

73 of 128 DOCUMENTS

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HEADLINE: ENCOUNTERS WITH THE POLICE ON MY STREET

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BODY:

Sometimes being a scholar of criminal procedure and a black man seems redundant.

I am walking in the most beautiful neighborhood in the District of Columbia. Though I'm coming home from work, I feel as though I'm on a nature walk: I spy deer and raccoons and hear ridiculously noisy birds. And even more unusual in Washington: black and white people. Living next door to each other. It's more like Disney World than the stereotypical image of Washington, D.C.

It is the neighborhood where I am fortunate enough to reside, and I am ashamed that the walk is unfamiliar; it is occasioned by my broken car. The time is about 9 p.m., and the streets are mostly deserted. When I'm about three blocks from home, a Metropolitan Police car, passing by, slows down. I keep walking, and the car makes a right turn, circles the block, and meets me. There are three officers inside. Their greeting is, "Do you live around here?"

I have been in this place before. I know that answering the question will be the beginning, not the end, of an unpleasant conversation—"Where do you live?" "It's kind of cold to be walking, isn't it?" "Can I see some I.D.?"—that I don't feel like having.

So I ask a question instead: "Why do you want to know?" The three officers exchange a glance—the "we got a smartass on our hands" glance. I get it a lot.

"Is it against the law to walk on the sidewalk if I don't live around here?" When no response is immediately forthcoming, I say, "Have a nice evening, officers, " and head toward home.

The police now use an investigative technique that probably has a name other than cat-and-mouse, but that is the most accurate description. They park their car on the side of the road, turn off their lights, and watch me walk. When I pass out of their range of vision, they zip the car up to where they can see me.

In this fashion we arrive on the block where I live. I have a question, and so I stop and wait. For once, I have the power to summon the police immediately, quicker even than the president, who lives about seven miles away. Sure enough, as soon as I pause, the car does too. The police and I have a conversation, consisting mostly of questions.

"Why are you following me?"

"Why won't you tell us where you live?"

"What made you stop me?"

"We don't see a lot of people walking in this neighborhood."

"Are you following me because I'm black?"

"No, we're black too."

This answer is true, but it is not responsive. I ask the officers if they have ever been followed around a store by a security guard. They all say yes. The senior officer—a sergeant—says that it doesn't bother her because she knows she's not a thief.

I ask if that's how the kid in the Eddie Bauer case should have felt. A Prince George's County police officer, moonlighting as a security guard, made an African-American teen-ager take off the shirt he was wearing and go home to get a receipt in order to prove that he had not stolen the shirt from the store. Testifying about how that made him feel, the black man-child cried. The case had been in the news the previous week because a jury awarded the boy \$850, 000. Nonetheless, the sergeant says she isn't aware of it.

The officers tell me that they're suspicious because this is not a neighborhood where they usually see people walking. Furthermore, they know everybody who lives in the neighborhood and they don't know me. I ask if they know who lives there, pointing down the road to the house where I have lived for 14 months. Yes, they answer, yes, they do.

And so I walk. I walk up my stairs. I sit on my porch. I wait. I wait because I am a professor of criminal procedure. I wait because I remember the last time, with different officers, in a different place, when I "cooperated." Which meant that I let them search my car. Or rather, I let one search while the other watched me. With his hand resting near his gun. On 16th Street. Cars whizzed by. I pretended that I was invisible.

Now the officers park their car and position its spotlight on my face. All three of them join me on my porch.

"Do you live here?"

"Yes, I do."

"Can we see some identification?"

"No, you may not."

During the antebellum period of our nation's history, blacks were required to carry proof of their status, slave or free, at all times. Any black unsupervised by a white was suspect. In North Carolina, to make it easier for law enforcement, nonslave blacks had to wear shoulder patches with the word " free."

The District of Columbia, through its three agents standing on my porch, tells me: "If you live here, go inside. It's too cold to be out."

I am content where I am. So, the police announce, are they. They will not leave me until I produce some I.D. or enter the house.

I have arrived home late because I worked late, writing about a book for the Harvard Law Review. The book, which I'm carrying in my knapsack, is *Race, Crime and the Law*, by Randall Kennedy. Since apparently none of us has anything better to do, I take the book out of my sack and show the officers Chapter 4, "Race, Law, and Suspicion: Using Color as a Proxy for Dangerousness." The chapter contains several stories just like this one. It quotes Harvard Professor Henry Louis Gates Jr.:

Blacks—in particular, black men—swap their experiences of police encounters like war stories, and there are few who don't have more than one story to tell. Erroll McDonald, one of the few prominent blacks in publishing, tells of renting a Jaguar in New Orleans and being stopped by the police—simply " to show cause why I shouldn't be deemed a problematic Negro in a possibly stolen car." The crime novelist Walter Mosley recalls, "When I was a kid in Los

Angeles, they used to spot me all the time, beat on me, follow me around, tell me that I was stealing things." Nor does William Julius Wilson wonder why he was stopped near a small New England town by a policeman who wanted to know what he was doing in those parts. There's a moving violation that many African-Americans know as D.W.B.: Driving While Black.

