

10-17-2012

The Open Road and the Traffic Stop: Narratives and Counter-Narratives of the American Dream

Nancy Leong

Follow this and additional works at: <http://scholarship.law.ufl.edu/flr>

 Part of the [Administrative Law Commons](#), [Constitutional Law Commons](#), and the [Criminal Law Commons](#)

Recommended Citation

Nancy Leong, *The Open Road and the Traffic Stop: Narratives and Counter-Narratives of the American Dream*, 64 Fla. L. Rev. 305 (2012).
Available at: <http://scholarship.law.ufl.edu/flr/vol64/iss2/1>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized administrator of UF Law Scholarship Repository. For more information, please contact outler@law.ufl.edu.

Florida Law Review

Founded 1948

VOLUME 64

APRIL 2012

NUMBER 2

ARTICLES

THE OPEN ROAD AND THE TRAFFIC STOP: NARRATIVES AND COUNTER-NARRATIVES OF THE AMERICAN DREAM

*Nancy Leong**

Abstract

American culture is steeped in the mythology of the open road. In our collective imagination, the road represents freedom, escape, friendship, romance, and above all, the possibility for a better life. But our shared dream of the open road comes to a halt in the mundane reality of the traffic stop—a judicially authorized policing procedure in which an officer may pull over a vehicle if she has cause to believe the driver has committed even the most minor traffic violation. I examine the cultural texts—books, movies, songs—celebrating the open road and juxtapose them against those documenting the traffic stop. The traffic stop, I conclude, interrupts the open road narrative closely associated with the American dream. Those stopped most frequently—in particular, racial minorities—are consequently denied full participation in an abiding national fantasy.

INTRODUCTION	306
I. THE OPEN ROAD	309
A. <i>The American Dream and the Open Road</i>	309
B. <i>The Law on the Open Road</i>	318
C. <i>Racializing the Open Road</i>	321

* Assistant Professor, University of Denver Sturm College of Law. I am grateful for the thoughtful suggestions of Hans Allhoff, Fred Cheever, Alan Chen, Owen Davies, Ian Farrell, Charlotte Garden, Brooks Holland, Justin Pidot, Catherine Smith, Robin Walker Sterling, Eli Wald, and Robert Weisberg. Thanks also to the editors of the *Florida Law Review* for careful and thorough editing, especially Cem Akleman, Olga Balderas, Allison Fischman, Amanda Harris, Sara Hoffman, Andrea Krkljus, Lauren Millcarek, Kyla O'Brien, Paul Pakidis, Matt Simmons, and Samantha Tucker.

II. THE TRAFFIC STOP..... 324

 A. *The Law of the Traffic Stop*..... 324

 B. *From the Open Road to the Traffic Stop*..... 328

 1. From Transcendent to Mundane 328

 2. From Freedom to Confinement..... 331

 3. From Intimacy to Isolation..... 332

 4. From Power to Helplessness 334

 5. From Possibility to Impossibility 336

 C. *Racializing the Traffic Stop* 338

III. THE AMERICAN DREAM..... 341

 A. *Imaginative Consequences of Racialized Access to the Open Road Narrative* 342

 B. *Overcoming Race on the Road*..... 350

CONCLUSION..... 352

*“Whither goes thou, America, in thy shiny car in the night?”*¹

INTRODUCTION

The American dream of a better life and a brighter future is even older than America itself. The Founders memorialized the content of this dream by asserting an inalienable right to the pursuit of happiness in our Declaration of Independence,² and the paramount importance of mobility threads throughout our jurisprudence.³ Today, we continue to embrace the ideal of America as a place where dreams come true, a place where possibility can be transformed into reality.

Nothing so aptly captures this fundamentally American dream as the image of the open road stretching out toward the distant horizon. Indeed, this image captures another paradigmatically American concept,

1. JACK KEROUAC, ON THE ROAD 119 (Viking Penguin 1997) (1957).

2. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

3. See, e.g., Saenz v. Roe, 526 U.S. 489, 498 (1999) (holding that the “constitutional right to travel” is protected by the Privileges and Immunities Clause of the Fourteenth Amendment and “firmly embedded in our jurisprudence”); Shapiro v. Thompson, 394 U.S. 618 (1969) (“This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.”); Passenger Cases, 7 How. 283, 492 (1849) (“For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.”).

that of manifest destiny, which in turn led to the westward expansion of American territory, the westward migration of Americans, and, ultimately, the literal extension of our highways.⁴

The road has been celebrated, serenaded, mythologized, and idealized in countless iconic cultural texts—books, movies, poems, songs, and so on.⁵ As a symbol, the road represents the possibility of freedom, autonomy, and self-determination that the American dream promises. Yet the road also translates the dream to concrete physical form by quite literally providing a pathway toward the fulfillment of these desires. Both symbolically and literally, then, the road stands for possibility—and for the possibility of possibility itself.

The road is also more than a pathway toward the American dream. The road, in itself, is *already* a realization of the dream. Simply to travel the road is to exercise the freedom of movement and choice of destination intrinsic to our ideals. A traveler on the road is, in that moment, living the dream of making his own way in the world, of pursuing his own happiness. It is no accident that the road trip occupies a revered place in our collective imagination. Regardless of the destination, or even whether the destination is different from the starting point, the act of the journey is an exercise of the American dream.

The open road, then, is both a means to an end and an end in itself—that is, it represents both the promise of the American dream and its fulfillment. These multiple narratives of the open road coexist and mutually reinforce one another, collectively cementing the road's place at the heart of the American dream.

But this dream comes to a grinding halt in the banal reality of the traffic stop. Our fables of freedom celebrating the road contrast starkly with accounts of motorists pulled over, questioned, delayed, and ensnared in the minutiae of arcane traffic laws. This narrative of the traffic stop emerges, for instance, in judicial opinions, in which we often find stark depictions of motorists suspected, searched, detained, arrested, and charged. These sterile texts, as well as other cultural texts depicting the traffic stop, provide a dystopian counter-narrative to the joyous parable of the open road. The two narratives create cognitive friction, and in many instances, they are incompatible. The result is that the traffic stop interrupts our travels on the open road, and in so doing, keeps us from the American dream.

For many of us—the lucky ones—traffic stops are a rare, if unpleasant, experience. Therefore, they have little effect on our

4. ANDERS STEPHANSON, *MANIFEST DESTINY: AMERICAN EXPANSION AND THE EMPIRE OF RIGHT* (1996).

5. For a partial compilation of such cultural texts, see *infra* notes 11–15.

imagination; we remain able to participate in the fantasy of the open road, whether or not we realize that fantasy from day to day. But for the less fortunate, traffic stops are a regular event. For those routinely subjected to the humiliation of the traffic stop—racial minorities in particular—the shining possibility of the open road gradually dims and eventually may be extinguished altogether. The traffic stop, then, is more than an inconvenience. It is more, even, than a potential violation of fundamental constitutional rights. For some racial groups, the traffic stop inhibits the American dream.

The goal of this Article is to reveal the imaginative injury resulting from the racialization of the open road and the traffic stop—that is, the harm that racial minorities suffer when they are excluded from the open road narrative enshrined in our cultural texts. Previous work has examined many of the harms flowing from racial profiling in traffic stops⁶: the legal concerns that racial profiling raises under both the Fourth Amendment and the Equal Protection Clause; the psychological harms of stigma and shame that racial minorities experience as a result of the lack of legal recourse for their injuries; and the damage to the relationship between law enforcement officers and minority communities. Yet no previous scholarly work has focused on the *imaginative* consequences of the disparity in how those of different races fare on the road. I will here examine how this disparity affects racial minorities' ability to desire, pursue, and attain the American dream embodied in the open road narrative.

Part I elaborates on the content of the open road narrative, while Part II examines the narrative of the traffic stop. The freedom and hope emblematic of the open road contrast starkly with the fear and constraint

6. I acknowledge that debate continues over the extent to which racial profiling occurs, the extent to which it is illegal as a law enforcement tactic even if it does occur, and the extent to which racial minorities experience harm as a result of racial profiling. Compare David A. Harris, *The Stories, the Statistics, and the Law: Why "Driving While Black" Matters*, 84 MINN. L. REV. 265, 266 (1999), with Stephan Michelson, *Driving While Black: A Skeptical Note*, 44 JURIMETRICS J. 161, 179 (2004). While there is certainly much more to say about this debate, I do not say it in this particular Article. Rather, I am convinced by the available evidence that racial profiling occurs at significant levels, that it is illegal as a law enforcement tactic, and that racial minorities experience significant harm as a result. See, e.g., David A. Harris, "Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops, 87 J. CRIM. L. & CRIMINOLOGY 544, 547, 582 (1997) [hereinafter Harris, *Driving While Black*]; Adero S. Jernigan, Note, *Driving While Black: Racial Profiling in America*, 24 L. & PSYCHOL. REV. 127, 133, 138 (2000); Kathryn K. Russell, "Driving While Black": Corollary Phenomena and Collateral Consequences, 40 B.C. L. REV. 717, 726–28, 730 (1999). I take these propositions as the starting point for this Article and do not devote time to proving them here. I recognize that those who do not share my views will disagree with some of the fundamental premises of this Article, and consequently, the conclusions that follow.

endemic to the traffic stop. The two narratives are incompatible, and I demonstrate that the traffic stop is inevitably a disruption—perhaps even a permanent rupture—of the fantasy of the open road. Moreover, the narratives are not race-blind; rather, the open road narrative is racialized as white, while the traffic stop narrative is racialized as non-white. Part III then turns to and makes explicit the implications of the racialization of the two narratives. I argue that those to whom the traffic stop narrative is made most salient—racial minorities—suffer injury to their collective imagination. The disproportionate imposition of traffic stops on minorities results in a far greater disruption of those individuals’ ability to access the open road narrative and to participate in the open road fantasy. The result is alienation from a core national fantasy, and, tragically, a diminished or eliminated ability to believe in, pursue, and ultimately experience the American dream.

I. THE OPEN ROAD

*“Well the night’s busting open / These two lanes will take us
anywhere”*⁷

I begin with the road. What does the open road mean to us, and why? In exploring this question, I strive to be as open and democratic as the road itself in my use of authority. I draw on both the undisputed classics and newer works that have not yet withstood the test of time; deploy indiscriminately all genres of literature, film, and music; and make no distinction between “high” and “low” cultural texts. The goal of this eclecticism is a medley of sources that roughly approximates the cultural *mélange* from which the open road narrative filters into our national imagination.

A. *The American Dream and the Open Road*

*“Let’s go get lost / Anywhere in the U.S.A.”*⁸

American culture is steeped in the mythology of the open road. The very idea of the road evokes infinite possibility—the possibility of establishing a new identity, finding a new job, meeting a new lover, creating a new home—the possibility, in short, of forging a better, happier, richer, and more fulfilling life. The road is vital to these possibilities in a quite pragmatic sense: starting afresh comes much more easily in a new physical place. But the road also supplies the

7. BRUCE SPRINGSTEEN, *Thunder Road*, on *BORN TO RUN* (Columbia Records 1975), available at <http://www.youtube.com/user/BruceSpringsteenVEVO#p/u/55/IxuThNg13YA>.

8. RED HOT CHILI PEPPERS, *Road Trippin’*, on *CALIFORNICATION* (Warner Bros. 1999), available at <http://www.youtube.com/user/RHCPtv#p/u/46/11GYvfYjyV0>.

imaginative foundation equally necessary to positive transformation. By providing us with a mechanism for escape and an avenue of possibility, the road allows us to envision ourselves somewhere different, both literally and figuratively, from our present circumstances.

The road so captures our imagination that we readily accept a road journey, coupled with an interesting character or two, as a sufficient premise for a book or a movie. The idea of the journey is not uniquely American—indeed, it dates back to Homer’s *Odyssey*⁹ and before—but the highway takes on an outsize significance in our physical topography,¹⁰ and perhaps as a result, we have made the genre our own. *The Grapes of Wrath*—both the Pulitzer Prize-winning book and the Academy Award-winning film—helped to cement the road trip in American literary and cinematic culture.¹¹ Countless variants followed, rendering the road tale as a genre unto itself. Consider canonical movies such as *Bonnie and Clyde* and *Easy Rider*.¹² Or consider classic novels

9. HOMER, *THE ODYSSEY* (Walter Shewing trans., Oxford Univ. Press 2008).

10. The U.S. highway network, for instance, contains over four million miles of road, whereas the United Kingdom, accounting for all roads, has less than two hundred fifty thousand miles of road. *Compare Transportation of the United States*, NAT’L ATLAS, <http://www.nationalatlas.gov/transportation.html> (last modified Jan. 27, 2011), with *Road Lengths (Miles) by Road Type and Region and Country in Great Britain, Annual from 2005*, DEP’T FOR TRANSP. (June 30, 2011), <http://www.dft.gov.uk/statistics/tables/rdl0101>.

11. JOHN STEINBECK, *THE GRAPES OF WRATH* (Easton Press 2008) (1939); *THE GRAPES OF WRATH* (Twentieth Century Fox Film Corp. 1940).

