

ACLU LOOKS AT TRAFFIC STOPS

By Tristan Bonn

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I am here today to talk about traffic stops or, more specifically, racial profiling. Racial profiling is such a loaded term that basically encompasses a broad array of objectionable policing practices that typically upset communities of color and continue to divisively invade our national discussions. It is again in the forefront of news headlines today in Arizona and in our own state in Fremont. In order to better understand why I am here today talking about racial profiling, I would like to tell you a bit about my background and how I came to be involved with this subject. I graduated from law school in 1985 from Creighton University and spent 17 years on the front range of Colorado practicing law in a variety of capacities, most relevant for about 8 years as a Senior Prosecuting attorney. When a job was posted for a Police Auditor in Omaha, I applied and was selected. Omaha's first Police Auditor was to be an independent civilian who would shadow Internal Affairs investigations of citizen complaints filed against Omaha Police Department officers. The Auditor would monitor complaints to see if they were handled fairly and then report to policy makers and the public about those findings and make recommendations as to how to improve services.

The idea behind an auditor, and one adopted by most modern police departments, is to listen to your community feedback as voiced through complaints, address those complaints fairly, and, as a result, a department will thereby improve its community relations. This is a basic, underlying principal of community policing. Involve your community in your policing to increase awareness, transparency and trust. By opening your department to this type of participation and accountability, you increase the community's confidence in the department's policing, which, in turn, should assist the department in its crime fighting efforts by way of more tips and general compliance.

From the very beginning of my job, complaints from people of color from both north and south, but mostly north Omaha started trickling in. Steadily, these complaints continued and various trends and patterns emerged. First, I cannot overestimate the upset that these complaints caused - the anger, tears, and humiliation expressed by these complainants were real and heart-wrenching. Like most whites, I was shocked at the events that were described, even though I had experience in and with law enforcement. The description of a father arrested tackled to the ground, kned in the back and handcuffed in front of his two teen age boys after being stopped on the way home from the grocery store and pulled over for simply having a "white light shining through" the back of his car was appalling. Then to hear that same man was "hooded" in front of his boys, the police literally placed a canvas hood over his head, to transport him to jail where he had to call his wife to come down and bail him out of jail was shocking. Or, cases where black men were forced to lay face down in the ground on snow and mud while police conducted an investigation on a traffic stop. But, incidents like these were not unusual. In fact, fully 50% of the citizen complaints that were called in or investigated involved these types of harsh traffic stops.

What was even more perplexing is that the vast majority of these types of traffic stops happened to African-Americans or Latinos. Whites simply did not complain about these practices, which I concluded, they surely would if they were occurring to the white population. After you hear enough of these complaints of the same type of practices used against the same population of people but from people who do not know each other, you realize that there is

enough truth in these versions to discover you have come face-to-face with racial profiling. I have asked several people why racial profiling is still so widespread. Most reply that because the actions are so unbelievable most people find the report too hard to believe and because these actions rarely happen to whites. So, even in spite of more and more videos, more and more data, more and more African-American or Latinos, even those we admire for their accomplishments and credibility, have publicly shared their experiences, still much of the white population disbelieves or worse, dismisses these stories.

It is at this point that I usually ask, like in this case, a mostly white audience, "how many of you have ever been pulled over for having an air freshener hanging from your rear-view mirror?" The response is generally surprise, but among communities of color this is a well known reason for a "profiling stop." That is, OPD treats an air freshener as a violation as it "Obstructs the View" of a vehicle and will pull a vehicle over for this violation alone. The problem is that while this violation may technically be true, it is not enforced equally. I simply did not encounter, again based on an absence of complaints from west Omahans or white Omahans, these complaints from whites. However, it was common in north Omaha, in fact, in a recent World-Herald article, Senator Brenda Council stated that she herself had been stopped for this very violation.

This was yet another example of a trend or pattern of complaint that alerted me to the presence of many questionable policing practices occurring during traffic stops in minority communities. In addition, these stops can reek further havoc on populations that are already economically fragile. A stop like this on your way to work could cost you your job if you are arrested. Your car may be towed and fees from the impound lot can quickly run up, making it impossible to get your car. If you lose your transportation, you may lose your job. And, if the stop results in a conviction for "Resisting" or "Obstructing" you may face difficulty finding new employment for the rest of your working life. I cannot emphasize enough the corrosiveness of these types of stops to minority communities or any community, which is why I am so intent upon doing what I can to put a stop to them.

