondents indicated they believe they had been previously stopped because of their race, 42% of Blacks believed they had been racially profiled (Ramirez et al., 2000). Moreover, “72% of Black men between the ages of 18 and 34 believed they had been stopped because of their race” (Ramirez et al., 2000, p. 4).

Because there are more than 3 times as many private security officers as there are public law enforcement officers (approximately 2 million vs. 600,000), it seems natural to explore the extent to which similar practices exist in retail settings, where private security officers predominate. Relatedly, because on average African Americans spend more of their annual incomes on apparel and services than Whites (6% vs. 4.8% even though Whites annually make $14,000 more a year), one would anticipate that they would visit retail establishments quite frequently (Bureau of Labor Statistics, 2002).

First, this study reviews the recent literature on Shopping While Black (SWB), while also examining legal cases where retailers have been accused of engaging in racial profiling in retail establishments. Thus, this study is guided by the following research questions: (a) What criminological theories are best suited to explain racial profiling? (b) What literature exists regarding racial profiling in the private sector? (c) What types of racial profiling inci-
dents are currently occurring in retail settings? (d) What have been the outcomes of these incidents? and (e) What potential remedies are there for reducing SWB?

THEORETICAL FRAMEWORK

The practice of racial profiling touches on a number of criminological theories that can possibly explain the use of the practice. I briefly discuss three, beginning with the labeling perspective. Although explaining racial profiling has recently been considered by criminologists, the labeling of people of color as criminals is not new. The practice is an outgrowth of the continuing historical criminalization of Blacks (Higginbotham, 1978, 1996; McIntyre, 1992). Scholarship over the past 10 years has discussed the labeling of Blacks as criminal. Gabbidon (1994), for example, called the fear resulting from the labeling of Blacks as criminal “Blackaphobia,” whereas Armour (1997) called it “Negrophobia,” and Russell (1998) referred to it as the myth of the criminal Black man. Irrespective of what you call it, for centuries, Blacks have had to deal with the effects of being considered the most criminal population. As a result, long before the labeling perspective was first being conceptualized in the classic work of Tannenbaum, Blacks were being profiled. Nevertheless, in his classic statement from *Crime and the Community*, Tannenbaum (1938), wrote, “The process of making a criminal . . . is a process of tagging, defining, identifying, segregating, describing, emphasizing” (p. 20). Because of this labeling process, society reacts to people differently. In the case of racial profiling, law enforcement, with the help of the media, have tagged African Americans as criminals who require additional scrutiny because of their criminal label. In line with the theory, although some African Americans conceivably take on this label and act it out (producing what some refer to as the self-fulfilling prophecy), most do not. Nevertheless, African Americans (particularly males) are all labeled by the police (or in this instance, by private security officers and retail clerks) as potential suspects—not law-abiding citizens—and are subsequently scrutinized more closely, suspected more often, and stopped more frequently for less cause than their White counterparts (Harris, 2002).

Conflict theory represents another potential perspective that can possibly explain the practice of racial profiling. Scholars have begun in earnest to examine racial profiling in police stops (Smith & Alpert, 2002; Weitzer & Tuch, 2002), with recent scholarship looking to conflict theory as one possible explanatory model (see Shepard, Calnon, & Bernard, 2002). Conflict theory centers on power differentials based on class (Quinney, 1980) and race (Hawkins, 1987). Therefore, even though there have been a number of African American celebrities who have had negative encounters with police
because of racial profiling (see Russell, 1998), a considerable number of the victims have come from middle and lower socioeconomic strata (Harris, 2002). Combining the work of Quinney (1980) and Hawkins (1987), the ruling class (Whites) would only institute policies such as racial profiling (which would conceivably fall under what Quinney refers to as “crimes of control”) that would principally affect the working class and minority groups (African Americans and increasingly Hispanic Americans). Such is the history of racial profiling in America. Never has there been any such practice employed against the ruling class or majority group members; only the working class and African American and other ethnic minority groups have been subject to such scrutiny by law enforcement (Hawkins, 1994).

Finally, the colonial model (primarily internal colonialism), which was brought to the fore in the 1960s and 1970s (see Blauner, 1969; Fanon, 1963; Staples, 1975), and more recently by Tatum (1994), views racial stratification and class stratification under U.S. capitalism as separate but related systems of oppression (Feagin & Feagin, 2003). In its most recent criminological incarnation (see Tatum, 1994), it serves as an additional theoretical perspective that can, at least partially, explain racial profiling.

