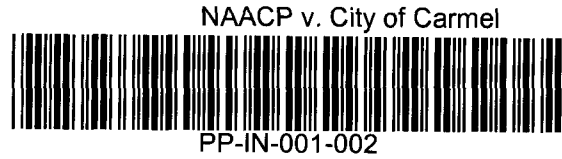


IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
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INDIANAPOLIS CHAPTER OF)
THE NAACP, and)
DAVID SMITH, on his own behalf)
and on behalf of a class of)
those similarly situated,)
)
Plaintiffs,)
)
v.)
)
THE CITY OF CARMEL, INDIANA)
and PHILLIP HOBSON,)
)
Defendants.)



CAUSE NO. IP97-104C:M/S

STIPULATION OF THE PARTIES TO SETTLE
ALL ISSUES AFTER APPROVAL BY THE CLASS/STIPULATION
TO CLASS CERTIFICATION/STIPULATION AND NOTICE TO THE CLASS

Come now the parties, in person and by their counsel, and enter into this Stipulation which is designed, after notice to the class pursuant to Rule 23(e), to resolve all issues in this cause as set out below.

INTRODUCTION:

1. Plaintiffs have previously filed their Amended Class Action Complaint for Injunctive and Declaratory Relief and Individual Case for Damages.

2. The Amended Complaint generally alleges a longstanding practice of the Carmel Police Department of stopping, without lawful cause, automobiles driven by, or containing, minorities and young persons, as well as a practice of stopping, without lawful cause, persons driving older cars without Hamilton County license plates.

3. Without admitting that any particular stop was unlawful or that an unlawful custom, practice or policy exists, or existed, the Defendants nevertheless believe that it is in their best interests to enter into this settlement which resolves all the issues in this cause.

4. By this Stipulation, the parties are desirous of resolving all issues raised or resulting from the allegations contained in Plaintiffs' Amended Complaint, as well as those issues raised in a tort claims notice directed against Carmel Police Chief Michael Fogarty.

STATEMENT OF APPLICABLE LAW:

5. Federal and state law prohibit specific stops of vehicles unless lawful cause exists for the stops. This does not include traffic checkpoint stops where all vehicles and their drivers are systematically stopped.

SGT. DAVID SMITH:

6. Sgt. Smith has alleged that he was stopped by Carmel Police Officer Phillip Hobson without lawful cause and that the stop was pursuant to the alleged policy, custom and practice of the Carmel Police Department of stopping vehicles because of the race of their drivers or occupants or because of the fact that the cars are from out of county.

7. The Defendants vigorously deny Sgt. Smith's allegations, but wish to avoid the continued expenses of a protracted litigation and further wish to resolve all issues involved in this lawsuit.

8. By separate agreement, the parties have reached a full and complete settlement of Sgt. Smith's claims for damages and attorney fees, and the parties agree that this portion of the settlement, as to any monetary payments, will remain confidential and will not be disclosed by any party.

CLASS ACTION AND NOTICE REQUIREMENTS:

9. The parties stipulate that this cause is brought as a class action, with Sgt. Smith as class representative, and that all the requirements of Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure are met herein.

10. The parties request that the following class be certified:

All persons, past, present and future, who are racial minorities or young persons or are driving vehicles which do not bear Hamilton County license plates, and who have been, are, or will be driving in or through Carmel, Indiana, and who have been, are being, or will be stopped or subject to being stopped without lawful cause by the Carmel Police Department.

11. Inasmuch as this is a class action, this settlement can not be approved until notice is given to the class as required by Rule 23(e) of the Federal Rules of Civil Procedure. The plaintiffs specifically request that the following manner of notice and schedule be approved by the Court.

- a. The notice attached hereto as Exhibit 1 shall be posted prominently in the City Hall of Carmel, Indiana; in the City Court for the City of Carmel; and in the Carmel Police Department.
- b. The notice shall also be posted once a week for three (3) consecutive weeks in the Indianapolis Star, the Indianapolis Recorder, the Indiana Herald and a newspaper of general circulation in Hamilton County and all other counties which are contiguous to Hamilton County.
- c. No earlier than sixty (60) days from the date that Exhibit 1 is first publicly posted, Plaintiffs' counsel shall report back to the Court as to contact from class members. Following the filing of this report, the Court will proceed to decide whether to approve this Stipulation.

