

# [Race college essay](https://assignbuster.com/race-3425-words-college-essay/)

The interviews excerpted here show that racially biased pretextual traffic stops have astrong and immediate impact on the individual African-American drivers involved. Thesestops are not the minor inconveniences they might seem to those who are not subjected tothem. Rather, they are experiences that can wound the soul and cause psychological scartissue to form. And the statistics show that these experiences are not simply disconnectedanecdotes or exaggerated versions of personal experiences, but rather established andpersistent patterns of law enforcement conduct. It may be that these stops do not springfrom racism on the part of individual officers, or even from the official policies of thepolice departments for which they work. Nevertheless, the statistics leave little doubtthat, whatever the source of this conduct by police, it has a disparate and degradingimpact on blacks. But racial profiling is important not only because of the damage it does, but also becauseof the connections between stops of minority drivers and other, larger issues of criminaljustice and race. Put another way, “ driving while black” reflects, illustrates, andaggravates some of the most important problems we face today when we debate issuesinvolving race, the police, the courts, punishment, crime control, criminal justice, andconstitutional law.

A. The Impact on the InnocentThe Fourth Amendment to the United States Constitution prohibits unreasonable searchesand seizures, and specifies some of the requirements to be met in order to procure awarrant for a search. Since 1961–and earlier in the federal court system–the SupremeCourt has required the exclusion of any evidence obtained through an unconstitutionalsearch or seizure. From its inception, the exclusionary rule has inspired spiritedcriticism. Cardozo himself said that “ the criminal is to go free because the constable hasblundered,” capturing the idea that the bad guy, caught red handed, gets a tremendouswindfall when he escapes punishment because of a mistake in the police officer’sbehavior. We need not even go all the way back to Cardozo to hear the argument that theexclusion of evidence protects–and rewards–only the guilty.

The justification advanced for the exclusionary rule is that while the guilty may receivethe most direct benefit when a court suppresses evidence because of a constitutionalviolation, the innocent–all the rest of us–are also better off. The right to be free fromillegal searches and seizures belongs not just to the guilty, but to everyone. The guiltyparties who bring motions to suppress are simply the most convenient vehicles forvindicating these rights, because they will have the incentive–escaping conviction–tolitigate the issues. In so doing, the argument goes, the rights of all are vindicated, andpolice are deterred from violating constitutional rules on pain of failing to convict theguilty. One problem with this argument is that it takes imagination: the beneficiaries ofsuppressed evidence other than the guilty who escape punishment are ephemeral andamorphous. They are everybody–all of us. And if they are everybody, they quicklybecome nobody, because law-abiding, taxpaying citizens are unlikely to view ourselves asneeding these constitutional protections. After all, we obey the law; we do not commitcrimes. We can do without these protections–or so we think.

It is not my intention here to recapitulate every argument for and against theexclusionary rule. Rather, I wish to point out a major difference between the usualFourth Amendment cases and the most common “ driving while black” cases. While policecatch some criminals through the use of pretext stops, far more innocent people are likelyto be affected by these practices than criminals. Indeed, the black community as a wholeundoubtedly needs the protection of the police more than other segments of societybecause African- Americans are more likely than others to be victims of crime.

Ironically, it is members of that same community who are likely to feel the consequencesof pretextual stops and be treated like criminals. It is the reverse of the usual FourthAmendment case, in that there is nothing ghostlike or indefinite about those whose rightswould be vindicated by addressing these police practices. On the contrary, the victimsare easy to identify because they are the great majority of black people who aresubjected to these humiliating and difficult experiences but who have done absolutelynothing to deserve this treatment–except to resemble, in a literally skin-deep way, asmall group of criminals. While whites who have done nothing wrong generally have littleneed to fear constitutional violations by the police, this is decidedly untrue for blacks.

Blacks attract undesirable police attention whether they do anything to bring it onthemselves or not. This makes “ driving while black” a most unusual issue of constitutionalcriminal procedure: a search and seizure question that directly affects a large, identifiable group of almost entirely innocent people.

B. The Criminalization of BlacknessThe fact that the cost of “ driving while black” is imposed almost exclusively on theinnocent raises another point. Recall that by allowing the police to stop, question, andsometimes even search drivers without regard to the real motives for the search, theSupreme Court has, in effect, turned a blind eye to the use of pretextual stops on a racialbasis. That is, as long as the officer or the police department does not come straight outand say that race was the reason for a stop, the stop can always be accomplished based onsome other reason–a pretext. Police are therefore free to use blackness as a surrogateindicator or proxy for criminal propensity. While it seems unfair to view all members ofone racial or ethnic group as criminal suspects just because some members of that groupengage in criminal activity, this is what the law permits.

