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# Racial Profiling and the Courts

## An Empirical Analysis of Federal Litigation, 1991 to 2006

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This article examines 135 federal-level racial profiling cases. Based on a review of these cases, the research reveals that such cases are on the decline. Moreover, most of the persons alleging they were racially profiled were Black and Hispanic. More than half of the persons making racial profiling allegations were caught engaging in criminal activity during the incident that instigated the legal suit. In addition, most of the incidents involved multiple male officers, who were employed by local police departments. The research also found that persons making racial profiling allegations win in less than a third of the cases. The article concludes by discussing the implications of these results.

**Keywords:** *racial profiling; profiling; Blacks/African Americans; federal litigation; court decisions; traffic stops; U.S. district courts*

Long before criminologists and other scholars began investigating racial profiling, racial and ethnic minorities in America had long asserted that they were targeted for stops and searches by law enforcement—simply because of the color of their skin. According to Withrow (2006), the term *racial profiling* was first used in 1987 news stories appearing in papers in San Diego and Washington, D.C., and was not used as a part of “routine police practices” until 1994. Harvard scholar Henry Louis Gates Jr. is credited with coining the term *driving while Black* and used it in a widely read 1995 article in *The New Yorker* magazine (Withrow, 2006, p. 2). These early events spurred considerable interest in the topic and also produced a measure of scrutiny for police agencies at all levels.

Public opinion polls were also conducted in the late 1990s to gauge how prevalent the public felt such practices were. In short, the results from these polls were stunning. More than 80% of Blacks felt the practice was widespread, whereas 60% of Whites felt the same (Weitzer & Tuch, 2002). In addition, Blacks felt they had been victims of racial profiling at a much higher rate than Whites (40% vs. 5%). But when the

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experiences of young Black males were considered, the figure rose to 72.7% (Weitzer & Tuch, 2002). So what do all these poll data mean? They suggest that the early anecdotes of countless Black Americans were supported. Hence, racial profiling was found to exist. And therefore, it had to be studied, in the hope that research findings could serve as a precursor to devising remedies to quash this discriminatory practice. Many related studies have been done in the past decade, and as a result, concrete steps have been taken by government agencies to stop racial profiling. By examining legal case transcripts, this article deviates from the emerging literature that depends heavily on traffic stop data to determine the progress of police agencies that have attempted to end their racial profiling practices. More specifically, the goal of this research was to examine the characteristics of racial profiling cases that reach federal courts. Thus, following a review of the racial profiling literature, the article discusses the study methods and the results from the analysis of federal cases.

## Racial Profiling Literature

As previously noted, racial profiling has existed for some time. But in the absence of empirical data, scholars tended to ignore the powerful “anecdotal” evidence that could easily have been found in Black communities across America. Nevertheless, it was not until legal suits alleging discrimination in traffic stops were brought before courts that there was any substantive research on the topic. Such suits required litigants to show evidence of racial profiling. So, for example, the well-known case of Roger Wilkins, who was stopped in 1992 on a Maryland highway, served as a precursor to much of the research that would “out” the practice of racial profiling. Wilkins’s family was returning from a funeral when they were stopped and detained for an excessively long period of time. Using what has become known as the drug courier profile, which included race as a characteristic, the officer was insistent on searching the vehicle; however, being an attorney, Wilkins, aware of his rights, refused to consent to the search. Even so, a drug-sniffing dog was summoned, as a way around the declined search request. In the end, the dog found nothing, Wilkins was given a \$105 ticket, and the officer went on his way (Harris, 2002). Russell (1998) notes that the American Civil Liberties Union (ACLU), who represented Wilkins’s family, sued the Maryland State Police, at which time they “discovered evidence of a race-based policy in effect for the Maryland Troopers” (Russell, 1998, p. 41). The policy targeted Black drivers who were felt to provide “the biggest bang for their buck” (Russell, 1998, p. 41). As a result of the suit, in 1993, the Maryland State Police was required to track its traffic stops (Harris, 1999, p. 21). This requirement produced some of the first data on racial profiling.

One of the earliest studies conducted that incorporated the Maryland State Police was carried out by Dr. John Lamberth of Temple University. Lamberth’s study, which was commissioned by the ACLU, involved the use of “rolling surveys” or the observation of drivers on a portion of Highway I-95 to determine driving patterns by race.