12. Actually, the sheer number of road movies—both canonical and decidedly otherwise—is staggering. *See, e.g.*, *ALIEN* (Brandywine Productions 1979); *BADLANDS* (Badlands Co. et al. 1973); *THE BIG BUS* (Paramount Pictures 1976); *THE BLUES BROTHERS* (Universal Pictures 1980); *BONNIE & CLYDE* (Warner Bros./Seven Arts & Tatira-Hiller Productions 1967); *BOTTLE ROCKET* (Columbia Pictures Corp. & Gracie Films 1996); *BOYS ON THE SIDE* (Alcor Films et al. 1995); *BREAKING THE RULES* (Management Company Entertainment Group & Sterling Pictures 1992); *THE CANNONBALL RUN* (Golden Harvest Company & Eurasia Investments 1981); *THE CHASE* (Capitol Films et al. 1994); *CROSSROADS* (Filmco Enterprises et al. 2002); *DEATH RACE 2000* (New World Pictures & Columbia Associates 1975); *DRUGSTORE COWBOY* (Avenue Pictures Productions 1989); *DUE DATE* (Warner Bros. Pictures et al. 2010); *DUEL* (Universal TV 1971); *DUMB & DUMBER* (New Line Cinema & Motion Picture Corp. of America 1994); *EASY RIDER* (Columbia Pictures Corp. et al. 1969); *EVEN COWGIRLS GET THE BLUES* (New Line Cinema & Fourth Vision 1993); *FANDANGO* (Warner Bros. Pictures & Amblin Entertainment 1985); *FEAR AND LOATHING IN LAS VEGAS* (Fear and Loathing LLC et al. 1998); *GET HIM TO THE GREEK* (Universal Pictures et al. 2010); *THE GREAT RACE* (Warner Bros. Pictures et al. 1965); *HAROLD & KUMAR GO TO WHITE CASTLE* (Endgame Entertainment et al. 2004); *THE HITCHHIKER* (The Asylum et al. 2007); *HONEYSUCKLE ROSE* (Warner Bros. Pictures 1980); *IT HAPPENED ONE NIGHT* (Columbia Pictures Corp. 1934); *IT’S A GIFT* (Paramount Pictures 1934); *IT’S A MAD, MAD, MAD, MAD WORLD* (Casey Productions 1963); *KALIFORNIA* (PolyGram Filmed Entertainment et al. 1993); *THE LAST CHASE* (Argosy Films & Canadian Film Development Corp. 1981); *LITTLE MISS SUNSHINE* (Fox Searchlight Pictures et al. 2006); *LOST IN AMERICA* (The Geffen Company & Marty Katz Productions 1985); *MIDNIGHT RUN* (City Light Films & Universal Pictures 1988);

such as *Lolita* and *On the Road*, in which the road is central to the plot and at times almost a character.¹³ Or the poems written in the same vein,

THE MUPPET MOVIE (Henson Associates & ITC Films 1979); NATIONAL LAMPOON'S VACATION (Warner Bros. Pictures 1983); NATURAL BORN KILLERS (Warner Bros. Pictures et al. 1994); NEAR DARK (F/M & Near Dark Joint Ventures 1987); O BROTHER, WHERE ART THOU? (Touchstone Pictures et al. 2000); OUT (Eli Hollander & Osprey Ltd. 1982); OVERNIGHT DELIVERY (Motion Picture Corp. of America 1998); PLANES, TRAINS AND AUTOMOBILES (Hughes Entertainment & Paramount Pictures 1987); RAIN MAN (United Artists et al. 1988); RAT RACE (Paramount Pictures et al. 2001); ROAD TO PERDITION (DreamWorks et al. 2002); ROAD SCHOLAR (Samuel Goldwyn Company 1993); ROAD TRIP (DreamWorks et al. 2000); SERVING SARA (FTM Productions et al. 2002); SESAME STREET PRESENTS: FOLLOW THAT BIRD (Children's Television Workshop et al. 1985); SIDEWAYS (Fox Searchlight Pictures et al. 2004); SMOKEY AND THE BANDIT (Universal Pictures et al. 1977); SOMETHING WILD (Religiosa Primitiva 1986); STAGECOACH (Walter Wanger Productions 1939); THE SURE THING (Embassy Films & Monument Pictures 1985); THELMA AND LOUISE (Pathé Entertainment et al. 1991); THEY LIVE BY NIGHT (RKO Radio Pictures 1949); THIEVES LIKE US (George Litto Productions & Jerry Brick 1974); TO WONG FOO, THANKS FOR EVERYTHING! JULIE NEWMAR (Universal Pictures & Amblin Entertainment 1995); TOMMY BOY (Paramount Pictures 1995); TRANSAMERICA (Belladonna Productions 2005); TWO LANE BLACKTOP (Michael Laughlin Enterprises & Universal Pictures 1971); VANISHING POINT (Cupid Productions & Twentieth Century Fox Film Corp. 1971); WENDY & LUCY (Field Guide Films et al. 2008); WRISTCUTTERS: A LOVE STORY (No Matter Pictures et al. 2006); YOU ONLY LIVE ONCE (Walter Wanger Productions 1937); ZOMBIELAND (Columbia Pictures et al. 2009). Indeed, our hunger for road movies is so great that some foreign films have also been assimilated into the American canon. See, e.g., THE MOTORCYCLE DIARIES (FilmFour et al. 2004); THE VANISHING (Argos Films et al. 1988); Y TU MAMÁ TAMBIÉN (Anhele Producciones et al. 2001).

13. The number of road movies is matched by the amount of road literature. See, e.g., DORIS BETTS, HEADING WEST (1981); BILL BRYSON, THE LOST CONTINENT: TRAVELS IN SMALL-TOWN AMERICA (Harper Perennial 2007) (1989); TIM CAHILL, ROAD FEVER (Black Swan 2005) (1991); TIM CHAMBERS, MOONBEAM HIGHWAY (2009); BRUCE CHATWIN, IN PATAGONIA (Vintage 2005) (1977); RICHARD FORD, ROCK SPRINGS (Bloomsbury 2006) (1987); RICHARD GRANT, AMERICAN NOMADS (2003); WILLIAM LEAST HEAT-MOON, BLUE HIGHWAYS: A JOURNEY INTO AMERICA (Little, Brown and Co. 1999) (1982); LAMAR HERRIN, THE LIES BOYS TELL (Harper Perennial 1992) (1991); TONY HORWITZ, ONE FOR THE ROAD (Vintage Books 1999) (1987); KEROUAC, *supra* note 1; LARRY MCMURTRY, CADILLAC JACK (Simon & Schuster 1987) (1982); LARRY MCMURTRY, LOOP GROUP (2004); JAMES A. MICHENER, THE DRIFTERS (Ballantine Books 1982) (1970); HENRY MILLER, THE AIR-CONDITIONED NIGHTMARE (New Directions 2003) (1945); DONALD MILLER, THROUGH PAINTED DESERTS: LIGHT, GOD, AND BEAUTY ON THE OPEN ROAD (2005); VLADIMIR NABOKOV, LOLITA (Berkeley 1983) (1955); DOREEN ORION, QUEEN OF THE ROAD (2008); REX PICKETT, SIDEWAYS (2004); ROBERT M. PIRSIG, ZEN AND THE ART OF MOTORCYCLE MAINTENANCE (Harper Perennial 2008) (1974); CHARLES PORTIS, THE DOG OF THE SOUTH (Bloomsbury 2005) (1979); JOHN STEINBECK, TRAVELS WITH CHARLEY (Penguin Books 2002) (1962); RORY STEWART, THE PLACES IN BETWEEN (Harcourt 2006) (2004); PATRICK SYMMES, CHASING CHE: A MOTORCYCLE JOURNEY IN SEARCH OF THE GUEVARA LEGEND (2000); HUNTER S. THOMPSON, FEAR AND LOATHING IN LAS VEGAS: A SAVAGE JOURNEY TO THE HEART OF THE AMERICAN DREAM (Harper Perennial 2005) (1971); TOM WOLFE, THE ELECTRIC KOOL-AID ACID TEST (Picador 2008) (1968).

such as Walt Whitman's *Song of the Open Road*.¹⁴ Or the innumerable popular songs, both recent and classic, that provide an ongoing soundtrack for our obsession with the road.¹⁵

Remarkably, the trope never gets old. We're willing to embrace innumerable twists on the road genre. A long-lost autistic brother?¹⁶ A transgender identity struggle?¹⁷ A post-apocalyptic world inhabited by zombies?¹⁸ Yes to all: we simply can't get enough. Even our fantasies—think, for example, of the yellow brick road in *The Wizard of Oz*¹⁹—reflect a preoccupation with both the physical and the psychological journey to a better place. This steady stream of artistic reinterpretation of the road reflects its hold on our collective imagination while simultaneously perpetuating and revitalizing that hold.

To find further tangible evidence of the power of the road in our collective imagination, we need look no further than our obsession with cars. We may drive mostly to work and the grocery store, but we want to feel as though we own a car that could transport us to the remote recesses of the deepest wilderness at a moment's notice. The reason the Volkswagen "Drivers Wanted" advertising campaign achieved such success in America is because it effectively evoked the abiding dream of the open road. The advertisement says simply: "On the road of life, there are passengers and there are drivers. Drivers wanted."²⁰ Because

14. WALT WHITMAN, *Song of the Open Road*, in LEAVES OF GRASS: THE "DEATH BED" EDITION 184-98 (Modern Library paperback ed. 2001); see also, e.g., ROBERT FROST, *The Road Not Taken*, in MOUNTAIN INTERVAL 9 (1916); CARL SANDBURG, *The Road and the End*, in CHICAGO POEMS 99 (1916); DR. SEUSS, OH, THE PLACES YOU'LL GO! (Random House 2010) (1990).

15. See, e.g., JUNIOR BROWN, *Highway Patrol*, on GUIT WITH IT (Curb 1993); JACKSON BROWNE, *Running on Empty*, on RUNNING ON EMPTY (Asylum 1977); BUCK 65, *Wicked and Weird*, on THIS RIGHT HERE IS BUCK 65 (Warner Bros. 2004), available at <http://www.youtube.com/user/buck65music#p/u/29/Yjxf7T97z0>; TOM COCHRANE, *Life Is a Highway*, on MAD MAD WORLD (Capitol Records 1991), available at <http://www.youtube.com/watch?v=U3sMjm9Eloo>; SHERYL CROW, *Everyday Is a Winding Road*, on SHERYL CROW (A&M 1996), available at <http://www.youtube.com/user/SherylCrowVEVO#p/u/39/khrx-zrG460>; HAWTHORNE HEIGHTS, *Drive*, on SKELETONS (Wind-Up 2010); ROBERT EARL KEEN, *The Road Goes on Forever*, on THE PARTY NEVER ENDS (Sugar Hill Records 2003); LL COOL J, *Speedin' on da Highway/Exit 13*, on EXIT 13 (Def Jam 2008); RED HOT CHILI PEPPERS, *supra* note 8; BRUCE SPRINGSTEEN, *supra* note 7.

16. RAIN MAN, *supra* note 12.

17. TRANSAMERICA *supra* note 12.

18. ZOMBIELAND, *supra* note 12.

19. THE WIZARD OF OZ (Metro-Goldwyn-Mayer & Loew's 1939).

20. This slogan was created by the firm Arnold Communications of Boston. See *Volkswagen Takes "Drivers Wanted" Campaign to the Next Level, Out of This World*, BUS. WIRE, Apr. 23, 1997, available at http://findarticles.com/p/articles/mi_m0EIN/is_1997_April_23/ai_19335492/.

the road is wrought so powerfully in popular consciousness, when it comes to the “road of life” Volkswagen references, we all *really* want to be drivers.

Dreams of escape inevitably involve the road—in a literal sense, almost necessarily so. But the road also becomes an inextricable component of the dream itself. In *The Good Girl*, Jennifer Aniston’s character Justine—a makeup counter employee at a big box retailer somewhere in the nameless Midwest—agonizes over whether to leave her husband to run away with an idealistic coworker who has told her he will wait for her at a particular motel. Her decision—already weighing on her emotionally—becomes vividly physical as she waits at a traffic light:

JUSTINE: Retail Rodeo was at the corner on my left, the motel was down the road to my right. I closed my eyes and tried to peer into the future. On my left I saw days upon days of lipstick and ticking clocks. Dirty looks and quiet whisperings[,] and burning secrets that won’t ever die away. And on my right, what could I picture?

(The camera cuts to what she imagines: an image of a straight highway traversing the flat earth to the horizon.)

JUSTINE: The blue sky, the desert earth stretching out into the eerie infinity. A beautiful, never ending nothing.²¹

The road thus figures in the character’s fantasy as an end in itself. She never envisions herself escaping *to* some exotic destination with Jake Gyllenhaal’s character,²² or perhaps starting a new life in a faraway place. The promise of the open road is fulfillment enough—of “starting from scratch and leaving trouble behind me.”²³

But the narrative of the open road encompasses more than the fantasy of escape from the encumbrances of the mundane. It also provides a powerful symbol of seizing what life has to offer. Jack Kerouac speaks of the allure of the road early in his classic chronicle *On the Road*: “Somewhere along the line I knew there’d be girls, visions, everything; somewhere along the line the pearl would be handed to me.”²⁴ His words affirm the centrality of the road to the American dream, and, in turn, cement the place of the road in our national

21. THE GOOD GIRL (Flan de Coco Films et al. 2002).

22. This deplorable lack of imagination may render Aniston’s character unrelatable for many audience members.

23. BUCK 65, *supra* note 15.

24. KEROUAC, *supra* note 1, at 8.

imagination. After all, each generation produces legions of would-be road warriors who go through a Kerouac phase sometime adjacent to the acquisition of a drivers' license, and his work transmits to them the vision of the road as a means to capture their hearts' desire, whatever that desire might be.

Camaraderie is also central to the road narrative and is part of the ideal that narrative embraces. Freedom is sweeter when shared with another who understands one completely, in the way that only a fellow traveler can. The shared experience of traversing the road and chasing the American dream cements relationships—or as LL Cool J proclaims, “Everybody that rides with me becomes a believer.”²⁵

Sometimes the road narrative begins with an existing friendship, which deepens and matures during the arc of the journey. In *Thelma and Louise*, the title characters begin by sharing a relatively conventional friendship; by the conclusion of their journey, they voluntarily share their deaths.²⁶ The evolution of Harold and Kumar's relationship in *Harold and Kumar Go to White Castle* is more subtle, limited both by the relative brevity of their single-night journey and by the tone of the movie itself, a comedy that occasionally detours into farce. Still, the two protagonists return to their shared apartment each possessed of greater self-knowledge and bound together by a subtle exchange of character. Harold has absorbed some of Kumar's laidback attitude and willingness to take risks, while Kumar has adopted (at least nominally) some of Harold's seriousness and dedication.²⁷

At other times, the camaraderie of the road begins as estrangement or even hostility. The magic of the road lies in the gradual erosion of seemingly impenetrable social barriers and long-held grudges as the gorgeous scenery slides by. In *Transamerica*, for example, the pre-operative transsexual protagonist—locked by circumstance into driving her recently-discovered biological child across the country—forges a tenuous bond with her troubled son that ultimately survives both the revelation of her biological maleness and the shattering disclosure to her son of his parentage.²⁸

Zombieland likewise pays a dark homage to the road's power to forge human relationships. Set in a post-apocalyptic world overrun by

25. LL COOL J, *supra* note 15.

26. THELMA AND LOUISE, *supra* note 12.

27. Kumar's transformation is perhaps undermined by his willingness to “postpone” a medical school interview to which he had verbally committed to taking seriously only hours earlier in order to travel to Amsterdam in search of perfectly legal adventures. HAROLD & KUMAR GO TO WHITE CASTLE, *supra* note 12 (describing the events of a single night that results in personal growth for both Harold and Kumar).

28. TRANSAMERICA, *supra* note 12.

zombies, the four remaining humans band together and gradually shed their disagreements, united by their road journey as much as by their determination to survive in the face of a common foe. At one point, the characters Columbus, Tallahassee, Wichita, and Little Rock join forces in one vehicle and rotate among the four seats in the car as they take turns driving through the night. During the journey, their differences erode as each pair of characters finds a way to relate to one another.²⁹ Late that night, as Little Rock and Tallahassee doze in the back seat, Wichita says to Columbus, “This is kind of freeing.” “Yeah,” he agrees, surprising himself. That their journey results in friendship and intimacy even in the wake of a zombie apocalypse is a testament to the power of the road. Columbus—for the first time living up to his wayfaring namesake—realizes that “[f]or the first time in a long time, we were having fun. So even though it ran counter to our survival strategies, we decided to stay together.”³⁰

This crumbling of previously insurmountable obstacles between people is an integral part of the American dream. Sharing the open road with another—no matter how foreign that other at the beginning of the journey—melts away superficial qualities of social status, class, language, even destination. The road enables and promotes these bonds; as Whitman writes in *Song of the Open Road*: “[I] think whatever I shall meet on the road I shall like, and whoever beholds me shall like me.”³¹ The road is thus wrought as an egalitarian playground, offering us optimism about relationships between people.

Not all of us have taken the epic road trip of which great cinema is made, and even those of us who are seasoned road warriors have not necessarily experienced overt social transformation on our journey. But many of us know firsthand the deep, silent understanding that grows between two people watching the sun go down through the windshield as the miles slip by beneath the floorboards. And many of us hold fond memories of spontaneously sharing an off-key duet to a favorite song after a good radio station comes in at just the right time.³²

29. ZOMBIELAND, *supra* note 12. In *Zombieland*, Tallahassee asks Little Rock incredulously, “Willie Nelson. You’ve *never* heard of Willie Nelson?” In turn, Little Rock explains the Miley Cyrus phenomenon to Tallahassee, noting, “She’s only famous when she’s Hannah Montana, when she’s wearing the wig.” Wichita teaches the twelve-year-old Little Rock to drive, explaining, “Since this is a freeway, you can get it up to sixty-five, but you don’t wanna go more than seventy-five,” as Columbus—always neurotic—warns from the backseat, “You don’t wanna go more than twenty.” *Id.*

30. *Id.*

31. WHITMAN, *supra* note 14, at 187.

32. *See, e.g.*, TOMMY BOY, *supra* note 12 (featuring enthusiastic sing-alongs by Chris Farley and David Spade to *Superstar* by The Carpenters and *It’s the End of the World as We Know It* by R.E.M.).

Perhaps most importantly, the road stands for possibility. Of course, the possibilities we desire vary from one individual to the next. At one extreme, we find *Fear and Loathing in Las Vegas*, which is both a novel about the open road and a novel about the American dream—indeed, Hunter S. Thompson’s portrayal makes it clear that the two are inextricable. Early in the novel, the protagonist—gonzo journalist Raoul Duke, a thinly disguised version of Thompson himself—tells a naïve hitchhiker, “I want you to know that we’re on our way to Las Vegas to find the American Dream That’s why we rented this car. It was the only way to do it.”³³ The car, and the journey it facilitates, is a prerequisite to fulfilling the dream. Although much of the book takes place in Las Vegas, *Fear and Loathing* is nonetheless incontrovertibly a road story. The narrative begins mid-journey from Los Angeles and includes several road trips to locations near Las Vegas. And the book reads like a road story, with the frenetic energy of Thompson’s prose propelling the novel at the pace of the characters’ movement—sometimes in excess of a hundred miles per hour—along the open highway.

The concept of possibility is intrinsic to this narrative. For example, the protagonist explains that his road journey to Las Vegas “was a classic affirmation of everything right and true and decent in the national character. It was a gross, physical salute to the fantastic *possibilities* of life in this country”³⁴ That the protagonist primarily conceives of these “fantastic possibilities” as opportunities to do massive quantities of illegal drugs, destroy hotel rooms without paying for them, and violate every traffic law on the books, all without consequences, is of no moment—the important point is that the road makes these possibilities possible.

In a perverse way, the road’s representation of possibility is at its clearest when reality is at its most desolate. Cormac McCarthy’s Pulitzer Prize-winning novel *The Road* recounts the post-apocalyptic journey of a man and his son along a vacant highway towards the ocean. They travel on foot and carry only the belongings that fit in a broken shopping cart. Their journey is motivated by both the need for escape—they realize that they cannot survive another winter in the frigid environment they have left behind—and the desire to seek the companionship of other survivors, “good guys” like themselves, who they believe may have gathered at the shore.³⁵ Although a future

33. HUNTER S. THOMPSON, *FEAR AND LOATHING IN LAS VEGAS AND OTHER AMERICAN STORIES* 6 (Modern Library 1996 ed.) (1971).

34. *Id.* at 18.

35. CORMAC MCCARTHY, *THE ROAD* (2006).

containing any kind of joy or fulfillment for the two seems virtually inconceivable to the reader, the bare physical presence of the road imparts hope to the characters and grants them the strength to continue their journey.

Ultimately, the dreams wrapped up with the road survive and transcend the realities of the journey. Even when it becomes clear that attainment of the promise of the open road will be impossible for a particular character, that character still derives fulfillment from the knowledge that the dream is *alive* even if her personal hope for attaining it has passed.

Consider Thelma and Louise—at the edge of the Grand Canyon, hopelessly outnumbered by law enforcement, they choose to keep driving because to do so is to hold fast to their faith in the dream. Rather than showing the crash that will result in their deaths, the movie then cuts away to scenes from their lives. Or consider Jackson Browne, who, even when running on empty, would not think of abandoning his journey: “I don’t know where I’m running now, I’m just running on / . . . Gotta do what you can to keep your love alive / Trying not to confuse it with what you do to survive.”³⁶ By committing to the ideal of the journey itself, rather than conceiving of the journey as merely a means to an end, one assures the survival of the dream. Put another way, it is more important to have believed in and tried to grasp the dream than to have captured it. Indeed, Thelma and Louise’s escape so moves the police officer played by Harvey Keitel that he chases after them—in part perhaps to try to prevent their deaths, but in part out of his own longing for the lawless freedom they have achieved. We the audience know, of course, that on foot he cannot come close—either physically or metaphysically—to capturing the freedom embodied by their accelerating Thunderbird convertible.³⁷

Thus, the open road symbolizes escape, material and spiritual fulfillment, camaraderie, and of course, possibility. That is, it represents to us the best in life and the best of ourselves. The road leads to the American dream, and it *is* the American dream. We may choose to reject the mythology, of course, but the cultural meaning remains etched in our deepest consciousness. The most jaded among us still understands exactly what Jon Bon Jovi means when he proclaims, “My heart is like an open highway.”³⁸

Our culture—filtered through literature, film, and music—idolizes the open road. Traveling that road holds the promise of a better life. We

36. BROWNE, *supra* note 15.

37. THELMA AND LOUISE, *supra* note 12.

38. BON JOVI, *It’s My Life*, on CRUSH (Island 2000).

absorb the vision from our earliest days. Shackled to the mast of convention and common sense, we may resist the siren song of the open road, but its allure remains. On some level, we continue to believe that, if we drive long enough and far enough and with enough faith, we too might realize Kerouac's dream: "Behind us lay the whole of America and everything [we] had previously known about life, and life on the road. We had finally found the magic land at the end of the road and we never dreamed the extent of the magic."³⁹

B. *The Law on the Open Road*

*"I always drive properly. A bit fast, perhaps, but always with consummate skill and a natural feel for the road that even cops recognize."*⁴⁰

There is little place for the law in the open road narrative. The law and the agents charged with its enforcement represent forces of structure and convention, precisely the forces that we strive to cast off by journeying the open road. So when the open road fantasy is at its strongest, reminders of the law and of law enforcement agents are often absent altogether, or are, at most, found lurking at the periphery of the narrative.

In some manifestations of the open road narrative, the law is simply missing. Consider, for example, the utter anarchy of *Zombieland*, in which the characters have only themselves to rely on—or blame—as they defend themselves from vast hordes of zombies. When law figures in the open road narrative, it does so primarily as a way of demonstrating the characters' immunity to its command. Indeed, when a character remains just outside the ambit of the law, it evokes the sense of freedom associated with the road and symbolizes the ascendance of that character's dreams. Typically a character whose fortunes are on the rise either escapes the notice of law enforcement altogether or attracts nothing more than benign regard. Indeed, the proximity of law enforcement reinforces, rather than clouds, the experience of the open road as a manifestation of the American dream: That law enforcement is present, yet unable to sully the characters' happiness as they traverse the road, emphasizes the characters' invulnerability and strengthens the belief that the dream is almost within grasp. Consider, for instance, "Speedin' on da Highway," by LL Cool J. In a song that euphorically embraces the freedom of the road, the only reference to law enforcement is the casual comment, "Tell the highway patrol no need to chase me tonight / The way I'm doin' my thang it's like I'm up in a

39. KEROUAC, *supra* note 1, at 276.

40. THOMPSON, *supra* note 33, at 90.

plane.”⁴¹ Enacting the road narrative, therefore, necessarily entails invulnerability to law enforcement.

Such invulnerability is on full display in *Lolita*, where Humbert Humbert lives out his own dark version of the American dream.⁴² Ironically, his dream is in some ways at its sweetest before it is fully realized, when his sexual relationship with Lolita is a forbidden fantasy rather than a consummated reality giving rise to a cascade of logistical and emotional obstacles.⁴³ Shortly after the death of Lolita’s mother, when Humbert goes to retrieve Lolita from summer camp, Lolita flirtatiously chastises Humbert for not having kissed her yet. Humbert pulls over to the side of the road and they begin to kiss—Humbert well aware that this is simply a game for Lolita—when “blessed intuition broke our embrace—a split second before a highway patrol car drew up alongside.”⁴⁴ The officer asks whether they have seen a car similar to theirs. Humbert nearly panics, but Lolita responds saucily to the officer, who smiles indulgently and drives on. Lolita remarks to Humbert that the officer “should have nabbed *you*” because he had been driving twenty miles over the speed limit.⁴⁵ But with a mere eighty miles remaining to the site of Humbert’s longed-for and planned-for consummation of his relationship with Lolita, Humbert’s dream is ascendant.⁴⁶ That Humbert escapes from punishment despite flagrant speeding and the officer’s (justified) suspicion of pedophilia drives home the idea that the open road narrative is invulnerable to law enforcement.

This invulnerability also emerges as a critical component of the open road narrative in *Fear and Loathing in Las Vegas*.⁴⁷ The friction between law enforcement and the freedom of the open road threads through the novel. The protagonist refers to his friend and partner in crime as “my attorney” throughout the novel. The friend alternates

41. LL COOL J, *supra* note 15.

42. NABOKOV, *supra* note 13.

43. That is, his *possibly* consummated reality. Humbert thinks he has sex with Lolita, or says that he thinks he has sex with Lolita. He is a notoriously unreliable narrator, perhaps matched only by Nick in *The Great Gatsby*. F. SCOTT FITZGERALD, *THE GREAT GATSBY* (Wordsworth Editions Ltd. 1993) (1925). Indeed, Humbert’s unreliability has fueled volumes of scholarship and countless hours of undergraduate English seminar discussion. *See, e.g.*, Anthony R. Moore, *How Unreliable Is Humbert in Lolita?*, 25 J. MOD. LITERATURE 71, 71–72 (2001).

44. NABOKOV, *supra* note 13, at 105.

45. *Id.* (emphasis added).

46. *Id.*

47. THOMPSON, *supra* note 33 (illustrating the freedom associated with the road by successfully avoiding law enforcement officials); *see also* THE BLUES BROTHERS, *supra* note 12 (depicting the main characters avoiding law enforcement while driving an appropriated police car).

between claiming a right to special treatment and authority due to his status as a lawyer with consuming vast quantities of illegal drugs and concealing a questionable relationship. These activities not-so-subtly suggest that the authority of law is no more than a farce. Although we never learn for sure whether the friend is actually admitted to the bar, the answer does not matter. The friend's reckless disregard for the letter of the law tracks Thompson's own, in the process underscoring that law—particularly to the extent it infringes on individual freedom—is no more than an inconvenience. Indeed, the resourceful—such as the protagonist and his friend—can seize the apparent authority of the law for themselves, requiring only audacity in order to do so.

This contempt for the law emerges throughout the book. At various times the protagonist refers to local police as an “outback nazi law enforcement agency” and the district attorney convention he covertly attends as a “prehistoric gathering” at which the vast majority of attendees are “crude-looking rednecks who could have passed for assistant football coaches at Mississippi State.”⁴⁸ The district attorney convention signifies the omnipresence of law enforcement, yet the fact that the protagonist and his “attorney” successfully masquerade at the convention gleefully drives home their immunity to the crude force of the law. Consequently, their journey, the open road journey, remains uninterrupted. In the process, their journey underscores that law—particularly to the extent it infringes on individual freedom—is a farce.

That the protagonist and his attorney succeed in their quest for the American dream despite the pervasive presence of law enforcement reinforces their triumph. They have managed to conceal their copious drug use, or at least to avoid legal consequences for it—to “maintain,” as Thompson puts it—and consequently have asserted their ability to do as they please in the midst of all the power the law has to wield. Law enforcement (as represented by the district attorney convention) is thus a crucial element of Thompson's portrayal of the American dream. Although the officers we meet are largely contemptible, successfully eluding them provides a visceral affirmation of the freedom the protagonists seek in their journey.

Perhaps more clearly than any other text, *Thelma and Louise* demonstrates the role of the law of emphasizing the freedom inherent in the open road narrative. When the women are at their most free—that is, when they have decided to cast off their past lives for good—the law simply cannot touch them. One hapless police officer who tries ends up in the trunk of his car, with only a polite apology for consolation. Although the police close in on Thelma and Louise at the end of the

48. THOMPSON, *supra* note 33, at 5, 138, 140.

movie, this reinforces rather than undermines the symbolic role of law enforcement in the open road narrative. Initially, the fact that the police are closing in suggests that the open road fantasy is coming to a close for Thelma and Louise—law enforcement has become a real threat to their progress toward Mexico, rather than merely a mechanism for emphasizing their invulnerability. But more importantly, law enforcement never actually touches Thelma and Louise; although they are surrounded, they choose to keep driving rather than surrender. This ultimate act of defiance cements the fidelity of their story to the open road narrative. Law enforcement cannot conquer them, and therefore the dream of the open road remains theirs.⁴⁹

In the open road narrative, the real symbolic function of the law is to emphasize the characters' freedom from the strictures of social convention that the law represents. By loosening these bonds of convention, the characters move closer to realizing the American dream.

C. Racializing the Open Road

“[A]mong young white people, no method of finding themselves is more popular than the road trip.”⁵⁰

Nothing in the open road narrative itself explicitly racializes that narrative.⁵¹ Yet even a casual perusal of the canonical road texts discussed and collected above reveals that our paradigmatic road warriors are almost exclusively white.⁵² Bonnie and Clyde, Jack and Dean, Thelma and Louise—all white people, acting out scenarios dreamed up and written down by other white people.

