Equal Treatment for Equal Dollars in Illinois: Assessing Consumer Racial Profiling and Other Marketplace Discrimination

Jerome D. Williams, PhD, F. J. Heyne Centennial Professor in Communication, Department of Advertising, Center for African and African American Studies, University of Texas–Austin
Anne-Marie G. Harris, JD, Assistant Professor, Salem State College
Geraldine R. Henderson, PhD, Associate Professor, Department of Advertising, University of Texas–Austin

Introduction

As the nation mourns the loss of Rosa Parks, Civil Rights pioneer and consumer activist, it seems appropriate for marketers, academic researchers, public policy makers, and the law enforcement community to continue asking the question that no doubt was on Rosa Parks’ mind: Are African Americans and other minority consumers getting equal treatment for equal dollars? Similar questions were raised by Illinois residents as evidenced by consumer activism in Illinois history. For instance, the race riots in East St. Louis in 1917 and in Cairo in 1969 were both tied to issues of economic parity and consumer equity. Recently, we examined this question on a national level by analyzing 81 federal court decisions made between 1990 and 2002 involving customers’ allegations of race and/or ethnic discrimination in the marketplace (Harris, Henderson, & Williams, 2005). Using a similar framework in this article, we analyze federal court decisions involving consumer racial profiling and other marketplace discrimination solely in the State of Illinois; however, we build upon our previous study by also analyzing state court decisions and complaints brought before the Illinois Human Rights Commission. Whereas our previous study provided a comprehensive look at federal cases across the entire country, the current “drill-down” approach allows us to focus on a particular geographic location (i.e., Illinois) and gain some insight as to how the courts and the Human Rights Commission in this location have dealt with marketplace discrimination and to compare the results to the broader, national study. We also felt that a state focus would have greater relevance for law enforcement personnel, particularly in Illinois, who are more impacted by local court findings.

In this study, we examine 29 cases in Illinois, including state court, federal court, and Human Rights Commission cases. We begin with a discussion that explains the terminology frequently used in the literature and popular press—“Shopping While Black” (Gabbidon, 2003), consumer racial profiling (Williams, Henderson, & Harris, 2001), consumer discrimination (Harris, 2003), and statistical discrimination (Lee, 2000). Next, we describe the extent of marketplace discrimination and why we feel this topic is important for marketers, followed by a discussion of the legal issues and relevant legislation. The remainder of the article focuses on an analysis of the 29 cases.
Differentiating Consumer Racial Profiling (CRP) and Marketplace Discrimination

For many researchers, consumer racial profiling (CRP) is analogized to law enforcement racial profiling. This is the approach we take in this article. This typically occurs when law enforcement officers stop, question, investigate, detain, and/or arrest individuals based on their race or ethnicity rather than on probable cause or even reasonable suspicion that these individuals have engaged in criminal activity. Typically when this involves motorists, this phenomenon is commonly referred to as “Driving While Black or Brown” (DWB). When it involves consumers, the phenomenon is commonly referred to as “Shopping While Black or Brown” (SWB).

Many incidents of marketplace discrimination, however, do not involve suspecting customers of engaging in criminal activity. Hence, in this article, we use “marketplace discrimination” as a broader term to capture not only CRP but other types of marketplace situations in which consumers do not receive equal treatment for equal dollars. Essentially, whether there is criminal suspicion or not, we are concerned with any type of differential treatment of consumers in the marketplace based on race/ethnicity that constitutes denial of or degradation in the products and/or services offered. Our definition of marketplace discrimination covers consumption experiences beyond shopping in retail stores. For example, our analysis of federal cases demonstrated that marketplace discrimination frequently occurs in places of public accommodation such as hotels, restaurants, gas stations, and service providers, as well as retail establishments including grocery/food stores, clothing stores, department stores, home improvement stores, and office equipment stores (Harris et al., 2005). Furthermore, marketplace discrimination impacts members of minority groups beyond those classified as black/African American, such as Hispanics, Asians, and Native and Arab Americans. In fact, since September 11, 2001, there has been heightened interest and concern about CRP as it applies to anyone perceived as Middle Eastern, including South Asians, Latinos, and even Jews (Nakao, 2001).

Extent of Consumer Racial Profiling/Marketplace Discrimination and Impact on Marketers

Compared to DWB, for which one survey reports that 37% of African Americans feel they have been victims of racial profiling (Morin & Cottman, 2001; Valia, 2001), the evidence clearly suggests that SWB is a far more common experience among African Americans (Ainscough & Motley, 2000; Henderson, 2001). Williams and Snuggs (1997) conducted a mail survey of 1,000 households and found that 86% of African Americans felt that they were treated differently in retail stores based on their race. A 1999 Gallup poll reported that 75% of black men had been subjected to CRP (as cited in Knickerbocker, 2000). Since 1990, the popular press has reported hundreds of accounts of consumer racial profiling and marketplace discrimination against consumers of color.

Sociologist Feagin (1991) suggests that African Americans utilize several diverse strategies to cope with perceived injustices, including withdrawal, resigned acceptance, verbal or physical confrontation, and filing a lawsuit. In Exit, Voice and Loyalty, Hirschman (1970), the noted economist, described a similar set of strategies:
exit (leave store), voice (complain, file lawsuit, etc.), and loyalty (accept and continue to purchase from retailer). Our analysis focuses exclusively on the “voice” strategy through lawsuits. Our current analysis comprises published federal court decisions brought in Illinois and issued between 1990 and 2002 as well as Illinois state court decisions and decisions of the Illinois Human Rights Commission (IHRC). With respect to Illinois state court decisions and those of the IHRC, we searched for and analyzed all cases available through Lexis-Nexis without any time limitation.