After observing more than 5,000 cars, Lamberth was able to determine the race of drivers more than 95% of the time (Harris, 1999). Of the drivers observed, 16.9% were Black, and 75.6% were White. The first substantive finding was that more than 93% of the drivers had violated some traffic law and could have been stopped. However, when Lamberth compared the race of the violators with the race of those who were eventually stopped and searched, he found that from January 1995 to September 1996,

the Maryland State Police reported searching 823 motorists on I-95, north of Baltimore. Of these, 600, or 72.9 percent, were black. Six hundred and sixty-one, or 80.3 percent, were black, Hispanic, or other racial minorities. Only 19.7 percent of those searched in this corridor were white. (Harris, 1999, p. 22)

Moreover, the research found that 13 troopers had conducted more than 85% of the searches. Following this research, other scholars and government agencies began to take the study of racial profiling seriously.

On the heels of Lamberth's pioneering work, researchers began to explore several questions related to racial profiling. Such questions, and the responses noted by Withrow (2006) in his review of the empirical literature up to 2004 (for an earlier review of the literature, see Engel, Calnon, & Bernard, 2002), include the following: (a) Are minorities stopped more frequently? After reviewing 24 relevant studies, the answer was "yes." He found that "of the twenty-four studies . . . eighteen found that Blacks, eight found that Hispanics, and one found that other races are stopped at disproportionately higher rates than they are represented in the benchmark used by the researchers" (p. 50). (b) Are there differences in the reasons for the stops? This question relates to the use of "pretextual" stops for minor offenses as a way to act on hunches to do more comprehensive searches. Such stops were endorsed by the Supreme Court in *Whren v. United States* (1996). Of those studies that examined the reasons for stops, Withrow (2006) found only 13 relevant studies, and in those, only 5 reported substantial differences in the reasons for such stops. As such, the answer to the second question was "no." (c) Are minorities searched more frequently? Only 16 of the studies reviewed included relevant data to answer this question. Nevertheless, "all but one . . . found that minorities are more likely to be searched" (p. 56). (d) Are stops involving minorities more punitive? Of the 13 relevant studies, Withrow (2006) noted that the data clearly revealed disparities, with all of the studies finding "differences in the dispositions of stops with respect to the race or ethnicity of the individual stopped" (p. 57). (e) Are minorities detained longer during stops? At the time of his review, only three of the studies included in his analysis answered this question. Even so, the results of these studies led him to surmise "that race and ethnicity, are, by themselves, not likely valid predictors of the duration of a stop" (p. 64). (f) Are incidents involving physical resistance and confrontation more frequent? From the two studies that spoke to this question, he wrote that "stops involving minorities are more likely to involve incidents of physical resistance or confrontation" (p. 64). And

finally, (g) do officer characteristics matter? Here, according to the four relevant studies, the answer was “no.” In his words, “[the] officer[s] characteristics have no effect on traffic stopping behaviors. White officers are no more likely to stop, search, or arrest minority drivers” (p. 66).

So what has been going on in the scholarly literature on racial profiling since 2004? Well, as one might expect, scholars continue to research the subject. And because many states (29 states as of this writing) now require their state police officers to record the racial/ethnic characteristics of drivers they stop, the topic has become even more fertile ground for researchers.

Gaines (2006) recently examined data from 40,976 traffic stops in Riverside, California. His research found that in general, the stops made by the Riverside Police Department fell in line with population and crime data. As he notes, “thus, crime and other activities appear to be a substantial portion of the stop behavior on the part of the Riverside police officers” (p. 229). Gaines also noted that these findings were likely the result of the department’s extensive training in cultural diversity, increased supervision of officers, and their “comprehensive policy and procedure to codify the department’s position regarding racial profiling” (p. 230).