Or consider the depiction of the road in popular music. It is difficult to avoid the reality that songs praising the open road are almost exclusively associated with white artists and traditionally white genres, such as country music,⁵³ while songs objecting to the traffic stop tend to come from black artists and traditionally black genres, such as rap and hip-hop.⁵⁴ Of course, there are exceptions.⁵⁵ But the clarity of the overall division is striking.

49. That Thelma and Louise are women—atypical, as we will see, for our canonical road warriors—surely plays a role in understanding their story, although I do not address the issue in any detail in this Article. For a brief discussion, see *infra* note 135.

50. CHRISTIAN LANDER, *WHITER SHADES OF PALE: THE STUFF WHITE PEOPLE LIKE COAST TO COAST, FROM SEATTLE'S SWEATERS TO MAINE'S MICROBREWS* 138 (2010).

51. Here and elsewhere, for simplicity's sake, I write of race. But where they function analogously, my discussion also encompasses social categories such as ethnicity and color.

52. See *supra* notes 11–14 (collecting cites).

53. See *supra* note 15.

54. See *infra* Part II.

55. See, e.g., LL COOL J, *supra* note 15 (celebrating the freedom of the open road).

The whiteness of the road does not make that narrative less desirable. In fact, to the extent that the road narrative is imbued with white privilege—or that such privilege is a prerequisite to participating in the narrative—it implies that the narrative is *more* desirable because it is scarcer, less readily accessible.⁵⁶ Thus, if anything, the road’s whiteness enhances the value of the narrative. Normatively, too, the whiteness of the road narrative does not make that narrative any less *good*. It is not, for example, a racist narrative; the hopefulness and camaraderie bound up in the road narrative remain intrinsically and universally desirable. Descriptively, though, the road is simply more readily accessible by whites.

We have come to acknowledge explicitly the whiteness of the open road narrative. In *Whiter Shades of Pale: The Stuff White People Like Coast to Coast*—the second book based on his popular blog *Stuff White People Like*,⁵⁷ Christian Lander devotes the fifty-fifth spot to “Road Trips.” Observing that the road trip is a popular method for young white people to “find themselves,” Lander satirizes some of the narrative’s common tropes:

Regardless of destination, there are some rules about road trips that must be followed. Chain hotels and restaurants are to be avoided at all costs, the only places to meet crazy characters are in local bars or truck stop diners [M]oments of silence on the trip are to be used to look out the window and think about important things.⁵⁸

These “rules” caricature the themes of camaraderie and self-actualization that unironically characterize much of the open road canon. Lander strips the notion of camaraderie of its deeper significance, suggesting that many people pursue connection with “crazy characters” simply because that’s what people *do* on road trips and they want to be able to tell stories about it later—not because of an elemental need for human connection that the magic of the road

56. Race, of course, is not the only source of privilege. Gender and class—to name only two—may also advantage individuals in their ability to access the freedom of the open road. Although my focus in this Article is on race, class may also affect whether a particular individual can take time off work to enjoy an extended road trip, or, indeed, whether an individual can even afford to own a car.

57. STUFF WHITE PEOPLE LIKE, <http://stuffwhitepeoplelike.com> (last visited Feb. 13, 2012). For the uninitiated, *Stuff White People Like* is a satirical blog, authored primarily by Christian Lander, that “skewers the sacred cows of lefty Caucasian culture.” Katharine Mieszkowski, *The Unbearable Whiteness of Being*, SALON (July 5, 2008, 4:06 PM), http://life.salon.com/2008/07/05/white_people/.

58. LANDER, *supra* note 50, at 139–40.

facilitates. Likewise, he implies that the growth and fulfillment that characters often achieve in iconic cultural texts is only shallowly replicated out in the real world, where the “important things” that people think about while staring out the window tend to be fairly prosaic. The core elements of the road fantasy, in short, reduce to some “stuff” that certain members of the dominant American racial group enjoy, along with single-malt scotch (ranked third), funny or ironic tattoos (ranked tenth), messenger bags (ranked twelfth), and berry-picking (ranked twentieth).⁵⁹

Ultimately, Lander’s analysis is not a critique of the open road narrative or a mechanism for undermining its power or desirability. Rather, he captures something important about those for whom the narrative resonates most potently. White people are the paradigmatic audience for the cultural texts capturing the open road narrative and are also the paradigmatic participants in the open road fantasy. Although nothing in the open road narrative inherently precludes non-white participation, the current association of the narrative in our culture is with white people.

It is worth mentioning that Lander’s group of “White People” does not map perfectly onto the socio-legal category of “white people” more commonly recognized by scholars in legal academia and the social sciences.⁶⁰ By “White People,” Lander is really referring to “well-off, well-educated, youngish, self-described progressives.”⁶¹ One can therefore be a White Person without being a white person, and one can also be a white person without being a White Person.⁶² Lander himself acknowledges that White People do not include “the wrong kind of white people,” such as “poor, right-wing white people, and rich, right-wing white people.”⁶³ Still, we as readers recognize the aptness of identifying the road narrative with white people, however that group is defined. As such, it supports the idea that the open road narrative, as typically implemented, tends to be a white narrative, and that the narrative also typically captures the imagination of white people more directly than those of color.

59. *Id.* at 8–9, 25–28, 30–31, 49–50.

60. *See, e.g.*, DAVID A. HOLLINGER, *POSTETHNIC AMERICA* 23–27 (2005 ed. 2000) (referring to an “ethno-racial pentagon” of Asian, Hispanic, White, Black, and Native American).

61. Benjamin Schwarz, *Intolerant Chic*, *THE ATLANTIC*, Oct. 2008, at 91, *available at* <http://www.theatlantic.com/magazine/archive/2008/10/intolerant-chic/6976/>.

62. *Id.* (“Lander’s White People aren’t always white, and the vast majority of whites aren’t White People.”).

63. Mieszkowski, *supra* note 57 (showing Lander’s answers to Salon.com’s questions about who “white people” are in a podcast).

The whiteness of the open road narrative is particularly ironic given that the archetypal open road story invokes themes of liberation and escape. In American history, this theme resonates powerfully with the escape of slaves via the Underground Railroad in the nineteenth century. Certainly there are runaway slave stories, some of which might be considered road stories—for example, *The Adventures of Huckleberry Finn*.⁶⁴ Yet 150 years later, the ongoing production of the road narrative involves almost exclusively white actors. To the extent that the theme of African-American escape to freedom and a better life was ever part of the open road narrative, it has more or less been written out today.

What, then, has supplanted the open road narrative for blacks in America? The next Part examines this question, finding an answer in the modern notion of the traffic stop.

II. THE TRAFFIC STOP

*“In my rear view mirror is the motherfucking law.”*⁶⁵

I turn now to the traffic stop. Both physically and metaphorically, that event interrupts progress along the open road. After a brief examination of what a traffic stop is and the law that governs it, I address its portrayal in a wide variety of cultural texts and then examine its racialization as a non-white—and, in many instances, explicitly black—narrative.

A. *The Law of the Traffic Stop*

*“Even a limited search . . . constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience.”*⁶⁶

If we read the open road narrative as a rosy-hued tale about the American dream, the traffic stop jolts us into an entirely different story. In addition to the sort of cultural texts in which we find the narrative of the open road, another highly influential chronicle of the traffic stop is the judicial opinion—a cultural text antithetical to our literary and cinematic staples. That dry medium has nothing of the poetry or magic of our best novels and our favorite movies. Rather, the sterile chronology of a typical judicial opinion examining a traffic stop

64. MARK TWAIN, *THE ADVENTURES OF HUCKLEBERRY FINN* 53, 191, 246, 258 (Oxford Univ. Press 1999) (1885).

65. JAY-Z, *99 Problems*, on *THE BLACK ALBUM* (Roc-A-Fella 2003).

66. *Terry v. Ohio*, 392 U.S. 1, 24–25 (1968).

represents a rude awakening from the sweet American dream of the open road.

We know from both judicial opinions and other cultural texts what happens in a traffic stop.⁶⁷ A police officer notices someone violating a traffic law. The officer pulls that person over to the side of the road, either by activating the flashers, turning on the siren, or both. The officer approaches the car and asks the driver for his license and registration. If the paperwork appears to be in order, the officer will return it to the driver; if something seems as though it might be amiss, the officer may return to the cruiser to run a check on the license or the vehicle. Sometimes, during the interaction, the officer will ask the driver to get out of the car or even to sit in the police cruiser. If there are passengers, the officer may separate them from the driver. The officer will then issue either a citation or a warning for the traffic violation. After writing the ticket, sometimes the officer will tell the driver that he is free to go. If something else has aroused the officer's suspicion during the interaction, though, the officer may ask the driver to wait while another officer or a canine unit comes to the scene, or may even arrest the driver on the spot if the officer believes he has committed an offense. At other times, the police officer then tells the detainee that he is free to go, but immediately follows that statement with a request to search his vehicle. When an individual responds in the affirmative to such a request, courts again generally find that the consent was voluntary.

The law governing traffic stops offers minimal protection to the citizen and broad discretion to the police. That law flows originally from *Terry v. Ohio*.⁶⁸ Put simply, *Terry* and its progeny establish that the police must have reasonable suspicion of criminal activity—that is, they must be able to point to “specific and articulable facts” that create an inference that criminal activity is occurring, has occurred, or is about to occur—to stop a vehicle and conduct a limited investigation by asking the driver a few questions.⁶⁹

The cases subsequent to *Terry* also tell us that the police may constitutionally pull over a vehicle and conduct a more thorough investigation if they have “probable cause” to believe the suspect has

67. See generally Nancy Leong, *Making Rights*, 92 B.U. L. REV. (forthcoming 2012) (collecting sources).

68. 392 U.S. 1, 5–7, 30 (1968) (involving the stop of a pedestrian rather than a motorist, but the Court has since imported its standards into the traffic setting).

69. *Id.* at 21 (establishing reasonable suspicion as the appropriate quantum of evidence to stop a pedestrian); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (requiring “articulable and reasonable suspicion . . . that either [a] vehicle or an occupant is . . . subject to seizure for violation of law” in order to conduct a traffic stop).

violated any law. The Supreme Court has (rather unhelpfully) defined probable cause as a quantum of evidence met when “the facts and circumstances within . . . [the officers’] knowledge and of which they ha[ve] reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that’ an offense has been or is being committed.”⁷⁰ The Court has admitted that this standard is a “practical, nontechnical conception”⁷¹ and a “fluid concept . . . not readily, or even usefully, reduced to a neat set of legal rules.”⁷²

Whatever all this means in the abstract world of legal principles, the practical effect with respect to traffic stops is that when the police think a driver has committed *any* traffic violation, no matter how minor or how fleeting, they can pull him over.⁷³ Thus, a driver might be pulled over for failing to signal for an appropriate length of time or for changing lanes too close to an intersection—things most of us routinely do on our daily commutes. The police can *also* pull over a driver when they lack enough evidence to establish probable cause of a violation if, under *Terry*, they have reasonable suspicion that criminal activity is afoot.

These standards allow police officers to exercise an enormous amount of discretion in performing traffic stops. Under current doctrine, the *legal* justification for stopping a car need not be the same as the *real* reason the police officer wants to stop the car, so long as a reasonable officer would have had probable cause to believe that a traffic infraction in fact took place. Paul Butler describes riding in a police cruiser with a police officer friend and playing a game his friend invented called “Stop that Car!” in which Butler “pick[s] a car—any car—and [the officer] stops it.”⁷⁴ Butler explains that his friend “is a good cop” because “[h]e waits until he has a legal reason to stop the car. It doesn’t take long, never more than three or four blocks of following. There are so many potential traffic infractions that it is impossible to drive without committing one.”⁷⁵ The reality, then, is that the police are free to pick a car they wish to stop, follow it until the driver inevitably violates one of

70. *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (first and third alteration in original) (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

71. *Id.* at 176.

72. *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

73. *See id.*

74. PAUL BUTLER, LET’S GET FREE: A HIP-HOP THEORY OF JUSTICE 24–25 (2009).

75. *Id.* at 25.

the vehicle code's myriad obscure provisions, and subsequently pull it over.⁷⁶

The Supreme Court has repeatedly interpreted the Constitution to permit this schism.⁷⁷ Thus, even an officer with no *actual* purpose other than to harass and annoy may—according to the Supreme Court—use a traffic stop as an entirely constitutional starting point for such actions, as long as an objectively reasonable evaluation would conclude that the officer had probable cause to believe that a traffic violation occurred at the time she made the stop.⁷⁸

From this starting point of an “objectively reasonable” stop supported by probable cause or reasonable suspicion, the judicial narrative then follows a well-worn script. Courts typically examine whether the circumstances justified the traffic stop, and—even more typically—answer that question in the affirmative.⁷⁹ This is so even when the events of the traffic stop stray beyond its ostensible justification. The Court has explained: “An officer’s inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.”⁸⁰

76. And the police know it. Consider the following advice offered on Officer.com, an online forum for police officers to share policing tips: “Pick the car you want to stop. Follow it for a minute or so. I guarantee you that some vehicle code will be violated. Study your V.C., get to know it well. I’ve always said that when you pick up a copy of the Vehicle Code and shake it real hard, [probable cause] will just fall out into your lap. Happy hunting.” Andy5746, Comment to *Night Shift, Traffic, and Looking for Big Fish*, OFFICER.COM (Nov. 11, 2007, 9:51 PM), <http://forums.officer.com/forums/showthread.php?75572-Night-shift-traffic-and-looking-for-big-fish>.

77. In *Whren v. United States*, 517 U.S. 806 (1996), the Court held that it did not matter whether the true reason for selecting that driver to pull over is to ticket for the violation, or for some other reason. Justice Scalia wrote for the Court: “We think these cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved.” *Id.* at 813. As a result, courts do not inquire into why the police choose to stop some and not others. As Justice Scalia observed, “[T]he Fourth Amendment’s concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances, whatever the subjective intent.” *Id.* at 814 (emphasis omitted).

78. Officers even have the discretion to execute a warrantless arrest for a minor criminal offense observed during a traffic stop. *See, e.g., Atwater v. Lago Vista*, 532 U.S. 318 (2001) (upholding the arrest of a mother driving with her two children for a seatbelt violation punishable only by a fine).

79. One five-year study of Fourth Amendment cases found that the government prevailed in 85% of those cases. Although it did not focus specifically on cases involving traffic stops, these cases comprise a substantial proportion of police–citizen interactions and there is no reason to suspect that they depart substantially from the norm. *See* Leong, *supra* note 67.