CLASS-WIDE INJUNCTIVE RELIEF:

12. As of this date, no Carmel Police Department officer shall stop any vehicle unless lawful cause exists. (As indicated above, this does not apply to checkpoint traffic stops).

13. A permanent injunction should issue on behalf of the class prohibiting Defendants from stopping any vehicle unless lawful cause exists as defined by law. Although the contours of lawful cause are as defined by the United States Supreme Court and other courts, both state and federal, the Defendants are specifically enjoined from using as the cause for stopping vehicles the fact that the driver and/or passenger of the vehicle is or are members of a racial minority. The Defendants are also specifically enjoined from using as the cause for stopping a vehicle the fact that the vehicle is not identifiable as being registered to a Hamilton County resident.

REMEDIAL MEASURES:

14. The parties agree that, in order to comply with the injunction as stated in paragraph 13, that the City of Carmel will, at a minimum take the following permanent steps:

- a. Within two (2) months of the execution of this Stipulation, the City of Carmel will employ an outside expert consultant, to be approved by the Plaintiffs, whose approval shall not be unreasonably withheld, who will assist them in establishing written compliance standards and procedures to be followed by the employees, officers, and other agents of the Carmel Police Department, which standards and procedures are designed to remove or reduce the prospect of the employees, officers, or agents committing the unconstitutional

conduct alleged in Plaintiffs' Amended Complaint and specifically enjoined above. These standards and procedures will be implemented within three (3) months of the execution of this Stipulation.

- b. Within two (2) months of the execution of this Stipulation, the Defendants will notify the Plaintiffs' representatives and the Court regarding the specific individuals within the Carmel Police Department who are assigned overall responsibility to oversee compliance with the above standards and procedures.
- c. Within four (4) months of the execution of this Stipulation, the City of Carmel, in conjunction with the expert consultant retained above, will inform the Court and the parties of the training schedule it will use to communicate effectively its standards and procedures regarding traffic stops to all employees, officers and other agents. This training schedule must include both an initial mandatory training as well as periodic training which will occur at least annually and, additionally as needed, as determined by the City of Carmel, Indiana Chief of Police.
- d. Within three (3) months of the execution of this Stipulation, the City of Carmel will notify the Plaintiffs' representatives and the Court regarding the monitoring and auditing systems it has put into place

which must be reasonably designed to detect unlawful conduct by its employees, officers, and other agents. At a minimum, the monitoring and auditing system must provide that:

1. A reporting system be devised so that employees, officers, or other persons can report unlawful conduct within the Carmel Police Department without fear of retribution. A written explanation of this reporting system will be made available at the Carmel Police Department and at Carmel City Hall. This explanation will be drafted by Plaintiffs' counsel, subject to approval by Defendants, which approval will not unreasonably be withheld.
2. The standards for traffic stops established by the Stipulation will be enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect or report unlawful conduct.
3. All traffic stops must be videotaped and the tapes may not be destroyed for at least two years. A "log" system will be designed to ensure quick retrieval of information from the tapes. The City of Carmel will use reasonable efforts to keep its videotape equipment in good working order. However, the parties acknowledge that mechanical and/or electrical failure occasionally occurs, and, absent a showing by the Plaintiffs' representatives that any alleged failures were as a result of the City not using reasonable efforts to keep the equipment in good working order, these failures will not constitute non-compliance with this agreement.

15. The parties agree that in order to comply with the injunction in paragraph 13, the City of Carmel will, at a minimum, take the following temporary steps within ninety (90) days of the execution of this Stipulation. The City of Carmel will maintain the information and standards specified below for a minimum of three (3) years and six (6) months from the date that this Stipulation is filed with the Court. After that time, the City of

Carmel will no longer be required to follow these steps. Plaintiffs' representatives may petition the Court for a continuation of these steps; however, they will have the burden to demonstrate a continued need for the steps.