Given that consumers of color comprise approximately one-third of the U.S. population and wield over $1 trillion of purchasing power (Selig Center, 2004), it is important to note that “exit” strategies due to SWB and other forms of Marketplace Discrimination can have a direct, negative impact on marketers. For example, sales at one Treasure Cache store fell by more than 50% following a SWB-related incident (Bean, 2001). Dillard’s department store stock has undergone a significant drop in the past few years, which some link to the over 100 CRP lawsuits filed against the retail chain (Kong, 2003). A Denny’s poll found that approximately 50% of African Americans said they would never eat at Denny’s again following negative publicity surrounding a CRP lawsuit, although, in a subsequent poll that number fell to 13% due to aggressive efforts by Denny’s to address CRP issues (Hood, 2004).

Legal Review of Consumer Racial Profiling Issues and Legislation

Claims of marketplace discrimination are typically filed under federal civil rights laws that stem from the Civil Rights Acts of 1866 and 1964. We describe these two laws and their application to cases of consumer racial profiling and marketplace discrimination. In addition, we describe the Illinois Human Rights Act and the Illinois Human Rights Commission, which was established to enforce the Illinois statute.

Civil Rights Act of 1866

Congress enacted the Civil Rights Act of 1866 pursuant to its 13th Amendment authority to eradicate involuntary servitude (Runyon v. McCrary, 1976). Among its goals, the Civil Rights Act of 1866 was designed to ensure “that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man” (Jones v. Alfred H. Mayer Co., 1968). Plaintiffs who successfully prove intentional discrimination under this act are entitled to both equitable (injunctive) and legal (monetary) relief, including compensatory and punitive damages (Johnson v. Railway Express Agency, 1975).

Victims of consumer discrimination have advanced valid claims under two sections of the 1866 Act, codified at 42 U.S.C. §1981 and 42 U.S.C. §1982. Section 1981 provides that “All persons . . . shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens.” The phrase “make and enforce contracts” includes “the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” The U.S. Supreme Court has stated that the purpose of Section 1981 was “to remove the impediment of discrimination from a minority citizen’s ability to participate fully and equally in the marketplace” (Patterson v. McLean Credit Union, 1989).
Only a small number of plaintiffs have alleged, in court, that their right to contract was violated during retail or other commercial transactions. To date, courts have narrowly interpreted the scope of Section 1981 by focusing on conduct that prevents the formation of the contract, as opposed to conduct affecting the nature or quality of the contractual relationship. Many federal courts insist that Section 1981 plaintiffs must produce evidence that they were denied an opportunity to complete a retail transaction in order to state a valid claim. This restricted interpretation of the statute has resulted in the dismissal of many plaintiffs’ claims at the summary judgment stage prior to the presentation of evidence to a fact-finder (Kennedy, 2001).

Section 1982 provides the following: “All citizens of the United States shall have the same right as is enjoyed by white citizens . . . to purchase personal property.” Personal property is any tangible or intangible property that is not real estate. Given that most courts interpret it similarly, this Section does not provide more effective relief than Section 1981 (Kennedy, 2001). Generally, the courts do not believe that defendants have interfered with a plaintiff’s right to purchase personal property when that plaintiff is ultimately able to purchase the goods or services he or she sought (Harris, 2003).

**Civil Rights Act of 1964**

Title II of the Civil Rights Act of 1964 prohibits discrimination and segregation in places of public accommodation. This law aims to “eliminate the unfairness, humiliation, and insult of racial discrimination in facilities, which purport to serve the general public” (House of Representatives Report No. 914, 1964). It provides a guarantee that “all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.”

While Title II does not require proof of intentional discrimination, it disallows plaintiffs from seeking monetary damages. The statute only permits a court to issue equitable or declaratory relief (Newman v. Piggie Park Enters., Inc., 1968). Equitable relief, such as the issuance of a court order prohibiting the defendant from engaging in discriminatory conduct, is non-monetary. Declaratory relief is a binding adjudication of the rights and status of the litigants even though no relief is awarded.

Title II also requires a plaintiff to notify the state civil rights agency of the complaint before filing suit and within a certain timeframe from the alleged discrimination. In Illinois, that timeframe is 180 days from the date of the alleged discriminatory action. This notification requirement results in the dismissal of some claims because many plaintiffs are not aware of it and fail to meet the statutory deadline.

Under Title II filings, courts must make a threshold determination as to whether the place in question is a “place of public accommodation” which Title II(b) defines as follows:

- Any inn, hotel, motel, or other establishment that provides lodging to transient guests
• Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises
• Any motion picture house, theatre, concert hall, sports arena, stadium, or other place of exhibition or entertainment
• Any establishment that is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located in any such covered establishment, and which holds itself out as serving patrons of such covered establishment

Most consumers are surprised to discover that retail stores are not considered places of public accommodation under Title II. There are some exceptions to this rule since the Act does cover retail stores that contain eating establishments (as well as eating establishments that are “located on the premises of any retail establishment”). According to the Supreme Court, “Retail stores, food markets, and the like were excluded from [Title II] for the policy reason [that] there was little, if any, discrimination in the operation of them” (Newman v. Piggie Park Enters., Inc., 1968). Legal commentators argue that Title II should be amended to include all retail establishments among the list of covered entities—given their coverage in the Americans with Disabilities Act as well as many state public accommodations laws—and to provide for monetary damages before it can truly become an effective tool in addressing the discriminatory conduct that occurs in the marketplace (Harris, 2003; Kennedy, 2001).

**Illinois Human Rights Act and the Illinois Human Rights Commission**

State laws also provide relief for some victims of marketplace discrimination. Forty-five states, including Illinois, have enacted civil rights or human rights statutes similar to the federal Civil Rights Acts. In fact, many state statutes predate the federal laws. Most consumer discrimination claims, however, tend to be mediated and resolved out of court, leading some commentators to characterize state statutes as ineffective in terms of addressing systemic problems (Haydon, 1997). While settlements may efficiently resolve individual claims to the parties’ satisfaction, they may also allow defendants to shield themselves from greater scrutiny and bad publicity. In addition, potentially valid claims are not adjudicated, thereby preventing the courts from establishing precedent with the force of law. State courts have decided only 89 cases of consumer discrimination involving state public accommodations laws, while federal courts interpreting state public accommodations statutes decided an additional 36 cases (Harris, 2004).

The Illinois Human Rights Act (IHRA) secures for all individuals within Illinois freedom from discrimination because of his or her race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, military status, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations (IHRA, 775 Illinois Compiled Statutes, Article 5).

Unlike its federal counterpart, the Illinois law prohibits discrimination in retail stores. The Illinois Human Rights Act defines a “place of public accommodation” as a “business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities,
privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public” (IHRA, 775 Ill. Comp. St., Art. 5).

Forty-one states, including Illinois, and the District of Columbia have established specific agencies empowered to enforce their public accommodations laws. The role and authority of the civil rights agencies vary from state to state. All agencies are responsible for educating the public about its rights and the business community about its duties, studying the problem of discrimination, developing policies and procedures, advising the legislature, publicizing remedies available under the law, responding to specific inquiries, and publishing brochures/pamphlets for wide distribution (Lerman & Sanderson, 1978). Most agencies have regulatory and quasi-judicial authority, which allows them to process complaints of discrimination based on the state’s administrative procedure act. Typically, this means that an investigation is conducted after an individual files a complaint, followed by persuasion and conciliation, a hearing, and judicial review (Lerman & Sanderson, 1978).

A majority of states (29), including Illinois, require individuals to file a claim within 180 days of the alleged discriminatory incident. As previously mentioned, the relatively short filing deadline precludes individuals from seeking and obtaining redress entirely in some cases. In Illinois, victims of discrimination may not bypass the state’s administrative process and must first file a complaint with the IHRC before filing suit. In addition, complainants in Illinois are required to exhaust the administrative process before proceeding to court. This means that the IHRC must have issued a final order before the complainant may seek relief through the judicial process (George Mendez v. Pizza Hut, 2002).

The administrative process begins when an individual files a complaint with the IHRC. An agency investigator assigned to the case attempts to determine whether there is probable cause to believe that the complainant was discriminated against. Between 1999 and 2001, approximately 30% of all cases of discrimination filed with the IHRC were dismissed on findings of no probable cause. This data includes all complaints arising in the employment and housing sectors as well as public accommodations. Specific data regarding public accommodations complaints are not available from the IHRC. Nationwide, 45% to 50% of complaints are resolved in this way (Harris, in press). In Illinois, as in most states, only a very small number of cases result in a probable cause finding. Across the country, during the 5-year period from January 1999 through December 2003, probable cause was found in 5% to 8% of public accommodations complaints. Similarly, probable cause was found in 9% to 10% of all complaints filed with the IHRC. When an investigation results in an agency finding that there is probable cause to believe that the complainant was discriminated against, the investigator typically attempts to negotiate with the respondent for a settlement of the complaint. Conciliation can begin while an investigation is still ongoing and before any finding is made; therefore, settlements are sometimes arrived at in cases in which probable cause has not been established (Harris, in press).

Approximately 30% of all complaints filed with IHRC are settled. Nationwide, 25% of public accommodations complaints are resolved via settlement. In most

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* Data were requested for FY 1999 through 2004. The agency was able to supply only data for FY 1999, FY 2000, and FY 2001. Information relative to FY 2002-2004 is unpublished.
agency settlements, respondents agree to provide the complainant with access to their establishment and to compensate the complainant with monetary damages. Additionally, many settlements include an order for compliance with the statute. Settlements are formalized in a signed agreement, which is enforceable by the agency (Lerman & Sanderson, 1978). In addition, mediation of complaints is encouraged, but it is unclear to what extent such efforts are successful given the paucity of data. Generally, mediation is conducted by mediators outside the agency.

Public hearings are held in cases in which probable cause was found but attempts to conciliate failed. This is a fairly unpopular method of resolution. For the 5-year period beginning in January 1999 and ending in December 2003, approximately 8% of cases were heard by an administrative law judge or an agency hearing officer in public hearings nationwide. No data was available regarding the number of complaints that went before hearing officers in Illinois (Harris, in press).

If the finding is against the respondent, the Commission’s hearing officer issues a recommended order for appropriate relief as provided by the Illinois Human Rights Act. Typically, this involves requiring the respondent to cease and desist from engaging in the discriminatory practice and to admit the complainant to the accommodation in question. Depending on the state, some agencies are authorized to award punitive damages as well as compensatory damages that may include damages for humiliation and embarrassment. In Illinois, the IHRC can order the respondent to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant; to pay a civil penalty to vindicate the public interest; to pay to the complainant all or a portion of the costs of maintaining the action, including reasonable attorney fees and expert witness fees incurred in maintaining the action in any judicial review and judicial enforcement proceedings; to report as to the manner of compliance; to post notices in a conspicuous place, which the Commission may publish setting forth requirements for compliance with the Act or other relevant information that the Commission determines necessary to explain the Act; and to take such action as may be necessary to make the individual complainant whole. On the other hand, if based on all the evidence, the hearing officer finds that a respondent has not engaged in discrimination, he or she issues a recommended order dismissing the complaint (775 ILCS 5/8A-102).

Judicial review of state agency decisions is available in every state to promote enforcement of agency orders (Lerman & Sanderson); however, very few public accommodations cases reach the courts, in part because of the common perception that plaintiffs do not fare well in state courts (Romero & Sanders-Romero, 2004). In fact, our search turned up only five cases of marketplace discrimination decided by Illinois state courts in which the state statute was at issue. Illinois law imposes civil penalties of $10,000 to $50,000 (depending on the number of prior violations) as well as compensatory damages, injunctive relief, punitive damages, and attorney’s fees. Most states provide compensatory as well as injunctive relief. Only Nebraska, North Carolina, Virginia, and Wyoming do not provide prevailing plaintiffs with compensatory damages. In fact, North Carolina, Virginia, and Wyoming provide neither legal nor equitable relief (Harris, in press).