Stopping disproportionate numbers of black drivers because some small percentage arecriminals means that skin color is being used as evidence of wrongdoing. In effect, blackness itself has been criminalized. And if “ driving while black” is a powerfulexample, it is not the only one. For instance, in 1992, the city of Chicago enacted anordinance that made it a criminal offense for gang members to stand on public streets orsidewalks after police ordered them to disperse. The ordinance was used to make overforty-five thousand arrests of mostly African-American and Latino youths before Illinoiscourts found the ordinance unconstitutionally vague. Supporters said that the lawlegitimately targeted gang members who made the streets of black and Latinoneighborhoods unsafe for residents. Accordingly, the thousands of arrests that resultedwere a net good, regardless of the enormous amount of police discretion that wasexercised almost exclusively against African-Americans and Hispanics. Opponents, such asProfessor David Cole, argued that the ordinance had, in effect, created a new crime:“ standing while black.” In June of 1999, the U. S. Supreme Court declared the lawunconstitutional, because it did not sufficiently limit the discretion of officers enforcingThe arrests under the Chicago ordinance share something with “ driving while black”: ineach instance, the salient quality that attracts police attention will often be the suspect’srace or ethnicity. An officer cannot know simply by looking whether a driver has a validlicense or carries insurance, as the law requires, and cannot see whether there is awarrant for the arrest of the driver or another occupant of the car. But the officer cansee whether the person is black or white. And, as the statistics presented here show, police use blackness as a way to sort those they are interested in investigating from thosethat they are not. As a consequence, every member of the group becomes a potentialcriminal in the eyes of law enforcement.

C. Rational DiscriminationWhen one hears the most common justification offered for the disproportionate numbersof traffic stops of African-Americans, it usually takes the form of rationality, notracism. Blacks commit a disproportionate share of certain crimes, the argument goes.

Therefore, it only makes sense for police to focus their efforts on African-Americans. Toparaphrase the Maryland State Police officer quoted at the beginning of this Article, thisis not racism–it is good policing. It only makes sense to focus law enforcement effortsand resources where they will make the most difference. In other words, targeting blacksis the rational, sound policy choice. It is the efficient approach, as well.

As appealing as this argument may sound, it is fraught with problems because itsunderlying premise is dubious at best. Government statistics on drug offenses, which arethe basis for the great majority of pretext traffic stops, tell us virtually nothing aboutthe racial breakdown of those involved in drug crime. Thinking for a moment about arrestdata and victimization surveys makes the reasons for this clear. These statistics showthat blacks are indeed overrepresented among those arrested for homicide, rape, robbery, aggravated assault, larceny/theft, and simple assault crimes. Note that becausethey directly affect their victims, these crimes are at least somewhat likely to bereported to the police and to result in arrests. By contrast, drug offenses are much lesslikely to be reported, since possessors, buyers, and sellers of narcotics are all willingparticipants in these crimes. Therefore, arrest data for drug crimes is highly suspect.

These data may measure the law enforcement activities and policy choices of theinstitutions and actors involved in the criminal justice system, but the number of drugarrests does not measure the extent of drug crimes themselves. Similarly, the racialcomposition of prisons and jail populations or the racial breakdown of sentences for thesecrimes only measures the actions of those institutions and individuals in charge; it tells usnothing about drug activity itself.

Other statistics on both drug use and drug crime show something surprising in light of theusual beliefs many hold: blacks may not, in fact, be more likely than whites to be involvedwith drugs. Lamberth’s study in Maryland showed that among vehicles stopped andsearched, the “ hit rates”–the percentage of vehicles searched in which drugs werefound–were statistically indistinguishable for blacks and whites. In a related situation, the U. S. Customs Service, which is engaged in drug interdiction efforts at the nation’sairports, has used various types of invasive searches from pat downs to body cavitysearches against travelers suspected of drug use. The Custom Service’s own nationwidefigures show that while over forty-three percent of those subjected to these searcheswere either black or Hispanic, “ hit rates” for these searches were actually lower forboth blacks and Hispanics than for whites. There is also a considerable amount of data ondrug use that belies the standard beliefs. The percentages of drug users who are black orwhite are roughly the same as the presence of those groups in the population as a whole.

For example, blacks constitute approximately twelve percent of the country’s population.