Based largely on the revolutionary writings of Frantz Fanon, the theory, as it relates to criminology, is a sociopsychological perspective (Tatum, 1994). Internal colonialism best speaks to racial profiling. This approach sees African Americans as being colonized in America (Tatum, 1994, p. 41). The colonization process has resulted in the following three forms of subordination: economic, political, and social (Tatum, 1994, pp. 42-48). Social subordination best explains racial profiling. Here, the colonizer creates a system that seeks to relegate the colonized (African Americans) to the lowest caste. By doing so, they ensure that “the social system reserves certain statuses and privileges for Whites” (Tatum, 1994, p. 47). This ideology results in agents of the state internalizing such thinking, which results in their inability to conceptualize that African Americans could legitimately have expensive cars or other items reserved for elite Whites. As a result, African American motorists driving expensive cars seem out of place and are indiscriminately subjected to police stops. Likewise, in the private sector, retail clerks and security officials might make similar assumptions, which results in African Americans and other minorities being indiscriminately singled out as potential shoplifters even though Whites represent 66% of the adult and 70% of the juvenile arrests for larceny-theft (Federal Bureau of Investigation, 2001). The remainder of this article provides a review of the literature, methods, and legal case studies pertaining to racial profiling in retail settings.
SHOPPING WHILE BLACK IN THE LITERATURE

It is unclear where and when the term Shopping While Black came into usage, but what is clear is that, although the practice has existed for some time, very few researchers have broached the subject. Thus, as anticipated, a search of several social science and criminal justice databases revealed few articles that address the subject. Most of the articles that were found only sparsely cover the subject. Russell (1999), for example, in an enlarged article on Driving While Black, makes mention of SWB by pointing to a highly publicized case involving Eddie Bauer (which is discussed more below). Besides the one paragraph devoted to that case, there is no other mention of SWB in the 14-page article. The few scholarly articles that devote considerable attention to the subject are reviewed below.

Scholarly Articles on Shopping While Black

Based primarily on in-depth, semistructured interviews, Lee (2000) investigated the shopping experiences of Black customers in five predominantly Black neighborhoods in New York and Philadelphia. The research examined their experiences with Korean, Jewish, and Black merchants. In general, most of the 75 participants reported positive interactions with all types of merchants. Lee (2000), however, noted that the 16% of the shoppers indicated receiving negative treatment from Korean store owners, 8% from Jewish store owners, and 7% from Black store owners. The age of the customer was a critical factor in how Black customers were initially treated (p. 6). As Lee noted, “Both young Black males and females, but most especially males, complain that merchants uniformly follow them as they browse in stores to ensure against customer theft” (p. 6). Interestingly, Black merchants were found to treat Black customers just like their ethnic counterparts. Lee also found that class does matter in the treatment of Black shoppers. In most instances, middle-class Blacks are treated better than their lower class counterparts. However, this does not guarantee favorable treatment. In fact, in some instances, White customers receive preferential treatment. This comes in the form of them being attended to more quickly than Black shoppers. These types of encounters leave Blacks with a range of emotions from disbelief to paranoia (Lee, 2000, p. 12)—feelings that result in several responses including lashing out at clerks, wearing clothes that speak to your income level (referred to as “wearing your class”), or avoiding establishments where Blacks are treated with undue suspicion.
Asquith and Bristow (2000) attempted to determine if students had ethnic biases in their views of the typical shoplifter and whether these views could be changed through the use of a classroom exercise. To investigate this question, they utilized a one-group pretest-posttest nonexperimental design. The study involved three stages whereby the subjects were first given a survey that inquired about their perception of the typical shoplifter. This stage was followed by a stage in which the students were shown a videotape on retail shoplifting statistics that showed that Whites were the majority of the shoplifters in Minnesota and how some security personnel utilize racial profiling (p. 272). After exposing students to these revelations, the authors retested them on several of the original questions pertaining to their perceptions of the typical shoplifter. The authors found “that a significant gap existed between participant perceptions and a statistically based profile of retail shoplifters. Participants seemed predisposed to profile shoplifters on demographic variables” (p. 273). Following the posttest, the authors concluded that there were no significant changes in the views of the students. They further suggested that a classroom exercise was not enough to change the students’ views.

