

## 10.1 Police Investigation

Multiple sources of data are available to assist attorneys investigating claims of selective enforcement in violation of the state and federal guarantees of equal protection, or of unlawful search or seizure in violation of the Fourth Amendment and the parallel state constitutional provision, N.C. CONST. art. I, § 20. This section identifies the type of data available to support claims relating to unconstitutional law enforcement practices, and explains how such data can be located and analyzed.

### A. Online Court Records

Information about charging patterns can be obtained from online resources maintained by the North Carolina Administrative Office of the Courts (AOC). Attorneys can conduct a search of criminal cases through the AOC's Criminal Information System (terminals are available in each courthouse). See AOC Computer Instructions in the Race Materials Bank at [www.ncids.org](http://www.ncids.org) (select "Training and Resources"). They may also query the AOC's online criminal calendar, by officer or agency, to produce a list of cases for a particular officer or agency. Once they obtain case numbers and other identifying information, they can access additional court records. See [Statewide Officer Court Appearance Query](#), NCCOURTS.ORG (last visited Sept. 25, 2014).

For example, in the case of *State v. Villeda*, 165 N.C. App. 431 (2004), after a conversation with a trooper in which he mentioned that he believed most Hispanic males drive drunk over the weekend, attorney Leonor Childers searched an AOC criminal computer for cases in which the trooper at issue was identified as the "complainant." This search provided her with a list of the trooper's citations, which allowed her to pull the corresponding court "shucks" described below.

### B. Court "Shucks"

Using records maintained in the courthouse by the clerk of court, and without employing expert assistance, attorneys have been able to determine stopping patterns of particular law enforcement officers. They have done so by pulling the "shuck" in each case (the envelope or folder containing the court records in each case) and looking at all of the citations that a particular officer has issued over a given time period. With these records, attorneys have been able to gather information about the race or ethnicity of drivers stopped by a particular officer, the specific geographic area where the stops occurred, and even the age and model of the vehicles stopped, which they then can compare with census data to determine whether the evidence suggests that the officer may be targeting minorities. An example of such an analysis appears in *State v. Villeda*:

[Defense attorney] Childers further testified that, following her discussion with Trooper Carroll, she began looking into his citation history. She pulled up all of Trooper Carroll's citations from 1 January 2001 to 24 March 2002, a total of 716 citations, and found that 71% of DWI citations issued by Trooper Carroll involved Hispanic

individuals. Only 16% of DWI stops were of Caucasians, 9% of African-Americans, and 2% of other racial backgrounds. After Trooper Carroll came under investigation by Internal Affairs in the spring of 2002 for racial profiling, no Hispanics were cited by him for DWI violations.

In plotting the DWI stops on a map, Childers noted “two fairly concentrated areas”: Area 1—the U.S. 70–Hillsborough Road–Main Street area in Durham (within a two-to-three-mile radius of La Maraca), and Area 2—encompassing Miami Boulevard, East Durham, Geer Street, and Holloway Street (including Circle K). According to the 2000 census data Childers reviewed, the Hispanic population in Durham County amounts to approximately 7% of the general population. However, the census data for LaSalle Street in the city of Durham, which is located in Area 1 and a quarter mile from La Maraca, reveals a population of 32% Hispanics and 36% African-Americans.

165 N.C. App. 431, 433–34 (2004).

### **C. Division of Criminal Statistics**

The North Carolina Attorney General, through its Division of Criminal Statistics in the North Carolina Department of Justice, is required to collect information about criminal law administration, including crimes committed, arrests made, convictions, acquittals, and punishment, including the race of offenders. *See* G.S. 114-10(1). G.S. 114-10.01 mandates the collection of traffic stop data, including “[i]dentifying characteristics of the drivers stopped, including the race or ethnicity” and “the race or ethnicity . . . of each person searched.” Pursuant to this law, the Division of Criminal Information of the North Carolina Department of Justice must collect statistics on traffic stops by state troopers and other state law enforcement officers. *Id.* This statute also requires the Division to collect statistics on many local law enforcement agencies. *Id.* A law enforcement officer subject to the provisions of G.S. 114-10.01 must record traffic stop data on State Bureau of Investigation Form SBI-122, which he or she must file with his or her local agency. The officer’s agency must then electronically forward the information collected on the SBI-122 forms to the SBI Traffic Stops Unit.

Traffic stop reports reflecting traffic stop data collected pursuant to G.S. 114-10, including reports identifying the race and ethnicity of drivers or passengers stopped and/or searched, may be accessed on the [North Carolina Traffic Stop Statistics](#) section of the Division’s website. This web-based tool allows users to create reports reflecting stops, searches, and enforcement actions taken by various law enforcement agencies during time periods designated by the user.