80. *Arizona v. Johnson*, 129 S. Ct. 781, 788 (2009).

An officer thus exercises considerable discretion in selecting whom to stop and in what he does during the stop. This deference to law enforcement lays the foundation for my examination of the traffic stop narrative and how it diverges from that of the open road. The next section will distill that narrative from various cultural texts, including both judicial opinions and the movies and songs that have reinterpreted this direct expression of the law and integrated it into our collective consciousness.

B. *From the Open Road to the Traffic Stop*

“Now you wanna’ frisk me and search my ride / Call me all kinda’ names, try to hurt my pride?”⁸¹

Judicial narratives that begin with a traffic stop are notable for their depressing sameness. Because of the nature of our judicial system, these narratives are typically inscribed in criminal prosecutions. Usually only those on whom contraband is found are charged with crimes, and those charged with crimes have the strongest incentive to challenge the stop that led to the discovery of contraband.⁸² Absent unusual events, courts tend to uphold such searches, finding them supported by probable cause.

There is no poetry in these narratives. They read like the documentation of an audit. The police go about their business. Courts double-check them. In most cases, the court finds the law enforcement officers in compliance.⁸³ In the process of all that process, we forget that—at least in criminal cases—someone’s freedom is on the line.

These dry judicial narratives contrast starkly with the joyful, liberated narrative of the open road that we find in our most exalted cultural texts. But they are no less a part of our collective imagination. When courts reiterate the traffic stop narrative, it filters into our consciousness as their decisions are reinterpreted via other cultural texts. The Subsections below use judicial writings as well as literature, film, and music to elaborate the content of the traffic stop narrative and in so doing, to contrast it with the narrative of the open road.

1. From Transcendent to Mundane

81. BIG L, *The Enemy*, on THE BIG PICTURE (Rawkus Records 2002).

82. The exception is actions for money damages under 42 U.S.C. § 1983, but these actions are more expensive to bring because civil plaintiffs—unlike criminal defendants—are not afforded counsel by the government if they are unable to pay. 42 U.S.C. § 1983 (2006). Moreover, the money value of an unconstitutional traffic stop is relatively minimal, so plaintiffs often lack incentives to pursue their claims.

83. *See supra* note 77.

In contrast to the grandeur of the open road narrative—the sweeping scenery, the sense of epic journey and self-discovery—the traffic stop narrative is narrow, mundane, and focused on minutiae. A police officer might pull someone over for countless legally-sanctioned justifications, and those justifications may be utterly divorced from the police officer’s *actual* reason for wanting to pull the person over in the first place. This standard is deferential to law enforcement on paper and positively obsequious in practice.

Consider a small sample of documented “reasons” that officers give for pulling over drivers. In *United States v. Barnum*,⁸⁴ the police became interested in a car because it was parked in the lot of a motel known for illegal drug and prostitution activity. They pulled over the driver, however, not for involvement in those activities, but because “the vehicle’s middle taillight failed to illuminate when the driver . . . applied the vehicle’s brakes.”⁸⁵ In *United States v. Farrior*,⁸⁶ the police suspected that a particular car might be involved in drug trafficking, observed the car, and eventually pulled it over for having an inoperable tag light.⁸⁷ Both *Barnum* and *Farrior* implicitly acknowledged—yet expressed absolutely no concern regarding—the fact that the reason the car was pulled over was not the real reason the police were interested in it.⁸⁸ In so doing, these opinions sanction pretextual preoccupation with minutiae, reinforcing these trivialities as central to the traffic stop narrative.⁸⁹ Other opinions reinforce the centrality of this preoccupation, reflecting the decision to pull cars over for mundane violations such as tailgating,⁹⁰ briefly crossing lane lines,⁹¹ driving without valid license plates,⁹² or having an obstructed rearview mirror.⁹³

Surely those stopped and searched on such bases chafe at this catalog of minute details: this is not the promise of the open road. And this frustration with the obsessive patrolling of the mundane seeps into other cultural texts. In “99 Problems,” for example, Jay-Z describes a police officer ostensibly pulling him over for “doing fifty-five in a fifty-four.”⁹⁴ The incident reflects both a preoccupation with an exceedingly

84. 564 F.3d 964 (8th Cir. 2009).

85. *Id.* at 967.

86. *United States v. Farrior*, 535 F.3d 210 (4th Cir. 2008).

87. *Id.* at 214.

88. *Id.*

89. *See, e.g., United States v. Gallardo*, 495 F.3d 982, 984 (8th Cir. 2007).

90. *United States v. Figueroa-Espana*, 511 F.3d 696, 699–700 (7th Cir. 2007).

91. *United States v. Herrera-Gonzalez*, 474 F.3d 1105, 1107 (8th Cir. 2007).

92. *United States v. Esquivel*, 507 F.3d 1154, 1156 (8th Cir. 2007).

93. *United States v. Grajeda*, 497 F.3d 879, 880 (8th Cir. 2007).

94. JAY-Z, *supra* note 65.

minor violation—driving only one mile per hour over the speed limit—and a broader contempt for the inane and seemingly arbitrary strictures of the law—why would the speed limit be fifty-four miles per hour?

Moreover, once the traffic stop has commenced, minute details of appearance or behavior take on immense significance. Consider the details courts allow to contribute to establishing reasonable suspicion of criminal activity. Multiple air fresheners.⁹⁵ Air fresheners *in conjunction with* fuzzy dice.⁹⁶ Nervousness.⁹⁷ Tense posture.⁹⁸ “[F]urtive posture.”⁹⁹ “Furtive movements.”¹⁰⁰ Minivans.¹⁰¹ Volvos.¹⁰² A baseball bat (do police officers never play recreational baseball?).¹⁰³ Driving on a particular road.¹⁰⁴ Inconsistent accounts of travel plans.¹⁰⁵ Idling in a motel parking lot.¹⁰⁶ And of course, police officers are more candid outside the courtroom, admitting to an even wider array of small details that arouse suspicion.¹⁰⁷

This clinical evaluation of the content of the traffic stop effectively punctures the uplifting fantasy of the open road. The symbolism of the road as a route to a better life—one free and unencumbered—dissipates in the face of bickering over whether a host of minutiae means that a police officer saw enough or heard enough or knew enough to establish “reasonable suspicion.” The American dream has no time for such details; put another way, someone whose fate hangs on those details has no time to chase the American dream.

95. *State v. Franzen*, 792 N.W.2d 533, 537–38 (N.D. 2010). *But see* *Snow v. State*, 578 A.2d 816, 817 (Md. Ct. Spec. App. 1990) (considering but ultimately rejecting the presence of three air fresheners in the vehicle as sufficient to support reasonable suspicion).

96. *People v. Young*, 843 N.E.2d 489, 490 (Ill. App. Ct. 2006); Timothy P. O’Neill, *Vagrants in Volvos: Ending Pretextual Traffic Stops and Consent Searches of Vehicles in Illinois*, 40 *LOY. U. CHI. L.J.* 745, 763 (2009).

97. *United States v. Figueroa-Espana*, 511 F.3d 696, 703 (7th Cir. 2007).

98. *United States v. Neufeld-Neufeld*, 338 F.3d 374, 382 (5th Cir. 2003).

99. *United States v. Campbell*, 549 F.3d 364, 371 (6th Cir. 2008) (emphasis added).

100. *United States v. DeJear*, 552 F.3d 1196, 1201 (10th Cir. 2009) (emphasis added).

101. *United States v. Arvizu*, 232 F.3d 1241, 1251 (9th Cir. 2000).

102. *United States v. Werking*, 915 F.2d 1404, 1407 (10th Cir. 1990).

103. *DeJear*, 552 F.3d at 1201.

104. *Arvizu*, 232 F.3d at 1251.

105. *United States v. Givan*, 320 F.3d 452, 459 (3d Cir. 2003).

106. *United States v. Lopez*, 518 F.3d 790, 797–98 (10th Cir. 2008).

107. Gary Webb, *Driving While Black*, *ESQUIRE*, Apr. 1, 1999, <http://www.esquire.com/features/driving-while-black-0499> (listing police revelations of attributes viewed as indicia of drug activity, including air fresheners, fast-food wrappers, evidence of “hard travel,” maps with cities circled on them known to be “drug sources” or “drug destinations,” tools on the floor, new tires on an older car, high mileage on a new car, a single key in the ignition, not enough luggage for a long trip, too much luggage for a short one, rental cars, and vehicle registration certificates in someone else’s name).

Ultimately, the traffic stop narrative's incessant focus on detail bleeds the American dream to a death by a thousand paper cuts. Did Jack Kerouac pause to count how many air fresheners he had? Was he concerned whether his travel plans might appear "consistent" to the reasonable, objective observer? These questions answer themselves. Whatever probative value these factors may have in identifying drug traffickers and other criminals—and available research suggests that value is quite open to debate—placing judicial imprimatur on such details is stultifying to the dream of the open road. When one must think constantly about how one looks to the police, and when the police are looking for a thousand minute details, one surely cannot lose oneself in the dream of the road. The sheer ordinariness of the traffic stop thus provides a wearying counter-narrative to the open road's gesture toward the extraordinary.

2. From Freedom to Confinement

The traffic stop narrative also diverges from that of the open road in its claustrophobic suspicion of movement. Much of the open road narrative is founded on the pure power of forward momentum, on breaking free and racing away from the past. Joy resides in the act of movement itself: LL Cool J explains, "When the engine is gunnin' I'm on a whole other level / White lines connected, I'm livin' life like a rebel."¹⁰⁸ A lack of particular agenda is something to be embraced—as Buck 65 puts it, to drive without purpose is to drive with "not a care in the world, not a how, and a why, no destination, not a cloud in the sky."¹⁰⁹

Judicial opinions regarding the traffic stop, however, reveal an inherent hostility toward and suspicion of movement; as one court stated, "[I]mplausible travel plans can form a basis for reasonable suspicion."¹¹⁰ Consider *United States v. Gallardo*,¹¹¹ in which a police officer's suspicion of a driver he has pulled over on Interstate 80 is aroused by the fact that the driver had put approximately 39,000 miles on his truck in the previous seven months. The Eighth Circuit validated the officer's suspicion, stating disapprovingly that the defendant's "only explanation for the exceptionally high mileage over such a relatively short duration was that he occasionally had to travel . . . for his employer."¹¹² What of driving for the love of driving, of the desire to

108. LL COOL J, *supra* note 15.

109. BUCK 65, *supra* note 15.

110. *United States v. Contreras*, 506 F.3d 1031, 1036 (10th Cir. 2007).

111. 495 F.3d 982, 987 (8th Cir. 2007).

112. *Id.*

“drive, just drive, roll the windows down and feel alive”¹¹³ After all, “[n]ot all those who wander are lost,”¹¹⁴ and “half the fun of travel is the aesthetic of lostness.”¹¹⁵ But such explanations for one’s odometer reading have no place in the traffic stop narrative. Had Gallardo offered them, surely they would have been met with incredulity by both police officer and judiciary.

Other cases reveal that such suspicion is systemic. In *United States v. Ramirez*,¹¹⁶ for example, both police and judiciary expressed profound skepticism of a man’s explanation that he drove from Texas to Florida to pick up cash from a family member, suggesting that anyone in his right mind simply would have had the money wired.¹¹⁷ In *United States v. Contreras*,¹¹⁸ a woman said that she drove 1,200 miles to visit her family for a day, after which she began a 1,200 mile return drive—an itinerary that the court described as “suspicious at best and incredible at worst.”¹¹⁹

In their classic protest anthem “Straight Outta Compton,” N.W.A. recognizes the suspicion that driving without clear destination inspires in law enforcement, objecting to the “attitude showin’ a nigga drivin’ / But don’t know where the fuck he’s going, just rollin’.”¹²⁰ Within the traffic stop narrative, citizens internalize the idea that driving simply because one enjoys driving—“just rollin’”—arouses suspicion and “attitude” from police officers. Cruising the streets aimlessly, even if one’s only desire is to have some time to yourself or to think about your life, is simply asking for trouble. Part of the traffic stop narrative is that you need a good reason to be on the road at all. If you don’t have one, you’d be better off staying home.

In the open road narrative, then, a long journey is the catalyst for fantasy to become reality. In the traffic stop narrative, a long journey is the catalyst for mere suspicion to ripen into probable cause. Long distance driving is not an end in itself in the traffic stop narrative—it is a suspicious activity that requires explanation.

113. HAWTHORNE HEIGHTS, *supra* note 15.

114. J.R.R. TOLKIEN, *THE FELLOWSHIP OF THE RING* 182 (1954).

115. This statement is commonly attributed to Ray Bradbury, who never actually obtained a drivers’ license, but perhaps he was thinking of journeys on a more epic scale. *See, e.g.*, RAY BRADBURY, *R IS FOR ROCKET* (1962).

116. 476 F.3d 1231, 1233 (11th Cir. 2007).

117. *Id.*

118. 506 F.3d 1031, 1036 (10th Cir. 2007).

119. *Id.*

120. N.W.A., *Straight Outta Compton*, on *STRAIGHT OUTTA COMPTON* (Ruthless/Priority/EMI Records 1988), available at <http://www.youtube.com/watch?v=TMZi25Pq3T8>.

3. From Intimacy to Isolation

The traffic stop fractures the camaraderie so essential to the narrative of the open road. Personal bonds, so powerful in road fantasies, crumble in the face of the traffic stop. Under the direction of police officers, co-adventurers are halted in their shared journey, separated, questioned, and pitted against one another if their stories misalign in the slightest.

Consider, for example, Amalia Grajeda and her aunt Maria Mendez in *United States v. Grajeda*.¹²¹ Halted on their journey for a license plate violation, an obstructed rearview mirror, and driving over the white line, the aunt and niece were separated, with Maria directed into the police cruiser while Amalia remained in the car. The officer questioned them separately, with small discrepancies in their stories leading to further suspicion.¹²² This use of road companions against one another—sometimes with the result that what they say leads to arrest and prosecution—fractures the deep bonds of friendship so fundamental to the open road narrative. The traffic stop's transformation of co-adventurers into codefendants ruptures the open road narrative and replaces the American dream of friendship with incarceration's solitary nightmare.

This theme replicates itself in film. In a sense, all of *Crash* is a variation on the traffic stop.¹²³ The movie takes place in Los Angeles, a city known for its epic gridlock. For anyone who has crept along Interstate 405 at rush hour, or who has contemplated flying from Burbank to Long Beach because it might well be faster than driving,¹²⁴ the thought of the open road seems less like a dream and more like a taunt. Angelenos' dreams of the open road atrophy, replaced by a frustrated desire simply to reach third gear. They hold fast to their cars—as Anthony (Chris “Ludacris” Bridges' character) says in *Crash*, “buses are for poor people”—but those cars are empty indicators of

121. 497 F.3d 879 (8th Cir. 2007).