Fifield (2001) centered much of his review of SWB with an examination of how it affects Black women, some of whom include journalist Gwen Fill, Houston Comets basketball star Sheryl Swoopes, Congresswoman Maxine Waters, and even Oprah Winfrey. Using illustrative examples of these figures, he showed how this insidious practice has even touched the lives of these elite African Americans. As stated earlier, this is not new, especially to African American women. In the article, Michelle Alexander of the American Civil Liberties Union is quoted as saying retail racism “[i]s where women of color have their most regular experience with racial profiling” (as quoted in Fifield, 2001, p. 4).

Fifield (2001) also discussed Dillard’s department stores, which have been the subject of numerous claims of racial profiling. In fact, during one such instance, it was revealed that six police officers who worked at one of the stores testified that African Americans were monitored more closely than Whites. One security guard testified, “particular people at Dillard’s security would . . . prey on African Americans” (as quoted in Fifield, 2001, p. 12). Fifield also presented data that surfaced in one suit against Dillard’s that showed that during 1991 to 1992, over half of the false arrest claims involved African American customers. This figure is shocking considering Dillard’s own records show that African Americans represent only 16% of their customers (p. 12). No other extended scholarly articles on SWB were found in the literature; however, newspaper articles and editorials from national newspapers serve as some indicator of how far-reaching the practice of SWB has become.
Newspaper Accounts of Shopping While Black

In the 1990s, several high-profile SWB incidents brought the practice of racial profiling in retail incidents into the national spotlight. Most notable was the Eddie Bauer retail store incident in which three Black youth were falsely accused of stealing clothing that actually had been purchased at the same store a day earlier. One of the youth was forced to take off the shirt before exiting the store. When the case went to trial, they charged “consumer racism” and were awarded a million-dollar settlement (Russell, 1999, p. 723).

Even prominent African American officials have been subject to SWB. In 1993, an African American municipal judge, Claude Coleman, sued Bloomingdale’s department store because they had falsely accused him of credit-card fraud while shopping at a mall in his jurisdiction (Bleemer, 1994). During the incident, they followed him from their store into another store within the Short Hills Mall and eventually handcuffed him and escorted him through the mall in front of numerous shoppers; the security personnel also lied to him by indicating that they had a video of him engaging in fraud. Moreover, Judge Coleman, who was also “a former Newark policeman, police director, and fire director,” claimed he was subjected to “humiliating racist remarks and treatment” (p. 8). Following the incident, Coleman was “besieged by calls from people who [claimed to] have been in similar situations” (p. 8). A lawsuit was eventually settled, with one security person being fired and another being suspended.

A more recent and considerably publicized case involved The Children’s Place retail store. This case involved an employee, Amanda Berube, who charged that her employer instructed her that to prevent theft, she should pay additional attention to Black shoppers. In addition, she was instructed to not give out shopping bags to them, not to invite them to open credit cards, and refrain from discussing any sales with them (Goldberg, 2000). According to the attorney general, Thomas F. Reilly, the strategy uncovered “a pattern of conduct of targeting people based on the color of their skin” (Goldberg, 2000, p. A16). The settlement in this case resulted in the company agreeing to antidiscrimination training, spending $100,000 on consultants to examine and weed out any institutionalized discrimination, and donating $50,000 to a Boston charity (p. A16).

Another account of SWB was found on the editorial page of the Capital Times. Writing about SWB in Madison, Wisconsin, Billups (2000) presented the following scenario of how one retailer practices SWB: “The practice is applied to both employees and customers of color. Presumably random, but suspiciously targeted and frequent searches of the packages of employees and customers of color occur regularly” (p. 9A). Drawing on the observation of a colleague who works in the retail industry, Billups further noted,
customers are monitored closely, and without even the pretense of subtlety
as they pass from area to area in the store. Employees of color, who develop
personal clientele to target for sales and other customer promotions, are
held in suspicion, and questioned about the amount of time spent with cus-
tomers, but only those who happen to be of color. Customers of color are
regularly asked to provide more proof of identification than is asked of
other customers. (p. 9A)

The problem got so bad in Madison that Recommendation 15 of the city’s
Task Force on Race Relations was devoted to addressing the SWB problem.
It called for the city’s Equal Opportunities Commission to “conduct a study
to determine the extent and nature of the problem” and “form a team to exam-
ine the survey results and assist in the design of a training program for retail
establishments to prevent racial profiling” (Billups, 2000, p. 9A).