But this, I announce, is the first time I've ever heard of "walking while black." I point to the big window of my beautiful house. I tell the police that I have seen people, mostly white, walking down the street at all times of the day and night, and I have never heard them questioned about their right to be there. That is why I will not show them my identification. This is not apartheid South Africa, and I don't need a pass card.

The officers are not interested. In fact, they announce, they're getting angry. There have been burglaries in this neighborhood and car vandalism. The police are just doing their job, and I—I am wasting the taxpayers' money. One officer theorizes that I'm homeless. Another believes that I'm on drugs. The one thing of which they are certain is that I don't live here in the house on whose porch I sit. And when they find out who I "really" am, I will be guilty of unlawful entry, a misdemeanor. "Another night of overtime, " they note with satisfaction.

The sergeant tells me that since I'm being "evasive, " she will interview my neighbors. The two officers who remain radio for backup. They give the dispatcher the wrong address, and I correct them. Soon a second patrol car, with two more officers, arrives. I am cold but stubborn.

Finally, my neighbor comes outside and identifies me. I'm free now—free to be left alone. Free to walk on a public street. Free to sit on my porch, even if it is cold.

But first, we—the five law enforcement officers and I—look to my neighbor for vindication, a moral to justify the last hour of our lives. My neighbor is black like us. He says that he is always happy to see police patrolling the neighborhood. But, he adds, many white people walk late at night, and they are not questioned about their right to be there. My neighbor tells the officers that they are always welcome to stop by his house for coffee. And he goes home. The sergeant invites me to a crime prevention meeting at the police station in a few weeks. Then the five officers get into their two cars and drive away.

As for me, I'm still searching for a moral. My neighborhood does not seem so beautiful anymore. I got my car repaired right away: I had enjoyed the walk, but I dreaded the next set of officers. Sometimes I prefer to leave criminal procedure at the office. Sometimes I like a walk to be simply a walk.

But sometimes I am willing for my walk to serve as a hypothetical, for the police, and for you, reader, about the Fourth Amendment and its protection against unreasonable government intrusion. If I had a television show, I would say, "Kids, don't try this at home." It is unfortunate, but other uppity Negroes have gotten themselves shot for less than what I did. The officers I encountered were professional, even if the male officers were not especially polite. They never led me to believe that they would physically harm me or even falsely arrest me. It is sad that I should feel grateful for that, but I do.

One reason that I felt safer with the officers was because they were African-American. They might stop me because I'm black, but I didn't think they would be as quick on the draw as nonblack officers, who are more susceptible to the hype. The black officer's construct of me—a black man walking in a neighborhood where people don't often walk at night—was burglary suspect, or homeless person, or drug addict. The white officer's construct—even during a traffic stop—is violent black man. At least that is what is communicated by the approach with the hand on the gun, the order to exit the car, and the patdown search. Not every time, but often enough.

Because the officers were black, I was especially angry. They should've known better.

What is reasonable law enforcement? There are neighborhoods in this city that covet police officers as concerned about crime prevention as these officers seemed to be. Like my neighbor, I had been pleased to see police patrols—at least until the police patrolled me. Still, I could excuse the intrusion as the price of life in the big city if everybody had to pay the price. But everybody does not. Ultimately, my protest is less about privacy and more about discrimination.

Most courts say that police may consider race in assessing suspicion. It is probably true that there are more black than white burglars and car thieves in the *District*. In *United States v. Weaver*, 966 F.2d 391 (1992), the U.S. Court of Appeals for the 8th Circuit said of racial profiles:

Facts are not to be ignored simply because they may be unpleasant. . . . Race, when coupled with other factors is a lawful factor in the decision to approach and ultimately detain a suspect. We wish it were otherwise, but we take the facts as they are presented to us, not as we would like them to be.

But the fact is also that most of the black people who walk in my neighborhood are, like me, law-abiding. And the fact is that some white people are not law-abiding. Race is so imprecise a proxy for criminality that it is, in the end, useless.

The police officers made me an offer before they left. If I wanted to know when they stopped white people who walked in my neighborhood, they would tell me. They would ring my doorbell any time, day or night, to let me know.

Ironically, considering the officers' lack of interest in Professor Kennedy's book, their offer is also his suggestion. Kennedy believes in colorblindness, including in assessments of suspicion. He writes:

Instead of placing a racial tax on minorities, government should, if necessary, increase taxes across the board. . . . It should be forced to inconvenience everyone . . . by subjecting all . . . to questioning. The reform I support, in other words, does not entail lessened policing. It only insists that the costs of policing be allocated on a nonracial basis.

I turned down the offer, thinking that the police might begin to question every walker in my neighborhood just to make a point. That would not make me feel any safer, and it would inconvenience the neighbors.

In retrospect, I made the wrong decision. I hadn't wanted to draw the enmity of my neighbors by causing them to be treated like criminal suspects. Or like black men. Sometimes the law gets me confused about the difference. Kennedy is correct: It is a confusion everyone should share.

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