Attorneys may also request data collected on SBI-122 forms from the SBI Traffic Stops Unit. A subpoena or court order should not be necessary to obtain these records. Unless a

specific statutory exception exists, records maintained by state and local government agencies are public records. *See generally News and Observer Publishing Co. v. Poole*, 330 N.C. 465 (1992). Counsel may tailor the request by asking for data for all stops made by the law enforcement agency in question during the time period and in the geographic location in which the client was stopped. Alternatively, counsel may submit a public records request to the relevant law enforcement agency for the traffic stop data sought. *See Request for Public Records and Affidavit in Support of Motion to Suppress Illegal Stop and Illegal Search* (noting that the contents of the affidavit were based in part on materials provided by the sheriff's department in response to a public records request) in the Race Materials Bank at [www.ncids.org](http://www.ncids.org) (select "Training and Resources").

In recent years, officers have begun to use additional numeric codes when entering the required data on the SBI-122 forms. For example, a motorist's race may be recorded as "3" and sex may be identified as "1". Therefore, attorneys must use a glossary of codes to decipher the recent forms. A glossary may be found in the Race Materials Bank at [www.ncids.org](http://www.ncids.org) (select "Training & Resources").

The officer's name is not included on the SBI-122 forms. In place of a name, the officer enters a number that is assigned by the officer's employing agency. G.S. 114-10.01(d) provides that the "correlation between the identification numbers and the names of the officers shall not be a public record." Although this information is not available to the public generally, the statute allows the officer's employing agency to disclose this information when required by a court order to resolve a claim or defense before the court. Motions for disclosure of an officer's identification number may be made before or alongside motions to suppress evidence arising out of a stop or search. *See Motion to Suppress Illegal Stop and Search and Motion to Disclose Officer's ID Number* in the Race Materials Bank at [www.ncids.org](http://www.ncids.org) (select "Training & Resources"). In addition to seeking disclosure of such information through a court order, some North Carolina attorneys have determined the identity of individual stopping officers associated with the SBI-122 numbers by comparing public court files with the data collected on SBI-122 forms. For example, Durham attorney Kerstin Walker Sutton has compared data from SBI forms, ACIS, and court files to determine an officer's SBI-122 number and analyze whether the evidence supported a claim of selective enforcement. Her approach to analyzing available sources of traffic stop data, along with materials from two cases in which she employed this approach, may be found in the Race Materials Bank at [www.ncids.org](http://www.ncids.org) (select "Training & Resources"). In these cases, identifying the officer listed on the SBI-122 forms allowed her to examine possible patterns by the officer, not just those that resulted in the filing of formal charges. *See id.*

#### **D. Traffic Stop Data Search Tool under Development by the Southern Coalition for Social Justice**

An additional resource for lawyers seeking North Carolina traffic stop data is currently under development by the Southern Coalition for Social Justice ("SCSJ"). SCSJ is developing a website to help users analyze possible racial disparities in traffic stops, searches, and arrests conducted by North Carolina law enforcement officers. The website

will allow users to:

- generate statistical reports, drawn from the aggregate data reported to the SBI pursuant to G.S. 114-10.01, detailing the relative probability of Black, White, and Latino motorists being searched when stopped by a particular department for a given offense;
- access statewide averages for comparative purposes;
- generate reports on contraband discovery rates, broken down by race, age, and gender;
- identify any departments in North Carolina that are not in compliance with the requirements imposed by the data collection statute; and
- use the website as a management tool within law enforcement agencies to identify officers generating the largest racial disparities.

The website, which will be available beginning in late 2014 or early 2015 and updated regularly, will include all reported traffic stops that have occurred in the state of North Carolina since January 1, 2000—currently an estimated 14 million. Questions about the website may be directed to SCSJ attorney and Soros Justice Fellow Ian A. Mance at [ianmance@southerncoalition.org](mailto:ianmance@southerncoalition.org), who, at the time of publication of this manual, was available to assist attorneys in analyzing traffic stop data as necessary. SCSJ also periodically releases reports analyzing North Carolina traffic stop data. *See, e.g.*, PowerPoint Slides of Ian A. Mance, [Racial Profiling in Durham](#), NCIDS.COM (last visited Sept. 22, 2014).

#### **E. U.S Bureau of Justice Statistics**

The Bureau of Justice Statistics (BJS), a part of the Office of Justice Programs in the U.S. Department of Justice, provides a tool for accessing and analyzing arrest data, including the race, age, and sex of arrestees. This tool allows the user to generate tables and graphs of arrests for various offenses. The data, which is reported by law enforcement agencies themselves, can be broken down by agency or state. For example, the user can generate the number of Black adults arrested by the Durham Police Department in 2008 for the offense of breaking or entering, and compare that to the number of White adults arrested for the same offense. *See* Bureau of Justice Statistics, [Arrest Data Analysis Tool](#), BJS.GOV (last visited Sept. 22, 2014).

Additionally, the BJS conducts traffic stop surveys, collects data on state traffic stop data collection practices, and publishes reports concerning police behavior during traffic stops. The Bureau's traffic stop materials are available online. *See* Bureau of Justice Statistics, [Traffic Stops](#), BJS.GOV (last visited Sept. 22, 2014).