Thus, judicial opinions and IHRC decisions contribute to an understanding of CRP and marketplace discrimination. Yet, it is important to note that complaints filed
in court or with the Commission represent a “tiny and nonrandom fraction” of the actual incidents of discrimination (Siegelman, 1999).

Analysis of Illinois Cases

The Illinois cases reviewed include plaintiffs of any racial groups who claimed that they were treated poorly relative to white customers in commercial establishments. More specifically, we analyzed federal cases in which people of color alleged that defendants violated their rights under federal statutes covering “the making and enforcing of contracts” (Section 1981), “the purchase of personal property” (Section 1982), and “the full and equal enjoyment . . . of places of public accommodation” (Title II). Similarly, we analyzed state cases in which people of color alleged a violation of the Illinois Human Rights Act and any case brought before the Illinois Human Rights Commission alleging violations of the Illinois Human Rights Act. We report a total of 29 cases, including 5 Illinois state cases, 10 Illinois Human Rights Commission cases, and 14 federal cases. The defendants cover a range of marketplace providers, including major retailers, small retail establishments, restaurants, oil companies, food/grocery stores, car rental companies, lodging facilities, etc. It is important to keep in mind that the inclusion of a company in our database of cases is not an indication of guilt. This only means that a suit was filed against the company. (See Tables 1A-1C for a complete list of all 29 defendants for state, Human Rights Commission, and federal cases).

Table 1A
Illinois Federal Cases Filed

<table>
<thead>
<tr>
<th>Company</th>
<th>Year (CRP or Discrimination Type – see legend)</th>
<th>Industry/Business Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ameritech</td>
<td>2000 (3)</td>
<td>Telecommunications</td>
</tr>
<tr>
<td>Amoco</td>
<td>2003 (2)</td>
<td>Gas Station/Oil Company</td>
</tr>
<tr>
<td>Baur’s Opera House</td>
<td>1993 (1)</td>
<td>Entertainment/Amusement/Social Club</td>
</tr>
<tr>
<td>Café Kallisto</td>
<td>1997 (4)</td>
<td>Restaurant</td>
</tr>
<tr>
<td>Dave &amp; Buster’s</td>
<td>1996 (4)</td>
<td>Restaurant</td>
</tr>
<tr>
<td>Jewel Food Stores</td>
<td>1996 (3)</td>
<td>Food/Grocery Store</td>
</tr>
<tr>
<td>Kookies</td>
<td>1999 (2)</td>
<td>Bar/Restaurant</td>
</tr>
<tr>
<td>OfficeMax</td>
<td>1996 (1)</td>
<td>Large Retail Establishment</td>
</tr>
<tr>
<td>Pizza Hut</td>
<td>2002 (1)</td>
<td>Fast Food/Carry-Out/Delivery</td>
</tr>
<tr>
<td>Pizza Hut</td>
<td>1998 (2)</td>
<td>Fast Food/Carry-Out/Delivery</td>
</tr>
<tr>
<td>Shell Oil</td>
<td>1999 (2)</td>
<td>Gas Station/Oil Company</td>
</tr>
<tr>
<td>Sportmart Sporting Goods</td>
<td>1997 (3)</td>
<td>Large Retail Establishment</td>
</tr>
<tr>
<td>United Farm Bureau</td>
<td>1994 (3)</td>
<td>Services (Insurance Company)</td>
</tr>
<tr>
<td>Video Junction</td>
<td>1997 (3)</td>
<td>Small Retail Establishment</td>
</tr>
</tbody>
</table>

Total Number of Cases 14
Table 1B
Illinois State Cases Filed

<table>
<thead>
<tr>
<th>Company</th>
<th>Year (CRP or Discrimination Type – see legend)</th>
<th>Industry/Business Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>CC Grace Restaurant</td>
<td>1904 (3)</td>
<td>Restaurant</td>
</tr>
<tr>
<td>Charles Kuchan Theater</td>
<td>1926 (4)</td>
<td>Entertainment/Amusement/Social Club</td>
</tr>
<tr>
<td>Fern's Café Restaurant</td>
<td>1966 (3)</td>
<td>Restaurant</td>
</tr>
<tr>
<td>Illinois Central Railroad</td>
<td>1946 (4)</td>
<td>Restaurant, Services (Transportation)</td>
</tr>
<tr>
<td>Jennie's Restaurant</td>
<td>1957 (4)</td>
<td>Restaurant</td>
</tr>
</tbody>
</table>

**Total Number of Cases** 5

Table 1C
Illinois State Commission Cases Filed

<table>
<thead>
<tr>
<th>Company</th>
<th>Year (CRP or Discrimination Type – see legend)</th>
<th>Industry/Business Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cerro Gordo Jr. HS</td>
<td>1997 (2)</td>
<td>Services (Education)</td>
</tr>
<tr>
<td>Derby St. Restaurant</td>
<td>1998 (3)</td>
<td>Bar/Restaurant</td>
</tr>
<tr>
<td>Dominick's</td>
<td>1998 (2)</td>
<td>Food/Grocery Store</td>
</tr>
<tr>
<td>Enterprise Rent-A-Car</td>
<td>1999 (3)</td>
<td>Car Rental/Car Dealer</td>
</tr>
<tr>
<td>Orland Park Nissan</td>
<td>1999 (1)</td>
<td>Car Rental/Car Dealer</td>
</tr>
<tr>
<td>Salvation Army Store</td>
<td>1993 (1)</td>
<td>Retail Establishment</td>
</tr>
<tr>
<td>Sheraton Hotel</td>
<td>1994 (4)</td>
<td>Lodging</td>
</tr>
<tr>
<td>Steve's Old Time Tap</td>
<td>2001 (4)</td>
<td>Bar/Restaurant</td>
</tr>
<tr>
<td>University of Illinois</td>
<td>1994 (2)</td>
<td>Services (Education)</td>
</tr>
<tr>
<td>Vill. of Colp Municipality</td>
<td>2000 (3)</td>
<td>Services (Municipal Utilities)</td>
</tr>
</tbody>
</table>

**Total Number of Cases** 10

Legend: 1 = Subtle Degradation; 2 = Overt Degradation; 3 = Subtle Denial; 4 = Overt Denial

Methodology

The framework used for analyzing the cases was the same framework used in our previous study (i.e., categorizing and aggregating cases with common themes under a common heading). For a detailed description of the content analysis methodology, the reader is referred to Harris et al. (2005). The three emergent themes employed in the content analysis are briefly described as follows:

1. Denial/Degradation
   Discrimination can result in a level of service that is either an outright denial or a degradation of the products/services. In a retail environment, the denial of goods or services occurs when customers are prevented from participating in consumption experiences. Examples include refusing to wait on certain customers or to provide them information about goods or services that is available to other customers, denying customers access to the establishment, and removing customers from the store. In contrast, a degradation of goods or services occurs when customers of
color are allowed the opportunity to transact but are provided something less—in a variety of possible ways—than white customers receive. Degradation may take many forms such as extended waiting periods, pre-pay requirements, being charged higher prices, and being subjected to increased surveillance and to verbal and/or physical attacks including the use of racial epithets.

2. Subtle/Overt

“Overt” discrimination is very obvious and direct while “subtle” discrimination is more ambiguous and indirect (Harris, 2003). A landmark study by Blank, Dabady, and Citro (2004) on measuring racial discrimination identified two components in their definition of racial discrimination, namely, differential treatment (“overt”) and differential effect, which the report actually refers to as being “subtle.” Furthermore, recent research on measuring discrimination and prejudice has focused on constructs and techniques designed to tease out the differences between overt expressions of prejudice and more subtle forms (e.g., the symbolic racism scale, Modern Racism Scale, Implicit Association Test, stereotypic explanatory bias, linguistic intergroup bias, etc.; see Williams, Lee, and Haugtvedt (2004) for a discussion of these constructs and techniques).

The two dimensions of Level of Service and Type of Discrimination combine to form four different CRP and marketplace discrimination categories: (1) subtle degradation, (2) overt degradation, (3) subtle denial, and (4) overt denial. Subtle degradation of goods/services involves cases in which plaintiffs complain of not receiving what they expected in a particular consumption setting without direct evidence that this treatment was based on their race or ethnicity. In contrast, overt degradation occurs when it is clear that non-white patrons received less by way of goods/services than white customers. Subtle denial refers to situations in which plaintiffs alleged that they were outright denied access to goods or services; however, they were unable to identify white patrons who received better treatment. On the other hand, overt denial occurs when there is clear evidence of preferential treatment of white patrons relative to their non-white counterparts. Table 2 presents a summary of these prototypes in matrix form.

3. Criminal Suspicion

The final dimension of criminal suspicion alludes to the common misperception that minority consumers engage in more criminal activity than majority consumers. The literature suggests that there is a predilection for singling out people of color
for increased scrutiny by criminal justice officials (Gabbidon, 2003). For example, due to increased concern over DWB, many states are now engaged in ongoing data collection to assess the validity of traffic racial profiling. Interestingly, some of the early results suggest that majority drivers have a greater propensity to engage in criminal activity. For example, in one recent study of Rhode Island traffic stops conducted by the Northeastern University Institute on Race and Justice, non-white motorists were 2.5 times more likely to be searched than white motorists (Farrell, McDevitt, Cronin, & Pierce, 2003). Furthermore, when the traffic stop resulted in a search, whites were more likely to be found with contraband—23.5% of white drivers who were searched were found with contraband compared to 17.8% of non-white drivers. Somewhat related to this result, Federal Bureau of Investigation Uniform Crime Reporting data indicates that the greatest percentage of arrestees are white (e.g., in 2002, over 70% of arrestees were white) (FBI, 2004); however, recent signal detection studies in psychology with blacks and whites in the roles of police officers and criminals suggest a perceptual sensitivity effect (i.e., blacks were incorrectly shot at more than whites, and guns held by blacks were less distinguishable from harmless objects than when held by whites) (Greenwald, Oakes, & Hoffman, 2003). Given this inconsistency of data on presumption and perception of involvement in criminal activity versus actual involvement, we felt that “presence” versus “absence” of criminal suspicion was an important categorization theme.

**Thematic Interpretation**

Below, we discuss the 29 cases based on our first two dimensions of Level of Service and Type of Discrimination represented in the Table 2 matrix, along with the third dimension of Criminal Suspicion. Table 3 provides a summary of the status of each of the 29 cases.

**Table 3**

**Status of Federal Consumer Racial Profiling and Marketplace Discrimination Cases**

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases Settled</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Cases w/ Finding for Plaintiff</td>
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<td>1</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Cases w/ Finding for Defendant</td>
<td>4</td>
<td>2</td>
<td>6</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>Cases w/ Partial Finding for Plaintiff and Defendant</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Cases w/ Multiple Plaintiffs with Findings for Some Plaintiffs and Against Other Plaintiffs</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total # of Cases in Category</strong></td>
<td>5</td>
<td>7</td>
<td>10</td>
<td>7</td>
<td>29</td>
</tr>
</tbody>
</table>
Subtle Degradation

This category contains five cases (two Human Rights Commission cases and three federal cases), representing 17% of the cases, and has the fewest number of cases of the four categories. This compares with our previous study, where subtle degradation represented the category with the most cases (35%) (Harris et al., 2005). Defendants include an entertainment/opera house, a restaurant, a large retail store, a car dealer, and a small retail store. Four of the five cases were adjudicated in favor of the defendant, suggesting that courts did not believe that the subtle degradation of goods or services occurred due to race or ethnicity.

One case that illustrates subtle degradation is a case brought against Pizza Hut in the federal courts. In that case, Geraldo Mendez, his wife Norma, and three children entered a Pizza Hut restaurant on February 14, 2002. The family stood at the entrance of the restaurant near a sign that read “Wait to be seated.” The family was approached by a waitress who asked whether they wanted to dine in or carry out. They replied that they wanted to dine in. They waitress said she would clear a table for them. The family noticed approximately 18 other people in the restaurant at eight other tables. After waiting a few minutes, the family was approached by the manager, Rachel Jackson, who stated that the restaurant was no longer seating people and they would have to carry out. The family left the premises. As he was leaving, Mr. Mendez noticed a sign indicating that the restaurant was open until 10:00 PM. He re-entered the restaurant and asked the manager about the sign on the door. He complained about not being seated and stated that he was going to phone in a complaint. At that point, the manager offered to seat the family, but Mr. Mendez refused. The Mendez family sued Pizza Hut, alleging violations of Title II of the Civil Rights Act, deprivation of the right to contract and to purchase property under sections 1981 and 1982, and violations of the Illinois Human Rights Act. Pizza Hut filed a motion to dismiss, alleging that the plaintiffs had failed to state a cause of action. The court dismissed the claim arising under the Illinois Human Rights Act because plaintiffs had failed to exhaust state administrative remedies before filing suit. The court also dismissed the Section 1981 and 1982 claims finding that plaintiffs could not maintain such claims because they voluntarily left the restaurant. Lastly, the court denied Pizza Hut’s motion to dismiss the Title II, a partial victory for plaintiffs.

Overt Degradation

This category contains seven cases (24%) and includes defendants such as gas station/oil company (2), bar/restaurant (2), school (2), and grocery store (1). Three of the seven cases were settled out of court, and two were decided in favor of the defendant. Only one of the cases, a federal case, was decided in favor of the plaintiff. In fact, many federal courts are interpreting very narrowly the statutory language of Section 1981 that evinces their failure to understand the experiences of consumers of color who are seen as lacking a valid claim of discrimination unless they suffer a complete denial of service.

Pizza Hut also was the defendant in an overt degradation case. The plaintiffs were in Illinois for a family reunion. They are all African American. On Sunday night, July 2, 1995, between 9:30 and 10:00 PM, Mary Ann Burton telephoned the Pizza Hut in Godfrey, Illinois, and ordered six pizzas. Mary Ann lived in the area and
was a regular customer of the restaurant, for both carry out and dining in. Mary Ann specifically asked whether it was too late to dine in and the employee of Pizza Hut, after checking with someone else, said she could still dine in. The pizzas were ordered for dining in, and a Pizza Hut employee called back to confirm the order. 

There were five employees on duty at the Godfrey Pizza Hut that night. All of them are white. The restaurant’s scheduled closing time that night was 11:00 PM. As of July 1995, the usual business practice of the restaurant was to take orders up until the closing time and permit dine-in customers to stay until they finished their meals.

Around 10:15 PM, Andrea McCaleb was the first member of the family to walk into the Pizza Hut with other relatives behind her. As she walked to a table, an employee said, “I am not serving those niggers.” They sat down at a set of tables. Employees, however, began taking those tables down. Upon inquiry, an employee named Ponce told them it was okay to use some other tables. Adrian, Sr., another family member, inquired and was told by Ponce that the pizzas were not yet ready but would be ready in a few minutes. When Adrian, Sr. inquired again in five minutes, Ponce told him the pizzas were ready and pointed to six boxes on the counter. Adrian, Sr. stated the pizzas had been ordered for dining in. Ponce did not respond. Adrian, Sr. picked up the boxes, and he and Andrea took them to the tables. Adrian then paid for the pizzas; this occurred at approximately 10:23 PM.

At the time the first plaintiffs arrived, the only other customers in the restaurant were a group of four whites, two adults and two children. That group left after about 15 minutes. No further dine-in customers came in after that. The white customers had plates and silverware with which to eat, and they were served drinks after plaintiffs had arrived.

Plaintiffs were not provided any plates, utensils, or napkins. No one seated them, and no one waited on them to ask them whether they needed any plates or utensils or to ask whether they wanted drinks or anything else with their pizza. Adrian, Sr. went to the counter and asked for plates, napkins, and/or silverware. Ponce handed him a stack of napkins. Adrian, Sr. did not say anything further about plates or silverware.

After the white customers left, an employee began vacuuming around and under the tables at which plaintiffs were dining. When Adrian, Sr. complained, she continued to vacuum around the table for a little while and then moved away a bit. Then, for a few minutes, the employee left the vacuum standing still in an upright position with the motor running. After the vacuuming stopped, the jukebox in the restaurant was turned on at an extremely loud volume. Then, the volume was alternately turned up and down. When the loud music stopped, the lights were turned on and off a number of times. The lights were left off for up to 15 or 20 seconds at a time. When plaintiffs complained about the lights, this antic stopped.

Shortly after the white customers had received drinks, Andrea went to the counter to order drinks and was told that no drinks could be provided because the machine had been turned off. Thereafter, no other customers received drinks, but there were also no other customers who requested drinks.
Plaintiffs were in the restaurant until approximately 11:00 PM. When they decided to leave, they packed the remaining pizza themselves. At one point, Ponce told Adrian Sr. that it was time for him to leave. Otherwise, plaintiffs were never expressly told that they had to leave the restaurant. The treatment plaintiffs received, however, was a clear message that they were not welcome in the restaurant. At least some of the plaintiffs would have stayed longer and eaten more of their pizza at the restaurant if not for the treatment they were receiving. Most, if not all, of the adults were upset by the treatment they received, and some of the children became frightened and cried.

Upon departing, confrontations occurred in the restaurant’s parking lot. While plaintiffs were in the parking lot, one of the female employees yelled at them something to the effect, “get out of here nigger.” One of the female employees came up to Andrea, who was seated in her car with her children, and called her a “black bitch.” Andrea felt threatened and feared that the employee might hit her. Andrea got out of her car and chased the female employee away. Andrea was also fearful because Ponce and another male employee were standing behind her car, one with a bucket and one with a stick, which may have been the handle of a mop. The employee was slapping the stick into his hand in a threatening manner. These same two also approached Adrian, Sr. and stated something to the effect: “Now you’re going to get it.” They, however, were distracted and did not follow through on the threat. Adrian, Sr. also saw Ponce throw something that just missed his face, though it might have only been a napkin.

Eventually, one of the employees said he would call the police, and Adrian, Sr. said, “Please do.” Plaintiffs waited around for 15 minutes but left before the police arrived. The police did meet them at a gas station about a half mile from the restaurant. The police did not arrest anyone. After the federal district court refused to dismiss the plaintiffs’ claims, the parties entered into an out-of-court settlement for an undisclosed amount.

Subtle Denial

This category, the largest of the four categories for the Illinois cases, contained 10 cases (35%) in which there was denial of service along with ambiguity as to whether this discrimination was based on race. Interestingly, in our previous study (2005), this category was the smallest. Establishments include a telecommunications provider, grocery store, large retailer, insurance company, small retail store, restaurant (3), car rental establishment, and municipality. Over half of the cases (6) were found for the defendant, compared to our previous study in which half were found for the plaintiff. Among the Illinois cases, two were decided in favor of the plaintiff, and two were settled.

An example of subtle denial of service involves a case brought in federal court against Sportmart Sporting Goods store. An African American man went to the defendant’s store to purchase air rifle cartridges. When he entered the store, he was wearing a pair of Nike Air Jordan athletic shoes that he had purchased 4 days earlier at Marshall Field’s. While he was shopping, one of the store security guards questioned Mr. Sterling about the shoes, accused him of shoplifting them and removed them from his feet. The security guard summoned the local police who arrested Mr. Sterling, charged him with retail theft, and placed him in a holding
cell until his bail was paid. At trial for shoplifting, Mr. Sterling produced his receipt from Marshall Field’s and was found not guilty; however, in his challenge against Sportmart, Mr. Sterling’s case was dismissed. Eventually, the parties negotiated a settlement whose terms are undisclosed.

Another subtle denial case was a Human Rights Commission case involving Derby Street Restaurant. Timothy Tomlin, Jerry Martin, and Robert Ledbetter are African-American males. On August 9, 1992, they attempted to enter Derby Street, a restaurant and bar. The men had been to other establishments earlier in the evening, as they were celebrating another friend’s engagement. Both Martin and Ledbetter had been prior Derby Street customers. Tomlin, Martin, and Ledbetter alleged they were denied entrance to the restaurant due to their race. Derby Street admits it denied Tomlin and Martin entrance but states that it was due to their appearance. Martin was dressed in a collarless shirt with writing, which violated Derby Street’s dress code. During the course of the argument about the denial of their entrance, Martin and bouncer Robert Ericson got into a physical altercation and exchanged words. The hearing officer took note that both men had failed to provide evidence that they had been denied entrance because of their race and dismissed the complaint.

Overt Denial

This final category contains seven cases, representing 24% of the Illinois cases and includes a restaurant (5), theatre, and lodging facility. It should be noted that three of these cases were among the five Illinois state cases, and all five of the state court cases were decided in a different era (i.e., 1904, 1926, 1946, 1957, and 1966). Two of the cases were settled, and three were decided in favor of the plaintiff, which is the highest percentage-wise among the four categories. Only one of the cases was decided in favor of the defendant, the lowest percentage among the categories.

This prejudicial conduct is exemplified by a federal lawsuit filed against Café Kallisto. Two Caucasian males and two African American females attempted to enter Café Kallisto, the defendant’s business. Plaintiffs claimed that the Café manager allowed one of the Caucasian plaintiffs to enter the Café to look for a friend he was to meet there. The manager later allowed the other Caucasian plaintiff to enter the Café as well. Plaintiffs alleged that the manager of Café Kallisto refused to provide service to the two African American plaintiffs when he made it clear that the two Caucasian plaintiffs were welcome but the “blacks” were not allowed to enter. Plaintiffs further alleged that the manager later told one of the Caucasian plaintiffs that he “did not understand why [they] had brought those “niggers” into his place.

Two Human Rights Commission cases also typify overt denial. The first involves Steve’s Old Time Tap restaurant. On June 17, 1999, Melvin Osborne and Robert Boudreaux entered Steve’s Old Time Tap. Both men were from Burlington, Iowa. They planned to use the bathroom and then get something to eat. When they entered, there were four other individuals in the bar, all Caucasian. Mr. Boudreaux and Mr. Osborne walked to the rear of the bar toward the men’s room. Mr. Boudreaux told Mr. Osborne he was going to use the restroom first. Mr. Osborne entered the restroom when Mr. Boudreaux returned. Shortly after he entered, the restroom door was kicked in by the cook who ordered Mr. Osborne to get out, using racial epithets. He threatened to call the police. The plaintiffs filed an action against the bar with the Illinois Commission on Human Rights. The Commission found that
the actions of the bar employees were racially motivated. Mr. Osborne received an award of $240.00 and Mr. Boudreaux an award of $400.00.

The second Human Rights Commission case involves the Sheraton Hotel. Complainant, Gail Walker, is an African American female. Ms. Walker had a confirmed reservation for a room at the Sheraton Inn on June 10, 1987. Ms. Walker arrived at the hotel at approximately 5:50 PM. She was refused a room and told that her reservation had been cancelled at 4:00 PM. Ms. Walker asked for assistance in locating another room, which the clerk refused. When Ms. Walker learned that the hotel had provided a room to a white male coworker, she complained to the manager. The manager, Mr. Ciesler, told Ms. Walker that the hotel had a policy under which management determines which “walk-ins” would receive rooms. Ms. Walker told the manager that the policy “had a very bad flavor” and asked whether he knew what she meant. He replied he did stating, “and if this gets out, it can be very bad for this hotel as well as the chain.” Ms. Walker sued alleging a violation of the Illinois Human Rights Act. Complainant’s motion for a default judgment was granted. At the damages hearing, Ms. Walker was awarded $622.72 in out-of-pocket expenses and $3,500.00 for emotional distress (damages totaled $4,122.72).