In 1997, the most recent year for which statistics are available, thirteen percent of alldrug users were black. In fact, among black youths, a demographic group often portrayedas most likely to be involved with drugs, use of all illicit substances has actually beenconsistently lower than among white youths for twenty years running.

Nevertheless, many believe that African-Americans and members of other minoritygroups are responsible for most drug use and drug trafficking. Carl Williams, the head ofthe New Jersey State Police dismissed by the Governor in March of 1999, stated that“ mostly minorities” trafficked in marijuana and cocaine, and pointed out that when seniorAmerican officials went overseas to discuss the drug problem, they went to Mexico, notIreland. Even if he is wrong, if the many troopers who worked for Williams share hisopinions, they will act accordingly. And they will do so by looking for drug criminalsamong black drivers. Blackness will become an indicator of suspicion of drug crimeinvolvement. This, in turn, means that the belief that blacks are disproportionatelyinvolved in drug crimes will become a self- fulfilling prophecy. Because police will lookfor drug crime among black drivers, they will find it disproportionately among blackdrivers. More blacks will be arrested, prosecuted, convicted, and jailed, therebyreinforcing the idea that blacks constitute the majority of drug offenders. This willprovide a continuing motive and justification for stopping more black drivers as a rationalway of using resources to catch the most criminals. At the same time, because police willfocus on black drivers, white drivers will receive less attention, and the drug dealers andpossessors among them will be apprehended in proportionately smaller numbers than theirpresence in the population would predict.

The upshot of this thinking is visible in the stark and stunning numbers that show what ourcriminal justice system is doing when it uses law enforcement practices likeracially-biased traffic stops to enforce drug laws. African- Americans are just 12% ofthe population and 13% of the drug users, but they are about 38% of all those arrestedfor drug offenses, 59% of all those convicted of drug offenses, and 63% of all thoseconvicted for drug trafficking. While only 33% of whites who are convicted are sent toprison, 50% of convicted blacks are jailed, and blacks who are sent to prison receivehigher sentences than whites for the same crimes. For state drug defendants, the averagemaximum sentence length is fifty-one months for whites and sixty months for blacks.

D. The Distortion of the Legal SystemAmong the most serious effects of “ driving while black” on the larger issues of criminaljustice and race are those it has on the legal system itself. The use of pretextual trafficstops distorts the whole system, as well as our perceptions of it. This undermines thesystem’s legitimacy, which effects not only African-Americans but every citizen, sincethe health of our country depends on a set of legal institutions that have the public’s1. Deep CynicismRacially targeted traffic stops cause deep cynicism among blacks about the fairness andlegitimacy of law enforcement and courts. Many of those African-Americans interviewedfor this Article said this, some in strong terms. Karen Brank said she thought that herlaw-abiding life, her responsible job, her education, and even her gender protected herfrom arbitrary treatment by the police. She thought that these stops happened only toyoung black men playing loud music in their cars. Now, she feels she was “ naive,” and hasconsiderably less respect for police and all legal institutions. For James, who looks athimself as someone who has toed the line and lived an upright life, constant stops are areminder that whatever he does, no matter how well he conducts himself, he will stillattract unwarranted police attention. Michael describes constant police scrutiny assomething blacks have to “ play through,” like athletes with injuries who must performdespite significant pain.

Thus, it is no wonder that blacks view the criminal justice system in totally differentterms than whites do. They have completely different experiences within the system thanwhites have, so they do not hold the same beliefs about it. Traffic stops of whites usuallyconcern the actual traffic offense allegedly committed; traffic stops of blacks are oftenarbitrary, grounded not in any traffic offense but in who they are. Since traffic stopsare among the most common encounters regular citizens have with police, it is hardlysurprising that pretextual traffic stops might lead blacks to view the whole of the systemdifferently. One need only think of the split-screen television images that followed theacquittal in the O. J. Simpson case–stunned, disbelieving whites, juxtaposed with jubilantblacks literally jumping for joy–to understand how deep these divisions are. Polling datahave long shown that blacks believe that the justice system is biased against them. Forexample, in a Justice Department survey released in 1999, blacks were more than twiceas likely as whites to say they are dissatisfied with the police. But this cynicism is nolonger limited to blacks; it is now beginning to creep into the general population’sperception of the system. Recent data show that a majority of whites believe that policeracism toward blacks is common. The damage done to the legitimacy of the system hasspread across racial groups, and is no longer confined to those who are most immediatelyPerhaps the most direct result of this cynicism is that there is considerably moreskepticism about the testimony of police officers than there used to be. This is especiallytrue in minority communities. Both the officer and the driver recognize that eachpretextual traffic stop involves an untruth. When a black driver asks a police officerwhy he or she has been stopped, the officer will most likely explain that the drivercommitted a traffic violation. This may be literally true, since virtually no driver canavoid committing a traffic offense. But odds are that the violation is not the real reasonthat the officer stopped the driver. This becomes more than obvious when the officerasks the driver whether he or she is carrying drugs or guns, and for consent to search thecar. If the stop was really about enforcement of the traffic laws, there would be no needfor any search. Thus, for an officer to tell a driver that he or she has been stopped for atraffic offense when the officer’s real interest is drug interdiction is a lie–a legallysanctioned one, to be sure, but a lie nonetheless. It should surprise no one, then, that thesame people who are subjected to this treatment regard the testimony and statements ofpolice with suspicion, making it increasingly difficult for prosecutors to obtainconvictions in any case that depends upon police testimony, as so many cases do. Theresult may be more cases that end in acquittals or hung juries, even factually and legallystrong ones.