122. *Id.* at 880.

123. *CRASH* (Bob Yari Productions et al. 2004). I feel compelled to mention here that I *really* did not like *Crash*. I thought it was didactic and full of itself, and obviously *Brokeback Mountain* (Alberta Film Entertainment et al. 2005) should have won the Academy Award instead. But *Crash*'s popularity and critical acclaim signifies that it captured something representative about the way the traffic stop functions in our national consciousness, and it is therefore worthy of analysis here.

124. See Steve Gorman, *JetBlue Offers \$4 L.A.-Area “Carmageddon” Flights*, REUTERS, July 14, 2011, available at <http://www.reuters.com/article/2011/07/14/us-carmageddon-jetblue-idUSTRE76D4GK20110714>.

status or necessities of transportation, rather than any sort of realistic vehicle for escape.¹²⁵

Within the literal and metaphorical confines of this perpetual traffic stop, the characters that populate *Crash* struggle and usually fail to connect. The fundamental forms of human intimacy embodied in the road fantasy—camaraderie, romance—are reduced to shallow imitations of themselves. The camaraderie we see is a mockery of the fast friendships formed on the road. For example, a scene in the film shows a police officer who was committed to colorblindness in his policing suddenly fear violence from a young black man he has offered a ride. He draws his weapon and fires—only to realize that the young man is holding not a gun but a St. Christopher statue identical to that on the officer's own dashboard. Likewise, instead of romance, we see an initially loving couple, Cameron and Christine, driven apart by a racially motivated traffic stop that traumatizes them both.

Crash does suggest some redemption in interpersonal connection, with a woman rescued from a burning car by a police officer who previously assaulted her,¹²⁶ and another scene in which a character releases a group of immigrants confined in a truck and presumably intended to be sold as slaves.¹²⁷ But the overall tenor of the movie is about the failure to connect with other people, including the movie's conclusion, which pans out from a heated roadside argument over a fender-bender, thereby suggesting that perhaps the possibility of friendship is illusory at best.

The traffic stop, then, disrupts or simply precludes the close interpersonal bonds that the open road facilitates. By interposing the force of the law, the traffic stop tears at the fragile fabric of human

125. See CRASH, *supra* note 123.

126. *Id.* This scene, involving Thandie Newton and Matt Dillon's characters, has been criticized as a white rescue fantasy; the racist police officer, played by Matt Dillon, may be readily redeemed for his previous sexual assault of a black woman played by Thandie Newton by later doing the job he is paid to do and rescuing her from a car accident. See, e.g., Robert Jensen & Robert Wosnitzer, "*Crash*" Is a White Supremacist Movie!, RACE, RACISM AND THE LAW: SPEAKING TRUTH TO POWER!!, <http://academic.udayton.edu/race/01race/whiteness19.htm> (last updated Dec. 29, 2007) ("The white male is redeemed by his heroism. The black woman, reduced to incoherence by the trauma of the accident, can only be silently grateful for his transcendence."). So I am not expressing approval of all aspects of the scene here. I am simply pointing out that, to the extent that *Crash* communicates to its broad audience that the traffic stop strips away power and autonomy, such an understanding both reflects and reinforces the broader social narrative on this matter.

127. See CRASH, *supra* note 123. The fact that Ludacris' character—a black man—chooses to do the releasing even though he might conceivably make money by selling the confined immigrants to another character suggests racial progress, albeit in a remarkably heavy-handed way. An American black guy is releasing slaves; we get it, already.

relationships and precludes the deep connection so often found in long road journeys. The traffic stop is thus more than an individual intrusion; it is also a form of isolation from family, friends, lovers, and other human companions.

4. From Power to Helplessness

The open road narrative is one of individual autonomy and control over one's destiny. The traffic stop narrative is just the opposite. In it, law and social convention strip away power from the individual. This loss of power takes place on multiple levels. The traffic stop functions as a literal interruption of the freedom promised by the open road. But the traffic stop's symbolic meaning also provides a far more profound counter-narrative; it forces relinquishment of control over one's destiny for the immediate future. During a traffic stop, we are suddenly at the mercy of the police. Although the stop is temporary and, if we are lucky, relatively brief, the sense of powerlessness lingers, superseding the open road's promise—however illusory—that we are masters of our own destinies.

The traffic stop also represents an intrusion into our private business, a hijacking of the unconstrained liberty promised by the open road. Certainly there are constitutional limits on what the police can do. But what the police can *ask* to do is far less circumscribed, and we all know the inherent double bind of refusing a police officer's request. Perhaps we are constitutionally entitled to refuse, but we are not constitutionally entitled to be free from lingering suspicion. An entire literature has sprung up around the notion of consent searches—law enforcement searches undertaken with the supposed acquiescence of the searched.¹²⁸ The touchstone in such interactions is voluntariness, but everyone knows that many searches are not “voluntary” in any reasonable sense of the word. Indeed, the Court has made clear that one need not *know* one could deny consent for one's consent to be voluntary,¹²⁹ begging the question of whether making the only choice one knew one had is actually making a choice. The extent to which law enforcement can infringe on our liberty of travel, then, is quite profound.

These tropes manifest themselves in the texts relating the narrative of the traffic stop. Even though *Fear and Loathing's* broad arc is that of the open road successfully traveled to achieve the American dream—or at least Hunter S. Thompson's twisted version of it—the dream is

128. See, e.g., Marcy Strauss, *Reconstructing Consent*, 92 J. CRIM. L. & CRIMINOLOGY 211 (2002).

129. See, e.g., *Schneekloth v. Bustamonte*, 412 U.S. 218, 249 (1973).

nonetheless imperiled by a traffic stop. Leading up to an incident in which a police officer pulls him over, the protagonist offers several paragraphs of authoritative-sounding advice on how to deal with law enforcement. Maintaining the upper hand is paramount: “The idea is to show him that you were always in total control of yourself and your vehicle—while *he* lost control of everything.”¹³⁰ Yet after executing his recommended strategy—a 120-mile per hour car chase, followed by a 100-mile per hour exit, followed by a 180-degree spin, followed by the presentation of a (fake) police/press badge—the protagonist realizes that he is holding a can of Budweiser in his other hand, and the power immediately shifts back to the officer.¹³¹

By virtue of the officer’s questionable decision to extend mercy, the protagonist escapes with merely a warning and an instruction to get some sleep at a nearby rest area. He realizes that “[t]his bastard is trying to be human; he could take me straight to jail, but he’s telling me to take a fucking nap.”¹³² Yet the experience leaves him shaken, because the officer, not he, wielded power over his destiny during the traffic stop. Bitterly, he relates, “I shook my head and got back in the car, feeling raped. The pig had done me on all fronts, and now he was going off to chuckle about it”¹³³ Literal removal from the road and confinement in jail is not the only mechanism by which the traffic stop interrupts the narrative of the open road. Loss of power—even if temporary—also ruptures the road’s promise of autonomy and self-determination.

The film *Crash* also reveals the powerlessness inherent in the traffic stop narrative. The film portrays the roadside interactions between law enforcement officers and citizens in chilling detail. In one vignette, a woman, Christine, is invasively searched by a police officer after verbalizing her anger during a traffic stop while her husband Cameron stands helplessly by. Their experience resonates with viewers. We know—either from firsthand experience or from other media portrayals—the rage and impotence that accompany an intrusive law enforcement interaction. Even if something about the interaction is technically illegal, most likely we can bring no consequences to bear on the officer, and that knowledge causes anger and pain. These emotions disrupt human relationships. In *Crash*, traumatized by the traffic stop, Christine and Cameron first lash out at one another, then grow distant. As Christine later tells Cameron, “I just couldn’t stand to see that man take away your dignity,”¹³⁴ but although they know they were wronged,

130. THOMPSON, *supra* note 33, at 90–91.

131. *Id.*

132. *Id.* at 92.

133. *Id.* at 93.

134. CRASH, *supra* note 123.

the two of them cannot seem to get past the wrong to reconnect with one another. They are helpless to recapture their sense of themselves.

Part of the injury of the traffic stop, then, is the loss of the autonomy associated with the open road. The open road narrative allows us to see ourselves as masters of our own destinies. During the traffic stop, law enforcement instead masters us.

5. From Possibility to Impossibility

Perhaps most devastating to the open road narrative is the traffic stop's restriction of its sense of unlimited possibility. This element of the narrative implicates the others I have previously discussed, so I will not retread that territory in detail. The point, simply, is that the traffic stop also shatters the very *possibility* of transcendence, freedom, intimacy, and power promised by the road. In the classic open road narrative, we feel that anything could happen. Bonnie and Clyde could drive off into the sunset. Thelma and Louise could make it to Mexico and spend their days drinking margaritas on a beach. Humbert and Lolita could live happily ever after. That these dreams could come true may be an illusion, but the possibility itself is part of the dream.

The traffic stop shatters this illusion. It literally halts progress toward something better, or at the very least, something different. It jolts us back into the present, leaving no room for our dreamy longings to hang it all up and disappear to the better place we've always imagined. In short, it shatters the sense of infinite possibility that the road offers, because we are no longer a part of the narrative of the open road.

The traffic stop thus interrupts and even precludes the open road narrative by interfering with some of its most fundamental elements. Without freedom, without camaraderie, without a sense of possibility, the open road narrative disintegrates. But *who* suffers from this disintegration? The next Section takes up that question.

C. Racializing the Traffic Stop¹³⁵

“‘Son, do you know why I’m stoppin you for?’ / ‘Cause I’m young and I’m black and my hat’s real low? Do I look like a mind reader, sir? I don’t know.’”¹³⁶

Just as the open road is, in practice, affiliated with whiteness, the traffic stop is raced black.¹³⁷ In his monologue, “How Not to Get Your Ass Kicked by the Police,” Chris Rock explains that “people in the black community . . . often worry that we might be a victim of police brutality” and offers a set of tips for avoiding it. Notably, although the threat of brutality is not explicitly framed as a car-specific worry, the majority of the vignettes Rock subsequently describes occur during traffic stops, revealing the traffic stop as a readily recognizable site of police–citizen tension for blacks.¹³⁸ One tip—“if you’re listening to loud rap music, turn that shit off”—emphasizes the racialized nature of the traffic stop. By instructing audience members not to listen to stereotypically black music, Rock is implicitly cautioning them that

135. Although I do not pursue this line of inquiry here, race is not the only axis along which the open road and traffic stop might be dichotomized. For example, with the single notable exception of *Thelma and Louise*, the open road narrative is almost entirely male—and Thelma and Louise, of course, die at the end, highlighting the exceptionalism and transitory nature of their participation in the road narrative. Aside from Thelma and Louise, women participate in the open road narrative mostly as romantic interests, such as in *Bonnie and Clyde* (Warner Brothers 1967) and *Zombieland*. Likewise, the open road narrative is primarily rural or suburban; city dwellers seldom get to escape to the open road, and when they do, it usually requires economic resources and a significant act of will. Consider the *Seinfeld* episodes when the characters go on what might be described as an urbanized “road trip.” For example, Kramer test-drives a car and convinces the salesperson to drive until they run out of gas, *Seinfeld: The Dealership* (NBC television broadcast Jan. 8, 1998), and Newman tries to drive a mail truck to Michigan to maximize his bottle returns, *Seinfeld: The Bottle Deposit (1)* (NBC television broadcast May 2, 1996). The humor in both instances lies in the fact that you cannot really go on a road trip in New York City; the road trip is divorced from the urban experience.

136. JAY-Z, *supra* note 65.

137. I readily acknowledge that it would be more accurate to say that the traffic stop is raced “white” and “non-white.” Still, I refer to the racialization of the traffic stop as black here for several reasons. First, the reality is that most of the examples of the traffic stop narrative involve blacks. Second, the paradigmatic tension between law enforcement officers and citizens continues to involve blacks; there is a reason that “driving while black” first became part of the cultural lexicon, while analogous phrases—“driving while Mexican” and “driving while Arab”—are recognizable derivations of that phrase. And finally, available evidence suggests that the paradigm is justified, insofar as blacks continue to experience more racial profiling than any other group. See Harris, *Driving While Black*, *supra* note 6, at 267. Thus, although I am very reluctant to reinforce the notion of black exceptionalism, I do so here for the preceding reasons.

138. Chris Rock, *How Not to Get Your Ass Kicked by the Police!*, YOUTUBE (Feb. 2, 2007) <http://www.youtube.com/watch?v=uj0mtxXEGE8&feature=related>.

exhibiting a stereotypically black identity will increase their odds of being subjected to a traffic stop. Rock also expresses the divide between the black and white experience of the traffic stop narrative. After offering several cautionary tales about the perils of giving rides to one's friends, he says, "[I]f you have to give a friend a ride, get a white friend." (This tip evokes one of the biggest laughs from the audience.) Rock concludes that the race of one's friend "could be the difference between a ticket and a bullet in your ass"—making clear that the racial difference in the traffic stop experience extends not only to the rate at which one is pulled over, but also to what happens once the stop is underway.¹³⁹

Perhaps the most telling part of Rock's monologue is the part that gets left out because there's no need to include it. Rock doesn't have to explain why most of the vignettes take place in the car or on the road. His audience already recognizes the logic of the setting and needs no explanation for why the black community's instruction on avoiding brutality is most logically located in the traffic stop setting. Nor does he have to explain why avoiding an "ass-kicking" often involves avoiding stereotypically black behavior. Because the traffic stop is racialized black, we recognize that the less black we act, the less time we will have to spend trapped within the traffic stop narrative.

The racialization of the traffic stop narrative as black also emerges in Chamillionaire's "Ridin'," ¹⁴⁰ which expresses both anger at undeserved police scrutiny and triumph at ultimately escaping. Both the song and the accompanying video ¹⁴¹ make the racial dimension of the traffic stop explicit. "They see me rollin', they hatin', patrollin', they tryin' to catch me ridin' dirty," Chamillionaire says during the chorus.¹⁴² There is no need to specify who "they" are, although Chamillionaire later does, referring explicitly to the police at the beginning of the first verse. Indeed, the activities described in the song and depicted in the video read like a recipe for "getting [one's] ass kicked by the police" under Rock's standards.¹⁴³ For example,

139. *Id.*

140. CHAMILLIONAIRE, *Ridin'*, on THE SOUND OF REVENGE (Universal 2005), available at <http://www.youtube.com/watch?v=CtwJvgPJ9xw&ob=av2e> (last visited Feb. 13, 2012).

141. *Id.*

142. *Id.* The expression "ridin' dirty," for the uninitiated, refers to driving in a car containing contraband, usually guns or drugs. See *Ridin' Dirty*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=ridin+dirty> (last visited Feb. 13, 2012).

143. Viewing Chamillionaire's video with an eye to racial dynamics leads to the observation that the police officer who appears to be primarily in charge of apprehending and arresting Chamillionaire is also black. But this does nothing to undermine the racial dynamics of the traffic stop narrative. First, research has indicated that black officers also use racial profiling in many areas of judgment. VICKY M. WILKINS & BRIAN N. WILLIAMS, BLACK OR BLUE: RACIAL

Chamillionaire says, “Law’s on patrol, and you know they hate me, music turned all the way up until the maximum,”¹⁴⁴ disobeying Rock’s instruction to “turn that shit off.” The remainder of the song describes the ongoing law enforcement efforts to target Chamillionaire and his friends. He seethes with resentment at this undeserved attention, which he traces explicitly to race: “So they get behind me tryin’ to check my tags, look in my rear view and they smilin’ / Thinkin’ they’ll catch me in the wrong, they keep tryin’ / Steady denyin’ it’s racial profilin’.”¹⁴⁵

Although *Ridin’* alone reveals the racialization of the traffic stop, “Weird Al” Yankovic’s satire of the song makes the role of race even more readily apparent. The parodic song and its video are titled *White and Nerdy*,¹⁴⁶ and true to form, Yankovic adopts the cadence and melody of *Ridin’* while slyly changing the lyrics. As the protagonist of the song, he reinvents himself as a stereotypical white nerd—“nerdy in the extreme, whiter than sour cream”—with stereotypically white, nerdy interests: chess, Dungeons and Dragons, calculus, comic books, Star Trek, and Wikipedia. His dream is to “roll with the gangsters,” but “it’s apparent [he’s] too white and nerdy.”¹⁴⁷

The contrast between *Ridin’* and *White and Nerdy* highlights the racialization of the traffic stop. Compare the chorus of *Ridin’*—“They see me rollin’, they hatin’, patrollin’, they tryin’ to catch me ridin’ dirty”—with that of *White and Nerdy*—“they see me roll on my Segway, I know in my heart they think I’m white and nerdy.” The contrast between Chamillionaire, engaged in a tense, potentially violent struggle with the police, and Weird Al, whose biggest concern is that people will think his Segway is lame, highlights the stakes of the traffic stop narrative and makes transparent the demographic to which it applies. Likewise, contrast the deadly serious concerns of *Ridin’* with the farcical ones of *White and Nerdy*. Whether the police catch Chamillionaire and Krayzie Bone “ridin’ dirty” affects their safety and

PROFILING AND REPRESENTATIVE BUREAUCRACY (2005). Second, as Chamillionaire himself might argue, that the police officer is black may actually *enhance* the standard racial dynamics of the encounter. Consider the line from *Fuck tha Police* in which Ice Cube accuses “black police” of “showin’ out for the white cop.” N.W.A., *Fuck tha Police*, on STRAIGHT OUTTA COMPTON (Ruthless Records 1988).

144. CHAMILLIONAIRE, *supra* note 140. In the video, he also disobeys Rock’s command to stay in the car (running into an alley instead), to get a white friend (riding with his black friend Krayzie Bone instead), and to “shut the fuck up,” instead “talk[ing] to them, not givin’ a damn ‘bout them not feelin’ my attitude.” *Id.*

145. *Id.*

146. “WEIRD AL” YANKOVIC, *White and Nerdy*, on STRAIGHT OUTTA LYNWOOD (Volcano 2006), available at <http://www.youtube.com/watch?v=N9qYF9DZPdw> (last visited Feb. 13, 2012).

147. *Id.*

their freedom. Meanwhile, Weird Al's biggest concern in *White and Nerdy* is several orders of magnitude less consequential. He explains, "Only question I ever thought was hard / Was do I like Kirk or do I like Picard?" (In the video, the camera then pans out to a shot of Weird Al sitting on his bed with a pensive expression, portraits of the two Star Trek heroes hung above his head.)

By replacing "ridin' dirty" with "white and nerdy," Weird Al superimposes a quite serious point on a quite funny song. Reenvisioning the song to capture stereotypically white concerns immediately makes clear the incompatibility of the traffic stop narrative with whiteness. We cannot easily imagine the sort of serious, traffic-based tension described in *Ridin'* taking place between police officers and white citizens. Thus, it is logical for a song altering the racial identities of the protagonists also to take place outside the traffic context and to have a far less serious flavor. That the melody and harmony of *Ridin'*, transported to a white setting, instead accompany an examination of far less serious concerns than those of the traffic stop provides a sober illustration of the racialization of this narrative. Perhaps more telling, though, is the relative popularity of the videos. The *Ridin'* video has just over thirteen million views on YouTube, whereas the *White and Nerdy* video has been viewed five times as often, with over sixty-five million views. This dramatic disparity suggests that, for some subset of viewers, *Ridin'* is an inaccessible and foreign narrative, while *White and Nerdy* is entertainingly familiar.¹⁴⁸

In stark contrast to the whiteness of the open road narrative, the traffic stop narrative is raced black. The next Part explores the tension between the two narratives and examines its consequences within our collective consciousness.

III. THE AMERICAN DREAM

*"Hold fast to dreams / For if dreams die / Life is a broken-winged bird / That cannot fly."*¹⁴⁹

The banality of the traffic stop provides a sober counter-narrative to the alluring saga of the open road. Indeed, the two are difficult to reconcile. And the two narratives are not colorblind. The open road narrative is largely raced white, while the traffic stop narrative is generally raced black, or at least non-white.¹⁵⁰

148. Compare CHAMILLIONAIRE, *supra* note 140, with "WEIRD AL" YANKOVIC, *supra* note 146. The number of views for each video was recorded during February 2012.

149. LANGSTON HUGHES, *Dreams*, in THE COLLECTED POEMS OF LANGSTON HUGHES 32, 32 (Arnold Rampersad & David Roessel eds., Alfred A. Knopf 1994).

150. For an explanation of this Article's use of racial identifiers, see *supra* note 137.

These narratives are *not* merely stories. They have consequences for our real lives, in which we live out one narrative or the other. To the extent that our daily reality is the traffic stop, it impairs our ability to access the open road. And because the narratives themselves are raced, which narrative we live out is not random but rather depends on who we are. To quite a significant extent, our narrative depends on our race.

This racial disparity has a number of consequences. Here, I am most concerned with the imaginative. Our ability to access the open road narrative, either imaginatively or in reality, has a profound effect on our hopes and dreams. And if members of one race access the open road more readily than another, that differentiation perpetuates an existing racial disparity in wellbeing. Dreams themselves are not real, but the ability to dream, and to chase one's dreams, has real consequences. To the extent that the American dream embodied by the open road remains accessible primarily or exclusively to whites, blacks and other minorities are denied equal participation in that dream.

A. *Imaginative Consequences of Racialized Access to the Open Road Narrative*

*"My dreams is censored / My hopes are gone."*¹⁵¹

For many Americans, a traffic stop is an interruption and an inconvenience, but is rare and short-lived. Annoyance about a speeding ticket or resentment regarding an unpleasant exchange with a police officer may linger for a few days, but these feelings dissipate as we go about our daily commute and our routine errands. In so doing, we reclaim the open road for our normal purposes and as a fantasy of escape, whether that fantasy is rare or reoccurring. We reclaim an entitlement to the pursuit of happiness that our nation's foundational document says is ours by right.

Yet for other Americans, the indignity of a traffic stop—and its inhibition of the open road fantasy and the pursuit of happiness—does not fade so quickly. Race is central in determining for whom traffic stops are a permanent feature of life on the road. Blacks are stopped more frequently than whites and are also more likely to be stopped for an identical violation.¹⁵² Scholars have adopted the term "driving while black" (coined by blacks) to communicate the enhanced level of law enforcement suspicion that many black drivers attract while on the road.¹⁵³ Although black drivers have received most of the attention, in

151. 2PAC, *Picture Me Rollin'*, on ALL EYEZ ON ME (Death Row Records 1996).

152. Harris, *Driving While Black*, *supra* note 6, at 267.

153. *Id.*

practice, the phenomenon is not limited to blacks. Hispanics are also targeted for suspicion, particularly in areas where they comprise a significant minority of the population.¹⁵⁴ Arizona's Senate Bill Number 1070¹⁵⁵ has had the perverse benefit of calling attention to the harassment that brown-skinned people suspected of illegal immigration status face.¹⁵⁶ And after September 11, 2001, Arab-Americans are exposed to analogous suspicion.¹⁵⁷

Other scholars have persuasively documented the difference in the degree and nature of the attention that blacks and other racial minorities receive from law enforcement officers in America, and my intent here is neither to augment nor to retread that claim in any depth.¹⁵⁸ Rather, I begin with the premise that this difference does exist, and my goal is instead to examine the injuries that flow from the disparity.¹⁵⁹

Many of the harms deriving from the disproportionate number of traffic stops imposed on members of suspect racial groups are well documented. Purely in terms of efficiency, the greater number of traffic stops borne by blacks and other minorities is a considerable inconvenience. Likewise, traffic stops themselves are traumatic events. Particularly if a stop is lengthy, or late at night, or unexplained, or disproportionately humiliating, the driver's irritation at an inconvenience will gradually ripen into fear, and at some point, an encounter becomes catastrophic, an experience the driver will carry with him for the remainder of his life. Moreover, racially disproportionate traffic stops fracture relationships between minority communities and law enforcement officers. When many members of a community are subject to the same undesirable experience, that experience becomes part of the community's collective knowledge and affects the willingness of members of the community to cooperate with law enforcement—even those who have not personally suffered that

154. *See Chavez v. Ill. State Police*, No. 94-C5307, 1999 WL 592187, at *1, *20 (N.D. Ill. Aug. 2, 1999), *aff'd but criticized*, 251 F.3d 612 (7th Cir. 2001).

155. S.B. 1070, 50th Leg., 1st Reg. Sess. (Ariz. 2011).

156. *See* Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. TIMES, Apr. 23, 2010, at A1, available at <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>.

157. AMNESTY INT'L USA, THREAT AND HUMILIATION: RACIAL PROFILING, DOMESTIC SECURITY, AND HUMAN RIGHTS IN THE UNITED STATES vi, 1–2 (2004), available at http://www.amnestyusa.org/pdfs/rp_report.pdf.

158. *See supra* note 6 and accompanying text.

159. And even if there were not, in fact, a disparity in the rate at which white and black drivers were stopped, the open road and traffic stop narratives would still exhibit a clear racial disparity. So the consequences resulting from this narrative disparity occur independent of the underlying empirical debate about profiling, in which I do not engage.

undesirable experience.¹⁶⁰ Scholars have documented the loss of trust in law enforcement that arises in part as the result of racial profiling.¹⁶¹ People adopt a cynical view of the law and its enforcers, and come to see law enforcement as a monolithic and hostile system. Thus, even when police are engaged in legitimate activities for which community cooperation is essential, they may find people unwilling to trust them. This distrust harms both law enforcement and the communities they serve.

These harms resulting from disparate experiences during traffic stops are real and gravely serious. Here, however, I wish to focus on a different sort of harm: the harm to imagination that blacks and members of other suspect racial groups suffer as the result of their subjection to the traffic stop narrative.¹⁶² This harm occurs on two levels. First, because the narratives of the open road and the traffic stop are so acutely racialized within our cultural texts, blacks are almost entirely excluded from the narrative of the open road. This makes it more difficult for blacks to visualize themselves reaping the paradigmatic benefits of the open road, and thus prevents them from participating in an important part of the American dream. Second, because the reality of the road experienced by blacks and other racial minorities often conforms to the existing narrative of the traffic stop, their day-to-day experiences on the road reinforce the unavailability of the open road narrative and the inevitability of the traffic stop narrative.

One imaginative consequence is that because they are trapped within the traffic stop narrative, blacks are never truly free to lose themselves in the possibilities of the road. Attentional resources are finite, and for those frequently subjected to the traffic stop narrative, considerable mental energy is devoted to avoiding, negotiating, experiencing, or resenting conflict with law enforcement. Ultimately, the law enforcement scrutiny inherent in the traffic stop narrative interferes with black drivers' ability to access the American dream of the open road. For many, the sight of a police cruiser activates memories of suspicion and harassment. The joy of asphalt slipping effortlessly beneath wheels instantly dissipates, replaced by the crushing concentration of the effort to avoid the smallest driving error. And the

160. See, e.g., Harris, *Driving While Black*, *supra* note 6, at 268–75; Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127, 129 (1987) (discussing the costs and harms of racism in general, which would include the traffic stop).

161. See, e.g., Russell, *supra* note 6, at 728–29.

162. The harm extends beyond racial minorities, as well, infringing on the ideals of all Americans who want to live in an egalitarian society. Indeed, this cohort includes many white individuals who have devoted their lives to pursuing racial justice and other egalitarian aims.

vast universe of possibilities suggested by the open road narrows to two: getting home unnoticed or suffering the indignity of suspicion and search. Increasingly, it becomes a struggle to access the dream of the open road; eventually, many give up the struggle.

The multifaceted dream of the open road thus remains out of reach to a driver engaged in what amounts to taking a driving test every time he heads out on the road. The freedom of the road is illusory when one is under constant surveillance. The camaraderie that develops between driver and passenger is chilled when the driver's attention is constantly fixed on avoiding the smallest of driving errors. And no one has time to dream of possibilities for the future when every fiber of one's being is devoted to avoiding the dangers of the present.

As a way of dealing with the trauma of heightened attention from law enforcement, minority drivers develop strategies for coping with traffic stops. One account aptly illustrates the inner monologue that flows from the knowledge that one is subject to strict law enforcement scrutiny:

[The police] are supposed to be there to protect and to serve, but you being black and being male, you've got two strikes against you. Keep your hands on the steering wheel, and do not run, because they will shoot you in your back. Keep your hands on the steering wheel, let them do whatever they want to do. I know it's humiliating, but let them do whatever they want to do to make sure you get out of that situation alive. Deal with your emotions later. Your emotions are going to come second—or last.¹⁶³

This immobilizing act of self-restraint, this suppression of natural emotions, this utter submission to the reality of the moment—these tactics are geared to the single goal of *survival*. Forget the freedom of the open road, forget the promise of a better life. For many blacks and others targeted for traffic stops, those dreams are laughably irrelevant to the basic struggle to get through the traffic stop with their lives intact. Moreover, one of the promises of the open road, that of infinite potential, is crushed by the traffic stop because that event makes the stopped motorist acutely aware of his own inherent limits imposed by race, gender, and other characteristics wholly out of his control. These harms constitute a grave psychic injury—what Patricia Williams calls

163. Harris, *Driving While Black*, *supra* note 6, at 274 (alteration in original) (quoting Interview with Karen Brank, in Toledo, Ohio (Aug. 21, 1998)).