An unfortunate tragedy some have linked to SWB was the 2000 killing of
Frederick Finley, who was suspected of shoplifting, by Lord & Taylor secu-
ritv officers outside a Detroit mall. Immediately following this incident, there
were a flood of editorials and protests. Most of them were couched under the
veil of SWB. To further explore the topic, an analysis of legal case studies
was undertaken. The next section reviews the methodology used to locate the
cases.

METHOD

Locating instances of SWB is a difficult undertaking. Most retailers are
likely unwilling to release information on specific instances in which racial
profiling has been alleged. Furthermore, when these instances do arise, fear-
ing profit losses from the fallout of bad publicity, they likely settle these sorts
of allegations out of court. Therefore, no current legal database will provide a
complete representation of these incidents.

The Lexis-Nexis legal research database was used to locate cases within
the database (going back as far as the database revealed) that were potentially
SWB-related. Using a combination of the search terms “false arrest,” “shop-
lifting,” and “racial profiling,” I searched individual state cases (all appeals
courts) and federal (U.S. District Courts and U.S. Court of Appeals) cases to
find instances in which SWB was alleged. The cases found were all decided
by September 2002. Once the cases were found, several characteristics were
noted.

Some basic characteristics were first recorded, such as the year the case
was decided, age of the plaintiff (adult or youth), race of the plaintiff, and the
gender of the plaintiff. Other characteristics noted included more specifics of
the case such as whether a racial slur or brutality was alleged in the incident.
The methods that resulted in the defendants falsely accusing the plaintiffs was also noted. The first was unsubstantiated hunches. This refers to those instances in which the defendants had a hunch—but no direct evidence—that the plaintiffs had stolen something. Another method that was potentially used was mistaken identity. This refers to the instances in which the defendants thought the plaintiffs were the ones who stole an item; however, on further investigation, it was revealed that another person had actually stolen the missing item. The final category used related to those companies that have histories of racial profiling. Within this category, somewhere in the case it was alleged race was regularly used as a key factor by the defendant to determine which customers were intensely scrutinized by sales clerks and security personnel.

Two final characteristics were recorded. First, that the defendant was a major (national) retailer. Second, the person who initiated the action or was the one accused of profiling. The categories here reflect the nature of those typically entrusted with the security function at retail chains. Typically, the sales clerks deter theft. Most retailers also have either a proprietary security force or they hire contracted security officers. Some retailers hire off-duty police officers to perform their security function. Yet other retailers utilize their local police departments to assist them with theft-related incidents. Here, for each case, I recorded one of the following three possible outcomes: first, the plaintiff was victorious; second, the plaintiff scored a partial victory (victorious only on some points); and third, the plaintiff lost. The results of my analysis are presented in the next section and summarized in Table 1.

RESULTS

The research revealed numerous false arrest cases pertaining to shoplifting in state courts dating to the early 1900s \((N = 256)\). However, only within the past 30 years has there been any mention of race in state court cases related to the topic. For example, the first recorded allegation of SWB occurred in the late 1960s but was not decided until 1973. The second case occurred in the mid-1980s. Because SWB became more public in the 1990s, I examined the past 10 years (1992 to 2001) of cases to see what percentage were SWB related. During this period, there were 54 cases related to false arrest and shoplifting. Only 7% \((N = 4)\) of them could be classified as instances in which SWB was alleged. My view of cases at the U.S. District Court and U.S. Court of Appeals levels also found instances of alleged racial profiling in retail settings.

At the U.S. District Court level, there were 113 cases found (dating from 1966 to 2002) using the specified search terms of which 16 (14%) included allegations of SWB. At the U.S. Court of Appeals level, there were 44 cases
<table>
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<th>Gender</th>
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<td>Yes/No</td>
<td>Yes (Wal-Mart)</td>
<td>PS</td>
<td>V</td>
</tr>
<tr>
<td>USCA4</td>
<td>1995</td>
<td>Adult</td>
<td>Black</td>
<td>1 Female</td>
<td>N/A</td>
<td>Yes/Yes</td>
<td>Yes (McDonald’s)</td>
<td>ODP</td>
<td>PV</td>
</tr>
<tr>
<td>USCA5</td>
<td>2000</td>
<td>Adult</td>
<td>N/A</td>
<td>1 of each</td>
<td>N/A</td>
<td>No/No</td>
<td>No</td>
<td>N/A</td>
<td>L</td>
</tr>
<tr>
<td>USCA6</td>
<td>2001</td>
<td>Adult</td>
<td>Black</td>
<td>1 Female</td>
<td>USH</td>
<td>No/No</td>
<td>Yes (Dillard’s)</td>
<td>SC</td>
<td>L</td>
</tr>
<tr>
<td>USCA7</td>
<td>2001</td>
<td>Adult</td>
<td>Black</td>
<td>1 Male</td>
<td>USH</td>
<td>No/No</td>
<td>No</td>
<td>SC</td>
<td>L</td>
</tr>
</tbody>
</table>

a. Indicates whether the case was a state case (SC), U.S. District Court case (USDC), or a U.S. Court of Appeals case (USCA).
b. Indicates the year the case was decided.
c. Indicates whether the plaintiff was an adult or youth (teenager).
d. Indicates the method of detection that lead to the false arrest. The key for the abbreviations are as follows: USH = Unsubstantiated hunch. MI = Mistaken identity. CHP = Plaintiff claims history of profiling.
e. Indicates whether the plaintiff claimed a racial slur had been used or brutality was alleged.
f. Indicates whether the defendant was a major retailer.
g. Indicates the person who either initiated the action or was involved in the actions that caused the allegation. The key for the abbreviations are as follows: CS = Contract security officer. PS = Proprietary security officer. SC = Sales clerk (includes store managers). PO = Police officer. ODP = Off-duty police officer working as a security guard.
h. Indicates the disposition of the case. The key for the abbreviations are as follows: V = Victory on all counts; PV = Partial victory. L = Lost on all counts. UNK = Unknown.
i. This case was actually a defamation of character case against a news agency brought on by a SWB incident at JCPenney that is discussed in the transcript of the current proceeding. Although all the facts of the SWB incident are discussed, there is no mention of the outcome.
j. This case does not specify race; it simply says the plaintiff claimed that his race was pivotal in the decision to arrest him.
k. This case did not fit any of the specified categories.
l. This case does not specify race; it simply says the plaintiffs claimed that their race was pivotal in the decision to arrest them.
m. Unable to determine based on information contained in case record.
related to false arrests and shoplifting; 7 (16%) of them included allegations of SWB. In sum, there were 29 cases that were classified as instances of racial profiling in retail settings. These 29 cases serve as the basis of my analysis. As such, they provide us with some of the characteristics of the cases involving these types of allegations. An analysis of the cases can also provide us with answers to two of my research questions: (a) What type of SWB cases have come before the court? and (b) What have been the outcome of these cases?

Characteristics of SWB Cases

All of the cases uncovered were decided within the past 30 years. Separated by decade, 10% \((n = 3)\) were decided in the 1970s, 28% \((n = 8)\) were decided in the 1980s, 34% \((n = 10)\) were decided in the 1990s, and 31% \((n = 9)\) were decided in either 2000 or after. Two thirds of them \((n = 19)\) were decided after 1990. Adults composed the bulk of the plaintiffs in these cases \((83\%, n = 24)\). Youths were the sole plaintiffs in 13% \((n = 4)\) of the cases. In only one case was both a youth and an adult plaintiffs. As for the race of the plaintiffs, Blacks composed 83% \((n = 24)\) of them, with 7% being Latino/Hispanic \((n = 2)\), 3% being Asian \((n = 1)\), and in the remaining 7% \((n = 2)\) of the cases, the race of the minority defendant was not specified. By a slender margin, most of the plaintiffs were males \((48\%, n = 14)\). Women were 41% \((n = 12)\) of the plaintiffs. In three cases \((10\%)\), there were both male and female plaintiffs.

This portion of the results looked at more specific characteristics of the event. Two thirds of the incidents \((n = 19)\) were initiated by unsubstantiated hunches. An equal number of incidents were initiated by mistaken identity \((23\%, n = 4)\) and a variety of other actions in environments in which there were claims of a history of profiling \((23\%, n = 4)\). In two instances \((7\%)\), the incidents that occurred did not fall under any of the specified categories. The use of racial slurs was alleged in 21% \((n = 6)\) of the cases. Brutality was alleged in 21% \((n = 6)\) of the cases. In only 10% \((n = 3)\) of the cases was both the use of racial slurs and brutality alleged. In the bulk of the cases \((69\%, n = 20)\), however, there were no allegations of either. Slightly over half these incidents took place at major retailers \((52\%, n = 15)\). The following three major retailers had more than one alleged incident of SWB: Dillard’s \((n = 3)\), JCPenney \((n = 2)\), and Wal-Mart \((n = 2)\). Store clerks were the ones who initiated or were involved in most of the incidents \((38\%, n = 11)\). Proprietary security officers (in-house) also composed a large portion of those initiating or being involved in the incident \((31\%, n = 9)\). Police officers, either called to the scene or off-duty officers working as security guards, were also involved in nearly 25% of the cases \((n = 7)\). And in 58% of the cases \((n = 17)\), the plain-
tiff was either victorious \((n = 5)\) or partially victorious \((n = 12)\). I provide some discussion of my results below.

**DISCUSSION**

Only in rare instances did my analysis reveal other minority groups being the victims of racial profiling. This rarity might provide the linkage between SWB and labeling theory. Because it is primarily Blacks who have been tagged as the criminals in America, they, therefore, are considered the ones most likely to steal. Again, following the most basic premise of the perspective, unsubstantiated hunches would be acted on in the case of Blacks because they have been labeled as criminals. Typical of such instances is when security personnel or retail clerks relay descriptions to someone responsible for either following-up on a lead or making an arrest; however, in SWB cases, the person saw a Black person and assumed them to be the criminal. Here, particularly in the case of security personnel, there might be a sense of power over this minority population and, subsequently, they are not as concerned about errors. This is also tied to the issue of brutality in SWB cases.

In *Yvonne A. Alexis, et al. v. McDonald’s Restaurants of Massachusetts, Inc.* (1995), the issue of power and lack of concern regarding the ramifications of one’s actions came together in one case. The case stemmed from a visit by an African American family to a Massachusetts McDonald’s restaurant on a July morning in 1990. At some point during the visit with her family, Yvonne Alexis got into a disagreement with workers at the restaurant, all of which stemmed from confusion over her order. When a manager became involved, the incident turned ugly, with the manager summoning a moonlighting off-duty police officer to come inside the restaurant and eject Ms. Alexis. The officer then approached the Alexis family, informing them that they had to leave. After further verbal exchanges, the officer demanded Alexis leave or face the possibility of arrest. When another officer arrived on the scene, the initial officer “suddenly and violently” grabbed her. The officers then tightly handcuffed her and injured her while dragging her from the booth. At several points during the incident, the officers were asked by Mr. Alexis why they were treating his spouse in such a manner, eventually crying out, “We have rights.” To this, one of the officers bluntly responded, “You people have no rights. You better shut up your [expletive] mouth before I arrest you too.” Alexis was partially victorious in the courts, with the court agreeing that such actions would not have taken place “were it not for the color of her skin.” There was a clear sense that the officers must have felt a sense of unbridled power to carry on in such a manner over such a trivial offense.
The instances in which the monetary status of minority shoppers were questioned fall in line with colonial theory. There were two such cases. In the case of *Billy J. Mitchell v. Dillard’s* (2000), a clerk testified that when someone went to get change for a $100 bill tendered by Mr. Mitchell, he “began to act nervous and appeared anxious to leave the store.” Eventually, officers stopped Mitchell and arrested him. After checking for a criminal record, Mitchell was released and later sued, winning more than $450,000 in compensatory and punitive damages. Could it be that the clerk had a belief that it was unlikely that a $100 bill tendered by a Black male was real? Such thinking was certainly a possibility in the case of *Nevin v. Citibank* (2000).

Although Citibank was the defendant in the case, it was a Lord & Taylor security guard who alerted Citibank because, as he told it to a Citibank official, “a Black female was making large purchases with a Citibank Visa card” and that “she makes the purchases, she puts merchandise in her vehicle, and returns to the store.” Even though the card was not reported lost or stolen, on the basis of this information, a Citibank official—suspecting the card might have been stolen—authorized Lord & Taylor to detain her. Although Nevin lost her appeal, given the facts of the case, one wonders if the perception that a Black person would not be able to make such considerable purchases contributed in part to this incident. Following the premise of social subordination within the colonial model, Blacks seem out of place making such large purchases; thus, it would only be normal to see Whites make such purchases.

