



## **Historic First On Racial Profiling**

By Dr. Lorne Foster

In the annals of Black urban folklore on racial profiling it has long been a shared belief that “Driving While Black”, or DWB, can be a punishable offence in the unofficial reality of everyday city life, although it has never been an official infraction of the Highway Traffic Act.

The great American jazz trumpeter Miles Davis was the celebrated “posterboy” for DWB in the Diaspora. In his autobiography he recounted how his penchant for driving expensive automobiles invariably resulted in his being stopped and bedeviled by police. On one particularly outlandish occasion, while he was parked on a New York street in the company of a female companion, an individual unknown to Miles took out a small-caliber handgun and shot at him. He was saved, he insisted, by the door of his well-built, cherry-red Ferrari, and his Black leather suit. But, after two White policeman arrived to investigate the incident, rather than pursue the shooter they arrested Miles and his companion.

If Miles were still with us today he might be encouraged to know that a leather-clad Black man with a shiny Ferrari may soon have to actually violate a section of the Highway Traffic Act to be bedeviled in Kingston, Ontario, where the police have recently released details of a first-of-its-kind plan to audit racial profiling.

In the fall of 2003, Kingston will become the first city in North America where police will be required to record the race and ethnicity of everyone stopped by an officer. The plan was unanimously approved by the police services board, following an order issued by Kingston police Chief Bill Closs banning racial profiling, also the first of its kind in Canada. The project will show if there is a systemic problem and if individual officers are unfairly targeting minorities, Closs said, arguing “it's time to move past anecdotal evidence.”

Officers will be required to check off one of six categories – White, Black, Asian, South Asian, Aboriginal or other – on the contact cards they fill out whenever they stop or question someone. Besides tracking race, officers will have to write down the reason for stopping someone and the conclusion of the stop. Kingston police crime analyst Ray Lonsdale said the data will likely be released after the year-long project is complete and anyone will be free to interpret it.

In Canada, of course, it was the drunk-driving conviction and appeal of ex-Raptor (basketball professional) Dee Brown (rather than the tortured genius of Miles Davis) that is often considered the crossroads between the urban legend and the urban fact of racial profiling.

Brown was convicted in July 2000 of drunk driving by trial judge Justice David Fairgrieve, but Superior Court Justice Brian Trafford quashed the conviction and ordered a new trial. The Crown appealed. However, the appeals court confirmed the Superior Court ruling that Brown's arrest was unconstitutional because he was singled out as a Black man who was casually dressed and driving an expensive vehicle on the DVP on Halloween night 1999. Thus, evidence gathered was inadmissible.

The appeals court also found that trial Judge Fairgrieve – who asked Brown to apologize for making allegations of racial profiling against the arresting officer – “had a fixed and negative view of the defense raising the issue.”

Following the Brown case, many Black community leaders embraced the Superior Court decision as the public revelation of a dirty little inter-racial secret. Lawyer Julian Falconer of the Urban Alliance on Race Relations spoke for many when he proclaimed – “The days of denial are over ... The fact that racial profiling exists for police is now the law of the land in Ontario.”

However, what many did not anticipate was the level of resistance to the idea of racial profiling as a legitimate public policy issue rather than an attack on one of society’s most venerable institutions. While Black and other community leaders have tried to use the Superior Court decision in the Brown case to frame racial profiling as an issue of social equality and proportionate treatment, much of the police establishment continues to re-frame the issue as an attempt to undermining the operational integrity of law enforcement in society – and so, for the most part, police authorities and decision-makers cannot be cajoled, guilt-ed, or summit-ted into submission.

Toronto Police Chief Julian Fantino said, “I have never denied that there are instances of inappropriate conduct by a small number of our members -- some that have been viewed as discriminatory and racist .” But he is confident his officers “carry out their duties fairly, professionally and ethically.”

Toronto Police union boss Craig Bromell, continues to express concern that police officers will be forced to boycott pulling over minorities to “protect ourselves against profiling allegations.”

Meanwhile, Tom Kaye, head of the Ontario Association of Chiefs of Police, has already attacked the Kingston plan, suggesting it will scare officers from questioning minorities – “even if they are guilty of a crime.”

All in all, much of the police establishment has shifted the focus of the racial profiling issue from “the protection of minority rights” to “the obstruction of police services.” Now it appears this same establishment is even prepared to disavow any compromising hard data and documented findings to the contrary.

This, of course, does not bode well for an advance in police-minority relations in the everyday round of our city life, but rather suggest that we can expect more urban alienation and the further entrenchment of racial differences – with the possible exception of “The City of Kingston where History and Innovation Thrive.”