Criminal Treatment

Our analysis of the 29 Illinois cases reveals that eight (28%) of all CRP and marketplace discrimination cases involved allegations that customers of color were treated with suspicion or as if they were criminals (see Table 4), compared to 40% in our previous study (2005). Of the cases, one of five subtle degradation cases involved criminal suspicion, three of seven for overt degradation, three of ten for subtle denial, and one of seven for overt denial. Two examples are described below.

Table 4
Criminal Suspicion in Treatment of Customers in Consumer Racial Profiling and Marketplace Discrimination Cases

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<tbody>
<tr>
<td>Criminal Treatment</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Total # of Cases in Category</td>
<td>5</td>
<td>7</td>
<td>10</td>
<td>7</td>
<td>29</td>
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</table>

The first example is a federal case involving OfficeMax. When two black men entered an OfficeMax store, a store employee summoned police officers because the men “looked suspicious.” The police officers questioned the men. After the men answered the questions, the officers apologized and left. In that case, the federal judge determined that the plaintiffs’ allegations did not give rise to any civil rights violation; therefore, the court dismissed plaintiffs’ claim. The Court of Appeals for the Seventh Circuit affirmed the district court’s decision.
The second example is a Human Rights Commission case involving Dominick’s. On September 11, 1995, Mr. McCormick was shopping in a Dominick’s store when he was stopped by police and accused of pick pocketing a customer at another Dominick’s store. Police officers were summoned by store employees who had been told about the pick pocketing at the other store. The employees had been told the suspect was a well-dressed African American male. Mr. McCormick was questioned by police and store employees who alleged that he was staring at another customer’s purse. Mr. McCormick denied staring at the customer’s purse and stated he had not been in the other store. Before leaving, he asked whether the pickpocket was a black man and he was told yes. Plaintiff’s complaint was initially dismissed but was remanded after an appeal of the dismissal.

Conclusion

Through this research of Illinois cases, we demonstrate that race and ethnic discrimination remain vexing problems in places of public accommodation and retail establishments so much so that the results point to the need for further research. It is our observation that plaintiffs appear to be more willing to file lawsuits in federal court and with the Human Rights Commission within the past decade compared to previous eras. This may be because members of racial groups (especially blacks) have transitioned from being vulnerable (Hill, 1995) to being vocal (Hirschman, 1970). As they face the perception among African Americans and other people of color that they do not value their business as highly as that of white customers, defendants faced with charges of discrimination have financial and other incentives to settle such cases rather than subject themselves to the publicity a lawsuit could engender. For reasons we cannot explain, we were unable to find any recent era Illinois state court cases.

In terms of future research, we would recommend a more rigorous content analysis than the preliminary analysis we undertook mainly for purposes of categorization. For the current study, it is important to recognize that we were limited to making a category assessment based only on available information. In some instances, we could only assess the case at a particular juncture (i.e., who prevailed at that point, without considering what may occur later as the case continues through the judicial system or is appealed).

Also, in addition to placing each case in a cell with descriptive meaning, which was our main objective, it would be useful to derive some prescriptive meaning from each cell. Ultimately, additional research is needed to determine what prescriptive measures can address the problem or perception of consumer racial profiling and marketplace discrimination.

Lawful conduct and ethical treatment may require strategic policy changes to ensure a more diversity-friendly environment for customers of all races. One avenue is diversity training designed to sensitize employees to explicit or implicit prejudices that inhibit them from treating all customers with dignity and respect. Following such consciousness-raising, firms should actively monitor interactions with customers to ensure that both positive outcomes and negative incidents are consistent across diverse subgroups. For example, some retailers recently have begun employing “the demographic test” to detect and prevent discriminatory behavior among its employees by using U.S. Census data to determine the racial/
ethnic makeup of its store trade areas and compare that data with its store arrest and detention records (Fitfield & O’Shaughnessy, 2001). Regardless, people of color must remain vigilant to the remaining vestiges of segregation and discrimination, understand their legal rights, and make their voices heard by holding offenders accountable. In this way, consumers in Illinois, and across the nation, can ensure that they receive equitable treatment for equal dollars.

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Jerome D. Williams, PhD, is the F.J. Heyne Centennial Professor in Communication, Department of Advertising, at the University of Texas at Austin, with a joint appointment in the Center for African and African American Studies. He received his BA from the University of Pennsylvania, his MS from Union College, and his PhD from the University of Colorado. He conducts research in the area of multicultural marketing, particularly on topics related to consumer behavior in response to marketing communications strategies targeted to ethnic minority consumers. He has testified in a number of court cases as an expert witness on consumer racial profiling and on consumer response to advertising strategies.

Anne-Marie Harris, MA, JD, is an assistant professor at Salem State College. Her research focuses on race and gender discrimination. Her work has been published in law journals including the Virginia Journal of Social Policy and the
Law, the University of Michigan Journal of Race and Law, and the Boston College Third World Law Journal. Her research on consumer racial profiling was cited in a brief filed before the U.S. Supreme Court in Arguello v. Conoco (2003). Ms. Harris served on the Massachusetts Task Force on Racial and Gender Disparities in Traffic Stops from September 2003 to August 2005. In that capacity, she worked closely with the research team at Northeastern University’s Institute on Race and Justice to inform the research process, serving as a liaison between the research team and the full task force on the analysis process, and meeting bi-weekly with the research team to better understand the analysis process. Prior to joining academia, Ms. Harris worked as a consultant to federal government agencies on issues relating to Equal Employment Opportunity law and policy. She earned her JD at the George Washington University Law School.

Geraldine R. Henderson, PhD, is an associate professor in advertising at the University of Texas at Austin. She earned her BS in electrical engineering from Purdue University and her PhD and MBA in marketing from Northwestern University Kellogg School Management. Her research on marketplace diversity (urban/ethnic marketing) has been published in outlets including the Journal of Advertising, the Journal of Public Policy & Marketing, and the Review of Black Political Economy. She has also been cited in journals such as the Yale Law Journal, the University of Pittsburgh Law Review, and Urban Affairs Review.