“spirit-murder”¹⁶⁴—to those routinely subjected to the traffic stop narrative.

A related imaginative harm flows from the psychological effect of the knowledge that a police officer has singled us out to pull over. Officers admit that when they stop vehicles for minor traffic violations, they are “being selective and looking for these violations on certain vehicles that raise a red flag or give you a certain vibe.”¹⁶⁵ And all of us as drivers *know* that law enforcement does this; if we are stopped for minor violations over and over while others are not, we know that this is because something about us gives law enforcement officers “a certain vibe.” Aware of the racialization of the traffic stop narrative, a black driver will surely come to believe that his race is the reason he is stopped so often in the absence of other explanations for why he is singled out from other drivers over and over.¹⁶⁶ The consequence of this knowledge is that a driver loses the ability to see himself as an individual with unlimited potential. How can someone envision himself as a successful and valued member of society if he is regularly made acutely aware that the forces of law and order will always see him as just another young black criminal? This awareness creates a loss of autonomy, freedom, and power. Once one grows accustomed to being treated as a member of a homogenous suspect group, the radical—and beneficial—individualism associated with the open road gradually becomes a dim memory.

Hip-hop texts communicate the imaginative costs imposed by the traffic stop narrative. One such cost is the lowering of standards for what constitutes a good life: those trapped in the traffic stop narrative lose the ability to dream extravagant dreams that transcend the mundane worries of daily existence. In Ice Cube’s classic “It Was a Good Day,” the mere *absence* of interference from law enforcement on the road figures in his description of a “good day” not once, but twice. “Saw the police and they rolled right past me / No flexin’, didn’t even look in a nigga’s direction / As I ran the intersection,” he observes in the second verse. That lack of law enforcement attention to a “nigga”—note Ice Cube’s intentional use of an overtly racialized term—helps qualify a day as “good” speaks volumes about the content of less auspicious days.

164. Williams, *supra* note 160, at 129.

165. SouthFL247, Comment to *Night Shift, Traffic, and Looking for Big Fish*, OFFICER.COM (Oct. 31, 2007, 3:24 AM), <http://forums.officer.com/forums/showthread.php?75572-Night-shift-traffic-and-looking-for-big-fish>.

166. To be clear, I believe that racial profiling does occur. The focus of this Article, however, is on the psychological effect of the traffic stop on the individual. Therefore, my focus is on what the stopped individual *believes* is the explanation for her stop, not on the actual reason—although I believe that they are quite frequently the same thing.

And in the final verse, Ice Cube reiterates the pleasant surprise of not being singled out by the police: “Today was like one of those fly dreams / Didn’t even see a berry flashin’ those high beams.”¹⁶⁷ True, Ice Cube describes his day as a good day. But it is deeply sad that his “fly dream” is not the paradigmatic American dream of the open road. It’s merely the dream of a day without harassment from law enforcement during a traffic stop.

These casual references to law enforcement make clear how prominently interactions with law enforcement figure in the consciousness of young black men as they move through traffic day by day. Harassment, not freedom, is at the core of the road narrative for these individuals, and this constant attention to law enforcement is the necessary result. A skeptic might argue, of course, that these interactions are a consequence of the result of high rates of crime by young black men, which in turn is the consequence of the glorification of criminality in so-called “black music” and “black culture.” But the explanation is not always so simple. *It Was A Good Day*, for example, does not celebrate criminal activity; Ice Cube’s good day consists of nothing more insidious than playing basketball and stopping by Fat Burger for a bite to eat. The final scenes of the song’s accompanying video clarify the contrast between Ice Cube’s innocuous day and the attention that day’s activities receive from law enforcement as the lyrics end and officers are shown closing in on Ice Cube’s home.

Likewise, the traffic stop narrative occasions imaginative harm by instilling racial minorities with deep cynicism about life that contrasts sharply with the optimism of the open road. In *Ridin’ Dirty*, the ultimate, ironic twist is that—despite the rebellious lyrics that place Chamillionaire squarely in opposition to the law—he is not guilty of any crime. In the last verse, he explains, “When they realize *I ain’t even ridin’ dirty* / Bet you’ll be leavin’ with an even madder mood . . . / You can’t arrest me plus you can’t sue / This is a message to the law, tell ’em ‘we hate you.’”¹⁶⁸ Yet in light of this revelation, he does not complain of injustice, nor does he imagine a world in which he were not subject to unfair police scrutiny; he simply expresses more hostility toward law enforcement. Such cynicism casts doubt upon one canonical iteration of the American dream: a belief in just results, or, as we might call it, the Horatio Alger principle that if we work hard we will do well because we deserve to. But for Chamillionaire, there is no question of desert. The

167. ICE CUBE, *It Was a Good Day*, on THE PREDATOR (Priority Records 2003). “Berry” is slang for a police car. See *Berry*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=berry> (last visited Feb. 13, 2012).

168. CHAMILLIONAIRE, *supra* note 140 (emphasis added).

police dislike Chamillionaire through no fault of his own; although this is deeply unfair, he accepts it with a matter-of-fact resignation rather than a genuine belief that it is within his power to improve his situation.

Our cinematic culture both reflects and reinforces this implicit difference in the imaginative worlds available to white and minority drivers on the road. As noted, our culture's archetypal road warriors are white; this is because it is difficult to imagine them as any other race. Would audiences have reacted to *Thelma and Louise*'s outlaw behavior with applause if their characters were black women? What if they were black *men*—would white American audiences have embraced an outlaw road movie called *Tyrese and LeRon*? In either instance, would it have mattered if the road warriors' victims had been upper-middle-class white men rather than unlikable, uneducated working-class characters such as *Thelma*'s husband Darryl, the would-be rapist Harlan, and the slovenly truck driver? These hypothesized identity differences surely would have affected audiences' perceptions of the film—but they are so difficult to imagine that it would have been shocking if they were chosen. Moreover, had *Thelma and Louise* been black, the movie might have appealed primarily to black viewers and, consequently, might never have achieved iconic cultural status with mainstream moviegoers. The unfortunate reality is that movies featuring black actors tend to appeal to much smaller audiences than those with white casts, although the trend is not universal.¹⁶⁹

Those involved with *Thelma and Louise* largely sought to downplay the role of identity politics. When asked whether *Thelma and Louise* is hostile toward men, screenwriter Callie Khouri responded, "I think it is hostile toward idiots."¹⁷⁰ Geena Davis, who played *Thelma*, agreed, explaining, "This is a movie about people claiming responsibility for their own lives. This is a film about freedom. Anyone should be able to identify with it."¹⁷¹ But instinct tells us that, even *if* we agree with the film's creators that *Thelma and Louise* is gender-blind, it simply cannot be colorblind. White, middle-class Americans' identification with characters of a different race would be more circumspect, and their response far more suspicious, if the complexity of race were

169. See, e.g., Tom Jacobs, *Why Whites Avoid Movies with Black Actors*, MILLER-MCCUNE.COM (May 4, 2011) <http://www.miller-mccune.com/culture-society/why-whites-avoid-movies-with-black-actors-30890/>.

170. Larry Rohter, *The Third Woman of 'Thelma and Louise,'* N.Y. TIMES, June 5, 1991, at C21, available at <http://www.nytimes.com/1991/06/05/movies/the-third-woman-of-thelma-and-louise.html>.

171. Elizabeth V. Spelman & Martha Minow, *Outlaw Women: An Essay on Thelma & Louise*, 26 NEW ENG. L. REV. 1281, 1285 (1992) (quoting Peter Keough, *Who's Bashing Who?*, BOS. PHOENIX, May 24, 1991, at 6) (internal quotation marks omitted).

superimposed onto this conventional road-buddy narrative. Because Thelma and Louise are white women, their narrative is just different enough to be provocative. But to the extent the identity narrative *also* invokes our preexisting narratives about race and class, we would be less willing to believe that the movie's road narrative is uncomplicatedly about the same things that the quintessential American road narrative embraces—freedom, camaraderie, romance, possibility, and so forth. When it comes to our movies, it seems, the dream of the open road is only believable when the characters who act it out meet certain demographic criteria.

And so the phenomenon perpetuates itself. When our cultural texts only portray certain racial and social groups accessing the American dream of the open road, that narrative proves exclusionary to those who are not members of the favored groups. To a black man routinely subjected to traffic stops, *Thelma and Louise* is not exhilarating—it's alienating. When black motorists contrast the freedom that Thelma and Louise experience on the road with their own claustrophobic driving experiences, the inevitable result is bitterness and an increased sense of disempowerment. The open road fantasy is for other people—*white* people—and blacks and other minorities are unable to participate.

Of course, no one—black, white, or otherwise—can ever truly and fully claim the American dream. The infinite potential represented by the open road is truly both infinite *and* potential. Indeed, part of its appeal is its intractable status as fantasy.

But if access to the fantasy is granted to some and not others, the effect on liberty is real. Some might drive a lifetime in their air-conditioned Volkswagens, dreaming the dream of the open road uninterrupted. Others—particularly socioeconomically disadvantaged minorities, who drive old cars, work odd hours, and live in high-crime neighborhoods—drive in a state of constant vigilance, knowing from experience that law enforcement is watching them, knowing that any technicality might prove grounds for a stop, never fully immersing themselves in the dream of the open road because they never know when a traffic stop might interrupt the dream.

B. *Overcoming Race on the Road*

*“This is a road over which millions of Negroes are traveling to find a new sense of dignity. This same road has opened for all Americans a new era of progress and hope. . . . [I]t will, I am convinced, be widened and lengthened into a superhighway of justice as Negro and white men in increasing numbers create alliances to overcome their common problems.”*¹⁷²

Is there any hope for deracializing the road? The whiteness of the open road narrative, juxtaposed against the blackness of the traffic stop narrative, construct a troubling picture of the dichotomy in access to the open road fantasy and the freedom and possibility it offers.

Yet perhaps we need not blithely accept the de facto segregation of the imaginative terrain of the road. Ironically, given that it is at least superficially a comedy, *Harold and Kumar Go to White Castle* provides one of the canon’s more nuanced readings of the tension between the dream of the open road and the reality of the traffic stop. The movie acknowledges, accepts, challenges, and problematizes the racial preconceptions we bring to the road narrative. In some ways, the movie is an entirely conventional road movie, involving a quest, obstacles, complications, and ultimate fulfillment. Yet it also cuts deeper, overlaying race on this generic quest. Although the movie is a comedy, some of its more serious moments are made of the stuff that chips away at the American dream. In short order, Harold’s car is stolen by Neil Patrick Harris, a cultural icon of mainstream white America; a group of white hoodlums bully an Indian convenience store owner and mock Kumar’s ethnicity; and a racist white police officer arrives literally out of nowhere to ticket Harold for beginning to jaywalk in the middle of the night. Indeed, when Harold is taken to jail, he encounters a black man who performs—almost to the letter—Chris Rock’s advice about how to avoid “getting [his] ass kicked by the police.”¹⁷³

By overlaying the conventional road movie with race, *Harold and Kumar* treads a thin line between satire and polemic. Its most explicit foray into the latter is Kumar’s speech as he and Harold stand at the edge of a cliff, looking into a valley where there is—yes—a White Castle. The police are in pursuit behind them. Kumar (ridiculously) suggests that they hang-glide to White Castle. Harold resists. Kumar then says:

172. Martin Luther King, Jr., Acceptance Speech at the Nobel Peace Prize Award Ceremony (Dec. 10, 1964), available at http://www.nobelprize.org/nobel_prizes/peace/laureates/1964/king-acceptance.html.

173. See Rock, *supra* note 138.

You think this [is] just about the burgers, huh? Well, let me tell you—it's about far more than that. Our parents came to this country escaping persecution, poverty, and hunger. Hunger, Harold. They were very, very hungry. And they wanted to live in a land that treated them as equals. A land where their kids could study and get into good colleges. A land filled with hamburger stands.

. . . .

You think this is just about the burgers? No. This is about achieving what our parents set out for. This is about the pursuit of happiness. This is about the American dream.¹⁷⁴

Although Kumar's seriousness about White Castle is funny, the underlying message is serious because everything he says is *true*. Their parents presumably *were* immigrants who came to America precisely so they could provide their children with the better life, replete with greater possibilities in all dimensions, that American society offers. The road embodies those possibilities and serves as the means for reaching them. By continuing the journey, then, Harold and Kumar embrace the dream that began with their parents. It does not matter whether the goal at the end of the road is significant or trivial—whether it is a medical degree or an exceptionally delicious hamburger. The fact that it *is* the goal is enough to make it significant. Access to the open road—and to whatever it is at the end of the road that makes one happy or fulfilled—is the American dream in its most visceral incarnation.

Perhaps, then, *Harold and Kumar* suggests a way of gradual yet profound deracialization of the road through incremental cultural shift. In the past, escaped-slave narratives created an imaginative pathway for African-Americans—and others experiencing oppression—to access the open road's promise of liberation and a better life. Today, looking forward, we might again experience a renaissance in our narratives about the road. The stories we tell through our films and our literature, in their cumulative effect on our collective consciousness, might engender cultural change and democratize both literal and imaginative entry to the open road.

Few manifestations of the American dream can match that of the open road. The freedom and possibility embodied by the road invoke a universal sensibility—an understanding that crosses racial and ethnic lines, that recalls both remote and recent narratives of journeys from

174. HAROLD & KUMAR GO TO WHITE CASTLE, *supra* note 12.

distant lands, and that promises that one's history is insignificant in comparison to one's future. The reason the open road moves us so powerfully is because it is *open*—available to everyone, shared by everyone. But the reality of the traffic stop calls that openness into question. The American dream may be color-blind, but the traffic stop—as currently executed—is acutely conscious of race. And as long as it remains so, the critical component of the American dream bound up in the open road is unavailable to those whose race renders them vulnerable to the traffic stop.

CONCLUSION

*"I know that they go, but I know not where they go."*¹⁷⁵

Despite the millions of miles of highway tracing the contours of the American topography, despite the millions of cars bought and sold every year in America, we have not yet answered Jack Kerouac's question: "Whither goest thou, America, in thy shiny car in the night?"¹⁷⁶ Down an endless dark highway of limitless possibility? Or grinding to a halt in the gravel on the shoulder of the road with flashing blue lights in the rearview mirror? The open road and the traffic stop await us, daring us to choose which one will ultimately triumph as the embodiment of our national destiny.

175. WHITMAN, *supra* note 14, at 196.

176. KEROUAC, *supra* note 1 at 119.