2. The Effect on the GuiltyAs discussed above, one of the most important reasons that the “ driving while black” problem represents an important connection to many larger issues of criminal justice andrace is that, unlike many other Fourth Amendment issues, the innocent pay a clear anddirect price. Citizens who are not criminals are seen as only indirect beneficiaries ofFourth Amendment litigation in other contexts because the guilty party’s vindication ofhis or her own rights serves to vindicate everyone’s rights. Law-abiding blacks, however, have a direct and immediate stake in redressing the “ driving while black” problem. Whilepretextual traffic stops do indeed net some number of law breakers, innocent blacks areimposed upon through frightening and even humiliating stops and searches far more oftenthan the guilty. But the opposite argument is important, too: “ driving while black” has adevastating impact upon the guilty. Those who are arrested, prosecuted, and often jailedbecause of these stops, are suffering great hardships as a result.

The response to this argument is usually that if these folks are indeed guilty, so what? Inother words, it is a good thing that the guilty are caught, arrested, and prosecuted, nomatter if they are black or white. This is especially true, the argument goes, in the blackcommunity, because African- Americans are disproportionately the victims of crime.

But this argument overlooks at least two powerful points. First, prosecution for crimes, especially drug crimes, has had an absolutely devastating impact on black communitiesnationwide. In 1995, about one in three black men between the ages of 20 and 29 wereunder the control of the criminal justice system–either in prison or jail, on probation, oron parole. In Washington, D. C., the figure is 50% for all black men between the age ofeighteen and thirty-five. Even assuming that all of those caught, prosecuted, convicted andsentenced are guilty, it simply cannot be a good thing that such a large proportion ofyoung men from one community are adjudicated criminals. They often lose their right tovote, sometimes permanently. To say that they suffer difficulties in family life and ingaining employment merely restates the obvious. The effect of such a huge proportion ofpeople living under these disabilities permanently changes the circumstances not just ofthose incarcerated, but of everyone around them.

This damage is no accident. It is the direct consequence of “ rational law enforcement” policies that target blacks. Put simply, there is a connection between where police lookfor contraband and where they find it. If police policy, whether express or implied, dictates targeting supposedly “ drug involved” groups like African-Americans, and ifofficers follow through on this policy, they will find disproportionate numbers ofAfrican-Americans carrying and selling drugs. By the same token, they will not find drugswith the appropriate frequency on whites, because the targeting policy steers policeattention away from them. This policy not only discriminates by targeting large numbersof innocent, law abiding African-Americans; it also discriminates between racial groupsamong the guilty, with blacks having to bear a far greater share of the burden of drugprohibition.

3. The Expansion of Police DiscretionAs the discussion of the law involving traffic stops and the police actions that oftenfollow showed, police have nearly complete discretion to decide who to stop. According toall of the evidence available, police frequently exercise this discretion in aracially-biased way, stopping blacks in numbers far out of proportion to their presenceon the highway. Law enforcement generally sees this as something positive because themore discretion officers have to fight crime, the better able they will be to do the job.

Police discretion cannot be eliminated; frankly, even if it could be, this would notnecessarily be a desirable goal. Officers need discretion to meet individual situationswith judgment and intelligence, and to choose their responses so that the ultimate resultwill make sense. Yet few would contend that police discretion should be limitless. But thisis exactly what the pretextual stop doctrine allows. Since everyone violates the trafficcode at some point, it is not a matter of whether police can stop a driver, but whichBibliography: