

# Critical Faculties

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## Pit bulls and profiling

IF SOME STATE legislators have their way, Massachusetts could soon have one of the toughest "hang up and drive" laws in the country. This term, the full Legislature may vote on a bill barring cellphone use by drivers under 18 and requiring older drivers to use a hands-free set.

It's hard to object if you've ever watched an Escalade bear down on you in a crosswalk as a clueless driver natters on, steering the two-and-a-half-ton behemoth with one hand. And yet, people *will* object—on two grounds. First, the majority of people who make calls while driving do so safely. And second, why single out just one of the circus of distractions most drivers face? As ABC News's in-house libertarian John Stossel put it, after New York mandated hands-free cellphones for drivers in 2001, "Police and lawmakers should focus on laws we already have on the books against reckless driving instead of... taking away everyone's freedom because of the carelessness of a few."

That kind of reasoning drives legal scholar Frederick Schauer crazy. Granted, cellphone restrictions stereotype all cellphone-using drivers as unsafe. But virtually every law involves stereotypes of that sort. Minimum-age voting laws categorize all 17-year-olds as uninformed about politics. The law that bars pilots over 60 from flying commercial jetliners stereotypes some not-so-old folks as mentally and physically over-the-hill. As Schauer, a professor at Harvard's John F. Kennedy School of Government, argues in his new book *Profiles, Probabilities, and Stereotypes* (Harvard), stereotyping is "an essential part of our cognitive and decision-making apparatus. It is simply how we think."

It was actually whining dog owners that inspired Schauer to write the book. When localities began passing laws restricting pit bulls, rottweilers, and a handful of other "dangerous dogs," the cry of "canine racism" went up. (One group of pit bull lovers even placed Stars of David on their animals in protest.) Given that a handful of breeds disproportionately do all the biting and attacking, Schauer argues, such laws make perfect sense. Still, many cities (including Boston), cowed by the criticism, chose to crack down on dogs and their owners only *after* the animals

attack. "That's like saying, 'Drive as fast as you want—but you are responsible for any accident you cause,'" Schauer says.

These days, of course, when people hear "profiling" and "stereotyping," they think race and ethnicity. But while Schauer distrusts such profiling, he argues that there's nothing wrong with its underlying logic.

In a 1989 case, *United States v. Sokolow*, the Supreme Court upheld the right of airport police to stop and search the luggage of those who fit the profile of a drug trafficker. Sokolow, a white man stopped in Honolulu International Airport, had paid \$2,100 in cash for airline tickets, checked none of his luggage, scheduled a short stay in Hawaii, was not travelling under his own name, and wore a black jumpsuit and gold jewelry. Though he did turn out to be carrying cocaine, he argued that the police had no "reasonable cause" to search him. The Supreme Court disagreed. In other cases it has clarified that race or ethnicity can be part of the "profile" that raises police suspicion, but not the sole or the main factor.

True profiling, Schauer argues, has to be based on statistical evidence that a characteristic is linked to wrongdoing. By that standard, he says, some of the famous "racial profiling" scandals are misnamed. When police in search of drugs in Chicago's O'Hare Airport in the 1990s stopped and strip-searched black women, they were acting on their own racist hunches, not on any statistical evidence.

Schauer largely supports profiling based on statistically accurate data. Yet he adds that even when racial or ethnic information can render a statistical profile more accurate, there may be reasons to omit it. Although Arab men are statistically more likely than Italian-American women to hijack a plane, pulling Arabs out of line for questioning can inflame ethnic tensions. It may be wiser to question everyone even if it means longer lines and waits.

It's not that Schauer doesn't take some contrary positions. He's willing to chuck much of American age-discrimination law (it's reasonable, he argues, to generalize that mental faculties decline with age). And he thinks that notoriously raucous English soccer fans should be banned outright from European stadiums because of the hooliganism of a few. But he won't accept the argument of an all-male military school (Virginia Military Institute, circa 1996) that women should be denied entry since they tend to be physically weaker than men as well as allegedly less able to cope with brutal discipline. And even in life-and-death situations, he goes out of his way to reject, in practice, any profiling that involves discriminated-against minorities.

But those pit bulls? No mercy.

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