#### **F. The North Carolina Commission on Racial and Ethnic Disparities in the Criminal Justice System (NC-CRED)**

NC-CRED is a collaborative, research-based organization whose mission is to identify,

document, and alleviate racial and ethnic disparities in the criminal justice system. The Commission grew out of the North Carolina Advocates for Justice's Racial and Ethnic Bias in the Criminal Justice System Task Force (Task Force), a group of attorneys, policy makers, community leaders, and scholars who examined traffic stop data, drug and habitual felon convictions, and prison populations. The members of the subsequently-formed Commission include judges, police chiefs, public defenders, private defense attorneys, prosecutors, and professors. The history of the Commission and the Task Force is described on its website. See North Carolina Advocates for Justice, [Task Force History](#), NCAJ.COM (last visited Sept. 22, 2014). Data collected and analyzed by NC-CRED and the Task Force may prove useful to attorneys litigating claims of racial profiling. For example, the Task Force has published reports on the prison population, the habitual felon prison population, and the drug prison population. Task Force and Commission publications are available online. See North Carolina Advocates for Justice, [NC-CRED Publications](#), NCAJ.COM (last visited Sept. 22, 2014).

**Baumgartner study.** In 2012, the Task Force partnered with UNC professor Frank Baumgartner to publish a report analyzing state-wide traffic stop data, including approximately eleven years of traffic stop data. See FRANK R. BAUMGARTNER & DEREK EPP, [NORTH CAROLINA TRAFFIC STOP STATISTICS ANALYSIS: FINAL REPORT TO THE NORTH CAROLINA ADVOCATES FOR JUSTICE TASK FORCE ON RACIAL AND ETHNIC BIAS](#) 5 (2012) [hereinafter "Baumgartner Study"]. The study's authors concluded that, compared to White motorists, Black and Latino motorists and passengers in North Carolina are almost twice as likely to be searched and twice as likely to be arrested following a traffic stop. Using the data collected on SBI-122 forms, attorneys may be able to conduct their own small scale studies of patterns within a particular agency or of a particular officer. See *supra* § 10.1C, Division of Criminal Statistics. Traffic stop data study author Frank Baumgartner may be able to either assist attorneys in analyzing traffic stop data or direct attorneys to someone else who can do so.

### **G. Lippard and Page Study of Traffic Stop Data**

In 2011, researchers conducted a study of available traffic stop data from 32 randomly selected North Carolina law enforcement agencies and concluded that minorities had higher stop rates than whites in over 50% of the sampled agencies. See Cameron D. Lippard & Amy Dellinger Page, [Driving While Non-White: Exploring Traffic Stops and Post-Stop Activities in North Carolina, 2005–2009](#), 9 SOCIATION TODAY (Fall/Winter 2011) (Sociation Today is a peer-reviewed web-based publication of the North Carolina Sociological Association).

### **H. Expert Witnesses on the Subject of Racial Profiling**

In some cases, attorneys may be able to enlist academics, researchers, consultants, or graduate students to assist with statistical analyses. The following is a brief list of researchers who have provided expert assistance in analyzing claims of racial profiling:

- [Dr. Katherine Beckett](#), Professor, Law, Society & Justice Program and Department of Sociology, University of Washington
- [Dr. Jeffrey Fagan](#), Isidor and Seville Sulzbacher Professor of Law, Columbia University
- [Dr. John Lamberth](#), CEO of Lamberth Consulting
- [Dr. Ralph B. Taylor](#), Professor of Criminal Justice, Temple University
- [Dr. Frank Baumgartner](#), Richard J. Richardson Distinguished Professor of Political Science, University of North Carolina at Chapel Hill

### **I. North Carolina Public Defender Committee on Racial Equity (NC PDCORE)**

The mission of NC PDCORE, a committee of the North Carolina Public Defender Association, is to reduce and ultimately eliminate racial and ethnic disparities in the criminal justice system through education, collaboration, and litigation. The NC PDCORE website contains a collection of litigation materials, data, publications, reports, books, links, and other tools regarding racial disparities in the criminal justice system, along with regular updates distributed to NC PDCORE members and posted on the committee's website. *See* [NC PDCORE](#), NCIDS.COM/PD-CORE/ (last visited Sept. 22, 2014) (select "Resources").

### **J. Other Tools Related to Racial Profiling Data**

If your client believes that she may have been subjected to racial profiling at a vehicle checkpoint, she may want to report this concern to the ACLU of North Carolina by completing a [racial profiling checkpoint form](#). Such reports may facilitate data collection on this subject. The ACLU of North Carolina has recently published a report detailing the traffic stop data collection procedures in North Carolina and elsewhere, analyzing possible limitations of the collection procedures, and suggesting avenues for reform. *See* ACLU OF NORTH CAROLINA, [ROAD WORK AHEAD](#) (2014). The report may be useful in understanding the scope and limitations of the available data. In addition, some law enforcement agencies may have police civilian review boards, which may provide an avenue for filing complaints or providing feedback about policing practices. *See supra* § 2.8, Beyond Litigation.