When one examines the cases in which the minority plaintiff claimed there was a history of racial profiling in the company in question, this speaks to all three perspectives. In these instances, Blacks are not only labeled but there are also power structures within these establishments that see nothing wrong with treating minority groups in such a discriminatory manner. And, these same groups likely feel that African Americans are out of place shopping in their establishments. Two paradigmatic cases are *Rojas v. Alexander’s* (1986) and *Jane Doe v. Barbara Dendrinos et al.* (1997). In the first case, the plaintiffs (Fernando Rojas and his wife Petruia Rojas) claimed that, on November 9, 1984, while shopping for an answering machine at an Alexander’s Department Store in New York, Fernando was stopped and detained by store security. Ms. Rojas was expecting to meet up with her husband, but when he did not show up, she went looking for him and later found him handcuffed in the security office. He was later acquitted of the charges of petit larceny and possession of stolen property. After his acquittal, he filed suit alleging false arrest and, among other things, that Alexander’s had “[an] unstated policy to arrest more readily on suspicion of shoplifting those customers who were Black or Hispanic.” Although little more is said about this allegation, there was enough evidence for the U.S. district judge to refuse to dismiss Rojas’s allegation of racial profiling.
In the second, and even more troubling case, the plaintiff, Jane Doe, was accused of stealing some automotive products from a Pep Boys store in Pennsylvania. A manager in the store called the police, at which time the responding police officer arrested Jane Doe. Once the officer arrived at the police station, they received a call from the manager who informed them that he had decided not to prosecute. Although the manager declined to prosecute, Jane Doe was held at the police station where the officer allegedly slung racial slurs and obscenities at her. In addition, the plaintiff maintains that Officer Lewis also requested that she perform fellatio on him, and he told her that other women he had arrested “just did it and were let go.” She claims that although she refused to comply with his request, Officer Lewis sexually assaulted her.

Before the latter allegations could be fully investigated, the officer committed suicide. In his absence, the matter went to trial. During the trial, Jane Doe alleged that Pep Boys had a policy of targeting minorities. To support this claim, she pointed out that between January 1992 and June 1994, the majority of those arrested for shoplifting at Pep Boys were African American. She also alleged that there was a conspiracy to cover up this practice by showing that the local police “[had destroyed] arrest reports, such as hers, which were found in a dumpster behind the police station several days after she went public with her allegations of rape and false arrest.” Although Jane Doe won a partial victory on some counts, it was striking how the court used two sentences to indicate that none of the aforementioned events constituted a conspiracy in any way, which speaks volumes to how the power structure, at times, minimizes the experiences of minorities. This case is also illustrative of one of the numerous unacceptable “collateral consequences” of racial profiling (Russell, 1999). In this case, the false arrest, allegedly a product of SWB, was what brought Jane Doe into the system in which, by the allegations presented, she was sexually assaulted.

Based on the analysis of case outcomes, it appears that minority plaintiffs have a hard time securing clear victories in SWB-related cases. This again speaks to conflict theory. The courts are unwilling to give minority groups the benefit of the doubt in such cases. There seems to be a level of skepticism among judges. Even when a case reeks of SWB, the standard is so difficult to meet that only partial victories are reached. In a few cases, however, there have been some strong dissenting opinions that might change the tide. An illustration of a powerful dissent can be found in *Carl Youngblood v. Hy-Vee Food Stores, Inc.* (2001). In the case, Youngblood entered the Hy-Vee Food Store and walked to the back of the store where there were cans of beef jerky. After purchasing a can of beef jerky, Youngblood was stopped at the doors by
employees and accused of taking some beef jerky from another can and stuff-
ing some in the can that he eventually bought. The police were called and he
was arrested. The charges were later dismissed. Youngblood then sued claim-
ing that he was targeted because of his race. He lost his appeal. Judge Richard
Arnold, however, dissented from the majority opinion declaring that
Youngblood was a victim of discrimination from the moment he walked into
the store. As he put it,

Youngblood was singled out for surveillance by the store clerk before he
made his purchase, singled out for suspicion as he walked to the register to
make his purchase (when the store clerk alerted the manager), and singled
out for detention by three store employees as he tried to leave the store with
his purchase.

Making use of the district court transcripts, he reviewed Youngblood’s state-
ments and those from former employees who claimed “that Hy-Vee had a dis-
criminatory pattern and practice of targeting, surveillance, stopping, and
prosecuting Black customers disproportionately to White customers.” As a
result, Judge Arnold, unlike many of his judicial colleagues in numerous
other cases, saw that there was too much evidence to conclude anything other
than this was a case of SWB. Some limitations of the current research are pro-
vided in the following section.