This year, the ACLU National Racial Justice Project granted the ACLU Nebraska-Omaha Office funding to conduct a project on traffic stops. For the past several years, the Nebraska Crime Commission, citing data collected from law enforcement agencies statewide, has reported that blacks are stopped about 4x more often than whites and Latinos about 2.5x more often than whites in the Omaha metro. While these statistics have been consistent for several years now, no agency of late has done anything to determine why these disparities still exist.

In March of this year, the ACLU Omaha Office launched a "Know Your Rights-What to do if You Get Stopped by the Police" program. Many people are familiar with the ACLU Rights Card. This project combines the rights card with a live presentation, for any neighborhood, school, church, staff etc., by a knowledgeable person who will speak and answer questions about stops citizens may encounter with police either in a car, in person, or in their home. The focus of the program is to reach as many people as possible, but particularly young people of color, in order to inform them of the best way to have as low risk police stop as possible. The aim is to minimize any escalation of confrontation between the young person and the officer. In addition, the program will explain what information is important to gather and what to do if the citizen felt they were treated improperly by the officer. Information about how to file a citizen complaint with the department will be discussed. In addition, the ACLU has incident forms that citizens can use to tell the ACLU what may have happened to them in their police encounter. This information will be collected and analyzed by the ACLU to communicate with the police

department to try and address any patterns of complaint. The idea is to convince citizens to voice their concerns in this fashion to more productively resolve police problems.

I am the ACLU staff person in charge of this program so, I am accustomed to handling these sorts of complaints. Unfortunately, when Mayor Fahey fired her four years ago for publishing "Anatomy of Traffic Stops," neither the City or the police department ever dealt with the substance of that report. In it, there were many types of questionable and unconstitutional practices identified and explained regarding improper traffic stops and these practices may still persist. While Chief Hayes is an entirely new chief and has indicated his desire to make changes and improvements at OPD, there is some concern still expressed that harsh or unconstitutional practices still occur.

One such practice, and perhaps the most damaging and longstanding, is familiar to many people in north and south Omaha. This is a traffic stop where the police officer pulls someone over for a minor misdemeanor, littering, improper display of plates, or most infamously, having an air freshener dangling from one's rearview mirror. Typically, these stops would simply result in a "ticket" being issued or more precisely, "a summons in lieu of arrest." The officer issues the ticket and the citizen goes about their business. However, OPD for years, has treated these stops in north and south Omaha as "arrests" and conducted pat down searches of drivers AND passengers and searched the vehicle. This is patently unconstitutional and there is a U.S. Supreme Court case directly on point, Knowles v. Iowa. In that case, the Supreme Court states that the danger to an officer during an arrest is when the suspect is transported to jail. Therefore, only when a suspect is actually taken to jail can an officer conduct a "search incident to arrest," NOT when a summons and complaint is issued. Sadly, no one knows how many unlawful searches have been committed by OPD in the past, but this is one practice ACLU would like to see halted once and for all.

Fortunately, in early discussions, Chief Hayes has indicated his willingness to correct any bad practices. It is in everyone's best interest to ensure that OPD is acting in accordance with the law. First, for obvious compliance and liability reasons, your police department must be acting lawfully. Second, much of the community upset about the police has revolved around bad traffic stops. It is not unusual for a person to get upset when they are searched for flicking a cigarette out of the window. And in the past, this is when many traffic stops go bad and an argument, tussle, or fight between the driver and officer can ensue. This result is dangerous for everyone involved and can result in serious charges like resisting or worse filed against the driver. These charges, if leading to conviction, can cause the driver, especially a young driver, to have the kind of criminal record that can destroy their future and keep them from getting decent employment. This result is particularly tragic when the search should not have happened in the first place.

It is the hope of ACLU Nebraska that this program will be the catalyst to finally address some of these bad practices. Chief Hayes has expressed a genuine desire to make improvements. If it is successful, we may see improved police community relations that can actually help the police improve their crime fighting and help instill a greater sense of trust between the community and police. To learn more or to schedule a presentation for your group, staff, or organization, please call Tristan Bonn at 398-3027 or email at tbonn@aclunebraska.org.