- a. Defendants will supply Plaintiffs' representatives with a curriculum vitae of the trainers, as well as confirmation of attendance and completion of training by the trainees and trainees' evaluations of the training session and trainer following the training session specified in Paragraph 14c.
- b. At least thirty (30) days prior to the training specified in Paragraph 14c, the Defendants will supply to Plaintiffs' representatives the name, address, and phone number of the trainers as well as a syllabus or summary of the training.
- c. During the period that this paragraph is in place, the City of Carmel shall:
 1. Allow Plaintiffs' representatives to review any and all videotapes of traffic stops at least every three (3) months with reasonable advanced notice.
 2. Maintain computer records of all traffic stops, regardless of whether a citation or warning is issued, which records shall minimally include the following:
 - date
 - time
 - location of stop
 - the name of the officer making the stop
 - the name of the officer making the record if different than the officer making the stop
 - the year, make, model and color of the vehicle
 - the grounds for the stop
 - the race, age, and sex of the person stopped

- the race of any passenger(s) if this information can be ascertained solely through the observation of the officer from outside of the vehicle
 - if a citation or arrest is made, the specific offense charged
 - the county designation present on the license plate if from the State of Indiana or a notation that the plate does not contain a designation
3. Defendants shall make these records available to Plaintiffs' representatives on a quarterly basis. If Defendants elect to provide a summary of the information obtained, the original data will be produced to Plaintiffs with reasonable advanced notice.
 4. The parties agree that insofar as the above records mention the names of individuals and insofar as that information may not otherwise be disclosed under Indiana law, that that information is provided as if under seal of this Court and shall not be disclosed.

CONTINUED DIALOGUE:

16. In the interest of assuring compliance with the explicit requirements of this Stipulation, the parties agree that for a period of one (1) year after the approval of this Stipulation, the parties' representatives shall meet at least once every three (3) months to discuss the Stipulation, compliance and monitoring issues. These meetings may be dispensed with if all parties approve.

CONTEMPT:

17. In the event that the Plaintiffs reasonably believe that this Stipulation is not being complied with, they agree that they shall not file any contempt petitions with the Court until at least thirty (30) days after written notice is given to the City of

Carmel, with specific alleged deficiencies outlined in the notice. After the thirty (30) day Notice is given to the City, the parties will have a ten (10) day good faith negotiation period in which to resolve their differences.

18. Plaintiffs may show a violation of this agreement by establishing that:

- a. Defendants have failed to take the remedial measures specified above within the indicated time frame.
- b. Evidence exists showing a pattern and practice of traffic stops in violation of this Stipulation.

MISCELLANEOUS TERMS:

19. The parties agree to issue the following joint press release at a time and place to be determined on the date of submission of this Stipulation to the Court, said press release being attached hereto and made a part hereof as Exhibit "A". Furthermore, the parties hereto agree to make themselves available to answer questions from the news media at a joint press conference at the time the joint press release is issued, all in accordance with the provisions of the Stipulation and the "Confidential Settlement Agreement and Mutual Release", and further agree at the conclusion of this joint press conference not to answer questions from known members of the media for a period of ten (10) days without the other parties hereto having an opportunity to be present.

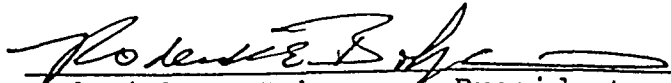
20. The parties agree that they will not engage in or encourage any disparaging conduct regarding the individual parties in this cause.

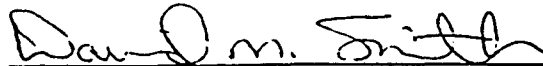
ATTORNEY FEES:


21. The parties agree that any entitlement of Plaintiffs or their counsel to attorney fees and costs for time spent in this litigation is fully resolved by the parties' confidential agreement referred to in paragraph 8.


WHEREFORE, the parties submit their Stipulation and request that the Court:


1. Certify this cause as a class action with the class as defined above.
2. Approve the proposed notice to the class and order that it be given in the manner specified above.
3. Approve this Stipulation following notice to the class.

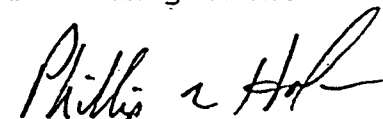

Roderick E. Bohannon, President
Indianapolis Chapter of the NAACP

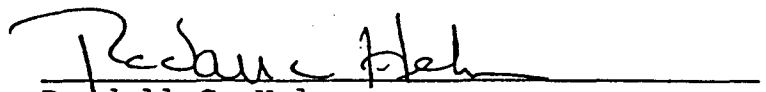

Sgt. David Smith


Kenneth J. Falk
Indiana Civil Liberties
1038 East Washington Street
Indianapolis, IN 46202
(317) 635-4059


Linda L. Pence
Andrielle M. Metzler
Johnson, Smith, Pence, Densborn
Wright & Heath
One Indiana Square, Suite 1800
Indianapolis, IN 46204
(317) 634-9777


City of Carmel, Indiana ~~and~~
~~its~~ Board of Public Works
~~and safety~~ by James Brainard,
~~Presiding Officer~~


Phillip Hobson


Randall C. Helmen
HUME SMITH GEDDES GREEN & SIMMONS, LLP
54 Monument Circle, 4th Floor
Indianapolis, IN 46204
(317) 632-4402

TO: All persons driving in and through Carmel Indiana

This notice is to inform you of a proposed settlement in the case of *Indianapolis Chapter of the NAACP, et al. v. The City of Carmel*. This case has been filed in the United States District Court in Indianapolis (Case Number IP 97-104C M/S). The case is a class action which means that it is brought on behalf of a class of persons. The class is defined as:

All persons, past, present and future, who are racial minorities or young persons or are driving vehicles which do not bear Hamilton County license plates, and who have been, are, or will be driving in or through Carmel, Indiana, and who have been, are being, or will be stopped or subject to being stopped without lawful cause by the Carmel Police Department.

The lawsuit claimed that members of the class were being stopped by Carmel Police officers without proper cause. The lawsuit did not seek damages for the unnamed members of the class, but sought orders that the alleged practice stop.

We are the attorneys who represent this class. We have now entered into a settlement with the City of Carmel which we wish to inform you of. Without admitting that it has done anything wrong in the past, the City of Carmel is agreeing to take certain steps now. These steps are outlined below:

1. No vehicle will be stopped unless there is lawful cause (unless there are random checkpoint traffic stops set up).
2. Written compliance standards and procedures will be established by Carmel to insure that stops will be lawful and there will be specific members of the Carmel Police Department charged with overseeing these standards and procedures.
3. At least annually members of the Carmel Police Department will be given training concerning proper traffic stops.
4. A system will be put in place to enable persons to report unlawful conduct by Carmel Police officers and to insure that officers will be disciplined for engaging in unlawful conduct or for failing to report it.
5. All traffic stops must be videotaped and the tapes will not be destroyed for two years.

The above steps are permanent ones. In addition, in order to insure that the settlement is being complied with, the City of Carmel has agreed to take the following steps for at least three (3) years and six (6) months.

1. Carmel will notify plaintiffs' counsel concerning the training being done.
2. Plaintiffs' counsel may regularly review the videotapes of stops.

EXHIBIT 1

3. Carmel will maintain information concerning each and every traffic stop. The information will include such things as date; time; location; name of officers; reasons for stop; race of driver; race of passengers if that can be determined from observation; the year, make, model, color of car; and whether the car is from out of county. This information will also be made available to plaintiffs' counsel on a periodic basis.

The settlement also provides that we will continue to have a dialogue with the City of Carmel for at least a year to insure that the settlement is implemented smoothly.

The settlement also resolves, through a confidential agreement, the claims of one of the people who brought this suit to damages and attorneys' fees.

Under federal law, before this type of class action is settled we have to notify the class of the settlement. After this notice is posted for sixty (60) days we will notify the Judge as to any comments we receive. The Judge will then decide whether to approve the settlement.

Therefore, please feel free to contact us if you have any comments about the Settlement or any questions as to its terms.

Thank you.

Attorneys for the Plaintiffs and the Class

Kenneth J. Falk
Indiana Civil Liberties Union
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059
FAX: 317/635-4105
E-mail: indclu@aol.com

Linda L. Pence
Andrielle M. Metzel
Johnson, Smith, Pence, Densborn, Wright and
Heath
One Indiana Square, Suite 1800
Indianapolis, IN 46204
317/634-9777