**LIMITATIONS OF THE RESEARCH**

Given the limited number of cases found, one does not have a true sense of
the representativeness of these SWB incidents. In addition, it is hard to speak
to the prevalence of SWB with the current data. Twenty-nine cases out of a
few hundred does not project that SWB is a serious problem. There still
remains an uncertainty as to the extent to which retailers systematically pro-
file minority shoppers. However, there are data that could tell us more but are
not readily available to researchers. In the case of SWB, who knows how
many minority shoppers fail to report such encounters? Many who do report
them and follow up with representatives from the retailer in question are
probably all too happy to settle of court so they can move on with their lives.
But again, in these instances, we do not have a record of the number of such
settlements. Until we get data on these instances, much like with crime data,
there will remain a so-called dark figure of racial profiling in retail settings.
CONCLUSION

Given the literature and the cases reviewed, three things are clear. First, SWB is real. “Shopping While Black” is not a catchy phrase with no substance behind it. Yet, although it is real, it has not yet garnered the scholarly attention it deserves. Current studies of racial profiling almost exclusively focus on one facet of African American lives, driving. Considering that most people, including minorities, spend substantial amounts of time in retail establishments, it seems that a rich area of potential research has gone unnoticed or has received less interest due undoubtedly to its connection to private security, which is probably the least studied area of criminal justice. Subsequently, there are a few likely directions for future SWB research. Researchers might want to do more surveys of minorities to see if they feel they have been victims of SWB. Moreover, current and former security personnel might also be a resource for securing information on SWB. This approach could also provide more insights into the utility of the three aforementioned criminological perspectives for explaining SWB. There is also the opportunity for covert ethnographic studies that might also yield some insights into the prevalence and use of racial profiling in retail settings. A final related area of future inquiry is the treatment of minority employees by retail security departments. Research in this area would determine if racial profiling in retail settings is only reserved for minority shoppers.

Second, clearly there are standard forms of racial profiling in retail establishments. These include the following:

- mistaken identity,
- extra scrutiny while shopping,
- the requiring of additional identification for credit or check purchases,
- undue use of force, and
- the enactment of blanket policies of how to handle minorities.

Third, the best way to combat racial profiling in retail establishments is through education, legal remedies, and boycotts. A practice called the demographic test might be a useful litmus test for whether some additional education or retraining is required for specific retail security departments. Used by former Montgomery Ward district security and safety manager Mike Magill, it seeks to detect and prevent racial profiling in retail settings (Fifield, 2001). Making use of census data, he matched up the demographics of every community in which a store was located and, every 3 months, he checked to see if the arrest and detention record in every store matched the community demo-
graphics. Wherever large discrepancies were found, he instituted additional racial sensitivity training (Fifield, 2001). Given that many of the SWB cases found in this study were initiated by sales clerks, it seems that such an approach has considerable appeal. As evidenced by the results of the Asquith and Bristow (2000) study discussed earlier, training or education is no panacea, however.

As for legal remedies, practically every major advancement regarding the civil rights of African Americans has come through the court system. Eliminating SWB will be no different. Such cases must be pursued to the fullest extent if retailers are to really get the message. In addition to legal suits, organized boycotts in conjunction with national civil rights organizations represent another avenue that has historically served African Americans well. Both strategies speak to the corporate bottom line, which in the past has gotten the attention of CEOs.

In recent years, the ire over racial profiling in the form of DWB has led to serious debate in the public, as well as in legislative chambers. This has produced legislation such as the Traffic Stop Statistics Act and other remedies. On the national level, however, no such actions have been undertaken to reduce SWB. At the federal level, the National Institute of Justice, the research section of the Department of Justice, has been given the thrust of collecting national data on traffic stops (Bureau of Justice Statistics, 2001). As such, requests for proposals relating to racial profiling have become more readily available (this has also happened at the state level in response to the federal actions). Missing, however, from the current rush to get on the racial profiling bandwagon is any serious focus on SWB. Researchers have not yet caught the same enthusiasm for profiling in retail settings. This must happen. As evidenced by the approach taken by state and federal officials regarding DWB, you must know the extent of a problem before you take informed actions to reasonably ameliorate it.

In closing, although most racial profiling in retail settings likely goes unnoticed, it is apparent from the literature that when it does surface, it comes in the form of what one can only see as a combination of race discrimination and harassment. This treatment, which is reminiscent of the Jim Crow era, does nothing to enhance race relations or catch suspected shoplifters; it only works to sour relations that have taken centuries to begin to mend.

**REFERENCES**


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