Schafer, Carter, Katz-Bannister, and Wells (2006) investigated traffic stops using self-reported behavior from police officers. During a 2-year period, the officers tabulated information on the characteristics of the driver, the context of the stop, actions taken by the officer, and the disposition of the encounter (Schafer et al., 2006, pp. 192-193). Results from the 250 officers revealed that as in previous studies, “controlling for gender and age, African American and Hispanic drivers are more likely to be searched or to have their vehicle searched” (Schafer et al., 2006, p. 198). Furthermore, consent searches were more likely to occur if the drivers were African American, Hispanic, and young males. Importantly, though, the research also revealed that such searches were mostly nondiscretionary or related to incidents where someone was being arrested or his or her vehicle had been towed. As for the fruits of such searches, the research revealed that only age and gender served as significant predictors. Thus, young males “were more likely to be found in possession of illicit and/or illegal property” (Schafer et al., 2006, p. 200). As in the Gaines study, the authors surmised that the positive findings were the result of proactive measures that had been taken by the unnamed department that was studied.

A more recent examination of attitudinal data investigated whether citizens believe racial profiling exists (Reitzel & Piquero, 2006). Based on survey data from the 2001 *New York Times* and CBS poll of 721 randomly selected New York City residents, the authors examined a variety of relationships related to racial profiling. In general, though, their findings comported with previous ones. For example, citizens who felt the New York City Police Department (NYPD) was doing a good job also felt that they “were less likely to believe racial profiling was widespread than those who generally disapproved” (Reitzel & Piquero, 2006, p. 175). Other findings indicated that those

persons who had negative encounters with the NYPD felt racial profiling was widespread, those with less education felt profiling was more widespread than those with more education, those residents who approve of the NYPD felt that racial profiling was justified, conservative respondents felt racial profiling was justified, males were more likely than females to believe they had been profiled, and non-White respondents were more likely than Whites to believe they had been profiled (Reitzel & Piquero, 2006, pp. 175-178). In their conclusion, the authors express pessimism as to whether it will ever be known whether racial profiling exists.

Although the studies on racial profiling continue to pour in and reveal that racial profiling is also applicable to other minorities such as Hispanics (Rice, Reitzel, & Piquero, 2005; Ruiz & Woessner, 2006; Weitzer & Tuch, 2005) and Arabs (Onwudiwe, 2005), the latest scholarship on the topic, which employs even more diverse methodological approaches, has not been supportive of the existence of racial profiling (see Grogger & Ridgeway, 2006; Lange, Johnson, & Voas, 2005). Grogger and Ridgeway (2006), for example, present their “veil of darkness” thesis, which argues that if officers engage in racial profiling, because it is more difficult to see the race of the drivers in the evening, the race of the drivers stopped in the evening should differ from those stopped during the day. To test their thesis, the authors used data from the Oakland Police Department. Their results, based on sophisticated statistical analyses, uncovered “little evidence of racial profiling, and our sensitivity analysis suggests that the departures from our maintained assumptions would have to be substantial to overturn our conclusions” (Grogger & Ridgeway, 2006, p. 886).

Our study differs from the previous research in three important ways. First, we examine the nature of the racial profiling lawsuits that make it to federal courts. Such cases provide additional information on the alleged circumstances surrounding racial profiling incidents. Second, a review of legal suits also provides additional information on the nature of the stops. Finally, by examining the decisions of such cases, we will be able to determine how receptive courts have been to allegations of racial profiling. Our methods are described below.

## Method

This research was based on the use of content analyses of federal-level racial profiling civil suits. According to Champion (2006), “content analysis is the systematic qualitative and quantitative description of some form of communication” (p. 321). In this study, the form of communication analyzed is transcripts from federal-level cases (U.S. District Courts). Specifically, the authors used the Lexis/Nexis legal database to locate racial profiling–related lawsuits. This database includes summaries of legal decisions from federal courts. To identify the cases, we entered the search terms *racial profiling* and *police*, and once the cases appeared, they were read and analyzed to determine their relevancy to the research. After eliminating duplicate

cases, class action suit cases where there were limited details of individual cases, and those that were not in line with our study (most notably, those cases in which the term *racial profiling* appeared but was not the focus of the litigation), our initial yield of 254 cases was reduced to 135.

During the review of the cases, several pertinent case characteristics were extracted, coded, and entered into a Statistical Package for the Social Sciences data set. More specifically, the following characteristics were recorded: the state where the case originated, the gender of the person making the allegation, the officer's gender, the number of officers at the time of arrest, the year of the incident, the month the incident took place, the allegations made by the person in the suit (racial profiling under the guise of Fourth, Fifth, Sixth, Eighth, or Fourteenth Amendment violations), the status of the person alleging racial profiling at the time of the incident (criminal vs. noncriminal), the injury status of the person alleging racial profiling, the race of the person alleging racial profiling, the level of police involved in the suit (e.g., state, local, city, township, campus), and the outcome of the case.

A few of the case characteristics require a bit more explanation. First, when we extracted the number of officers at the scene, in many instances, the case indicated a specific number at the scene, but in other instances, the case simply stated that multiple officers arrived at the scene. Because of this, we simply coded this as single or multiple officers. Second, in regard to the allegations made in the suit, the person bringing the suit generally fell into one of two categories: a plaintiff or a defendant. For cases involving plaintiffs, the person bringing the suit was typically an innocent person who believed he or she was targeted by law enforcement, and he or she brought a civil suit against the police department. On the other side, persons who were defendants in racial profiling cases were typically people who had been caught engaging in some criminal activity, and during the appeals process, they alleged that racial profiling was the reason why they were targeted and subsequently apprehended.

Another important point of clarification is in regard to the activities of the person bringing the suit at the time of his or her encounter with the police. Anyone who was found to have an outstanding warrant (even for things such as a suspended license), be in possession of drugs, or have a gun illegally in his or her possession was coded as being engaged in criminal activity. Finally, in those instances where the case described visible injuries and that someone was taken to the hospital, we coded the person as having been injured during the incident.

## Results

### Descriptive Results

The cases began to appear in federal courts in the early 1990s and peaked in 2002 with 24 cases. After this peak, the number of cases declined annually (see Table 1).

**Table 1**  
**Trends in Federal Racial Profiling Lawsuits: 1991 to 2006**

Year of Incident	Frequency	%
1991	1	0.7
1994	2	1.5
1995	2	1.5
1996	2	1.5
1997	5	3.7
1998	8	5.9
1999	15	11.0
2000	19	14.0
2001	21	16.2
2002	24	17.6
2003	14	10.3
2004	14	10.3
2005	7	5.1
2006 <sup>a</sup>	1	0.7
Total	135	100

a. These data are through May 2006.

During this time period, Kansas City produced the largest share of the cases ( $n = 21$ ; 15.6%); however, other states, such as New York ( $n = 16$ ; 11.9%), Pennsylvania ( $n = 13$ ; 9.6%), Texas ( $n = 13$ ; 9.6%), and Illinois ( $n = 10$ ; 7.4%), also had 10 or more cases. As for the distribution of cases by month, March, April, and July had the largest share of cases. But in general, no notable trends emerged here.

As anticipated, most of the plaintiffs were Black Americans ( $n = 57$ ; 42.2%), followed by Hispanics ( $n = 24$ ; 17.8%). A substantial number of cases did not indicate the race of the plaintiff ( $n = 49$ ; 36.3%). It is notable that there were two cases involving persons of Arab descent and two involving Whites. The officers involved in the incidents were largely male ( $n = 85$ ; 63%). Turning to the data on the number of officers at the arrest, we find that most incidents involved multiple officers ( $n = 90$ ; 66.8%). And most of the suits involved officers from local police agencies ( $n = 85$ ; 63%), followed by state police ( $n = 39$ ; 28.9%) and a federal agency ( $n = 10$ ; 7.5%).

A review of the facts surrounding the legal suits showed that in 56.3% ( $n = 76$ ) of the cases, the person making the claim that he or she was racially profiled was found engaging in criminal activity. Furthermore, in only 11.9% ( $n = 16$ ) of the cases was the plaintiff injured during the incident. Most of the plaintiffs allege multiple constitutional violations when they sue ( $n = 79$ ; 58.5%), with only 41.5% ( $n = 56$ ) alleging only racial profiling. As for the outcomes of the cases, the plaintiffs won in only 31.1% ( $n = 42$ ) of the cases. This figure includes partial victories, whereby there were multiple allegations, but the person alleging racial profiling was only victorious on one allegation.



**Table 2**  
**Cross-Tabulation of Single and Multiple Allegations by Case Outcome**

Plaintiff/Defendant Allegations	Won	Lost	Total
Racial profiling	11	45	56
Multiple constitutional violation	31	48	79
Total	42	93	135

**Table 3**  
**Cross-Tabulation of Being Engaged in Criminal Activity by Case Outcome**

Engaged in Criminal Activity	Won	Lost	Total
Yes	16	60	76
No	26	33	59
Total	42	93	135

**Table 4**  
**Cross-Tabulation of Being Injured and Case Outcome**

Injured in Incident	Won	Lost	Total
Yes	11	5	16
No	30	87	117
Total	41	92	133 <sup>a</sup>

a. Two cases had missing information on this aspect of the incident.

## Bivariate Analyses

We also ran some cross-tabulations and chi-square tests to see if there were any significant relationships between some select variables and the case outcomes. First, we investigated whether those persons who simply alleged racial profiling fared better in the courts than those who alleged multiple constitutional violations (see Table 2). Our analysis did produce significant results ( $X^2 = 5.873$ , 1 *df*,  $p < .05$ ). Next, we examined whether when the person alleging racial profiling was engaged in criminal activity, it mattered in the case outcome (see Table 3). This chi-square analysis also produced significant results ( $X^2 = 8.209$ , 1 *df*,  $p < .05$ ). When we examined whether the person alleging racial profiling being injured affected the case outcome (see Table 4), the analysis produced significant results ( $X^2 = 12.267$ , 1 *df*,  $p < .05$ ). However, when we examined whether the gender of the person alleging racial profiling, the type of the police agency involved in the suit, and being Black or Hispanic had any bearing on the case outcomes, the chi-square results were nonsignificant.

**Table 5**  
**Logistic Regression: Predicting Losing the Case ( $N = 74$ )\***

Predictor	Coefficient	Standard Error	One-Tailed $p$
Number of officers involved	0.088	0.689	.450
Recent years	-0.746	0.781	.170
Local police involved	0.603	0.685	.190
African American involved as suspect	-0.050	0.689	.471
Officer female	20.364	40,193.013	.500
Spring season	0.111	0.678	.435
Claim (racial profiling)	-1.782	0.718	.007
Criminal	-0.674	0.705	.170
Injury not suffered by plaintiff/defendant	2.381	1.322	.036
Plaintiff's/defendant's gender	1.736	1.057	.050
Significance	.004		
Nagelkerke's pseudo $R$ -square	.412		
Hosmer and Lemeshow test (significance)	.439		

\* The number of cases used in the analysis was reduced due to missing data.

### Multivariate Analyses

Table 5 reports the results of the multivariate analysis. Logistic regression is the method of choice, as the dependent variable (case outcome) is dichotomous (on logistic regression (see George & Mallery, 2005). The variable is coded as follows: 1 = *winning* and 2 = *losing the case*.

The table reports the coefficient, its standard error, and the significance level. We see the following:

1. A claim of racial profiling predicts less likelihood of losing the case.
2. A plaintiff not suffering an injury is associated with greater odds of losing the case.
3. Female plaintiffs are more apt to lose.

Other than that, none of the independent variables has any substantial effect on the dependent variable.

Despite the fact that only three variables had an effect on case outcome, the model works fairly well. The significance of the model is .004. Nagelkerke's pseudo  $R$ -square is a respectable .412. The Hosmer and Lemeshow test is significant at .439, indicating an acceptable model (with this test, one looks for a number higher than .05 to indicate an adequate fit). That is, if the  $p$  value is large, the model is well calibrated. Thus, the findings can be interpreted as respectable.

Table 6 examines the extent to which the set of independent variables predicts the cases accurately. We see the following: The predictors accurately predicted winning a case 52.3% of the time. They predicted exceptionally well losing the case. The model accurately predicted 94.1% of the times that the case was lost. Overall, combining the winning and losing percentages, 81.1% of the outcomes were properly predicted.

**Table 6**  
**Classifying Predictions**

Independent Variables Predicted Outcomes of Cases to Be	Observed Outcomes of Those Cases Were	Percentage Correct
Win 23 cases	Win 12, Lose 11	52.2
Lose 51 cases	Win 3, Lose 48	94.1
Total		81.1

## Discussion and Conclusion

So what does this study tell us? The fact that cases are on the decline could suggest a few things. First, it could be that with heightened awareness surrounding the practice of racial profiling, officers are more sensitive to the practice and are scrutinizing minorities less. Second, and in a similar vein, it could be that policies banning racial profiling in departments around the country have become institutionalized. Therefore, officers are less likely to engage in racial profiling, which would obviously result in fewer lawsuits. Notably, government studies have shown that the likelihood of being stopped is about the same for Blacks, Hispanics, and Whites, but racial minorities are still being searched during stops more often than Whites (Smith & Durose, 2006, p. 5). Third, because of the possibility of negative publicity, police departments might be settling many of these cases out of court. Given this possibility, it is hard to know for sure why there has been such a significant drop in suits.

The fact that Blacks and Hispanics were the largest share of the plaintiffs was not a surprise. "Driving while Black" and "driving while Brown" continue to be the main concerns related to racial profiling. Except for the more recent experiences of Arab Americans and Muslims in the aftermath of September 11, 2001, Blacks and Hispanics continue to be the targets of police scrutiny. It was, however, interesting to see that there were two cases in which Whites alleged racial profiling. These cases presented two interesting scenarios. In one case, the White person was Italian and was mistaken for a person of Hispanic descent. In the second case, the White person alleged that he was profiled as a drug buyer because he was a White person in a high-crime neighborhood in Camden, New Jersey. Ironically, some might surmise that if there was a greater prevalence of such cases, racial profiling would likely be attacked more vigorously. On another front, none of the cases involved Asian Americans, which might suggest the "model minority" moniker works in their favor when officers use racial profiling to target whom they scrutinize. On the whole, the cases involving Whites, and the absence of cases involving Asian Americans, reveal another side of racial profiling, which certainly requires more scholarly attention.

As for the officers, it was no surprise to see that they were mostly male and employed by local police departments. Although the early literature in the area pointed to state police departments as the most significant contributors to the problem, more and more research has emerged that shows that a large share of racial profiling occurs in local communities—and is perpetrated by local police officers.

The finding that there were often multiple police officers involved in these incidents could be a product of two things. On one hand, this finding could support the long-standing claim by racial minorities that when they are stopped, multiple police are called to the scene. This, they believe, occurs because there is an increased sense of “dangerousness” when racial minorities are involved in traffic stops. Even so, there were very few instances in which a plaintiff was injured. On the other hand, the results do show that nearly 56% of these cases did involve the plaintiff’s being caught engaging in some criminal activity, which could, at least in the more serious situations, justify the presence of multiple officers.

This article set out to examine the nature of federal-level racial profiling cases. An analysis of such cases appeared to show support for the trends in the current racial profiling literature. Most notably, the reduction of cases appearing in federal courts could be an indication that the practice of racial profiling has been curbed by the decade-long attention and recent changes in recording requirements and police practices in general. Continuing to monitor case trends is essential for two reasons. First, the legal system is what instigated the foray of social scientists into racial profiling research. As such, it might be a place where other questions arise in which social scientists might find new directions for research. Second, the courts are also the place where potential future challenges to the *Whren* decision will emanate. Therefore, a current understanding of the characteristics of racial profiling cases, and the nature of their decisions, is essential for racial profiling scholars.

Because of the nature of this research, two cautions are noted to readers. Any research that uses databases such as the one employed here is subject to selection bias or the fact that only the cases that made it to court are reviewed. Because of this, it could be that the cases herein were the most egregious, and therefore, they were pursued to the fullest extent. It could also be that for a number of reasons, other cases were settled out of court, which could, depending on the circumstances of such cases, represent a whole set of different incidents. Finally, this research only examined federal-level cases, which does not give any concrete insights into what is happening in state-level cases. Even with these limitations, this research provides complementary insights to the current racial profiling literature.

In closing, it is incumbent on researchers to continue to examine racial profiling from multiple dimensions. Because, in contrast to those who believe that “we will never know if racial profiling exists,” our review of federal-level cases suggests that it has existed—and still does. The remaining lingering question of scholarly import is this: What is the overall prevalence of such incidents? This is a question we urge researchers to continue to examine.

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