

Framework Tips for Establishing Inference that Race Impacted the Encounter

Framework tips for establishing permissible inference that race is influencing the decision at issue or had influenced the state actor's initial decision to engage with your client.

1. Establish at a minimum evidence of reliability: observable facts, high degree of circumstantial evidence, no alternative rational explanation for the inquiry or stop of client, or intrusion at issue.
2. Look at the motivation for the intrusion/stop in relation to reliable factors at the time.
3. What is a plausible inference as to the basis of the intrusion/stop? What is not plausible?
4. What corroborates that inference? What cuts against it?
5. What is the probative of bias, as to what is being asserted and offered as evidence of bias?
6. What are the indicia of reliability that points to stereotyping? Bias?
7. What evidence disputes the state actor's version?
8. What reliable version of the event can the defense proffer that supports a different narrative than that in the state actor's report?
9. What can you point to that unduly shows stereotyping and influenced the state actor's behavior towards the client? What is incredibly probative?
10. What corroborates what? What drives the violation of rights? What are the constitutional prohibitions that you can argue?