



PP-MD-002-004

**In The Courts****American Civil Liberties Union
Freedom Network****IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND****ROBERT L. WILKINS, et al.,
Plaintiffs,**

v.

**MARYLAND STATE POLICE, et al.,
Defendants.**

Civil Action No. CCB-93-468

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR
ENFORCEMENT OF SETTLEMENT AGREEMENT AND FOR FURTHER
RELIEF****I. Introduction**

After months of negotiations mediated by the Court, the parties to this case reached a settlement which was approved by this Court on January 5, 1995. *See* Settlement Agreement, attached hereto as Exhibit 1. The Agreement concerned plaintiffs' 1993 claim that Maryland State Police routinely used race in drug interdiction activities conducted on Maryland roadways, in violation of the Fourth and Fourteenth Amendments, 42 U.S.C. §1983, Title VI of the Civil Rights Act of 1964, and Maryland common law. *See* Complaint, attached hereto as Exhibit 2. Defendants denied using race in motorist stops, but agreed that MSP would explicitly prohibit such discrimination in the future, would conduct officer training, and would maintain computer records tracking motorist detentions and searches to enable the agency, the Court and the plaintiffs to monitor compliance. Data covering the first 21 months of the monitoring period, from January 1995 through September 1996, now has been filed with the Court and supplied to the plaintiffs.

As set forth below, this data shows a disturbing pattern of continuing racial discrepancies, in violation of the non-discrimination policy and the Settlement Agreement. Accordingly, plaintiffs ask the Court to find defendants to be in contempt of court, and to impose a conditional civil contempt monetary penalty in the amount of \$250,000, payable to the Court. Plaintiffs further request that, pursuant to the contempt citation, the Court order: 1) that jurisdiction over the case for monitoring purposes be extended for one year, from January 1998 through December 1998; 2) that MSP provide plaintiffs with names, addresses, and telephone numbers for all motorists searched along the I-95 corridor since January 1995; 3) that MSP's record-keeping obligations be extended by one year, until December 1998, and be expanded to include motorist stops in addition to motorist searches and detentions; and 4) that MSP produce to the Court and the plaintiffs all investigative and disciplinary records reflecting any actions taken by the agency to enforce the policy of non-discrimination established under the *Wilkins* settlement.

II. Enforcement Standards

The Settlement Agreement authorizes enforcement "in the United States District Court for the District of Maryland by any of the parties acting alone or in concert, or by the American Civil Liberties Union, as representative of the Plaintiffs." Agreement at ¶1. Further, the Agreement specifies: "If after July 1, 1995, Plaintiffs, on the basis of the computer records provided by Defendant Maryland State Police or through other means, make a *reasonable showing* that there is a pattern and practice of making stops on the basis of race," the Court's jurisdiction shall be extended and plaintiffs shall be entitled to additional injunctive relief. *Id.* at ¶10 (emphasis added). In addition, plaintiffs may show a violation, and therefore seek relief under the Settlement Agreement "by showing that there is a pattern and practice of MSP stops conducted on the basis of race, for which Maryland State Police could be held liable under 42 U.S.C. §1983." Agreement at ¶11. Relief available upon plaintiffs' showing of a violation includes any and all "relief available for violating an injunction[.]" *Id.* The plaintiffs clearly satisfy the enforcement standards set forth in the Agreement. The evidence presented in this Memorandum demonstrates, in an unequivocal fashion, that notwithstanding the Agreement, MSP continues to engage in a pattern and practice of making stops on the basis of race.

III. Plaintiffs' Monitoring Efforts

Plaintiff Robert L. Wilkins and the American Civil Liberties Union have collected, organized and analyzed data submitted by the Maryland State Police to the Court and the ACLU for the period from January 1995 through September 1996. The data shows that more than one-third of all MSP drug interdiction activities involving motorists occur along Interstate 95, north of Baltimore, in Harford, Cecil, and Baltimore Counties.(1) MSP's drug interdiction team, the "Special Traffic Interdiction Force (STIF)"(2) works exclusively on this I-95 "corridor."(3) Because the Interstate 95 corridor is a focus of MSP interdiction efforts and because racial disparities in MSP data for this area are glaring, plaintiffs have focused their monitoring there.

In focusing on this corridor, plaintiffs have monitored:

1. overall MSP activity along the Interstate 95 corridor;(4)
2. STIF activity in this area through March of 1996;(5) and
3. detentions and searches conducted by individual troopers who were active in drug interdiction efforts along I-95.

The following troopers have conducted motorist searches in sufficient numbers to prompt individual monitoring as part of plaintiffs' I-95 monitoring:

John E. Appleby
Bernard Donovan(6)
Melvin Fialkewicz
John R. Greene
Steven L. Hohner
David Hopp
David B. Hughes
Michael T. Hughes
Steven O. Jones
James E. Nolan
Paul J. Quill
Christopher Tideberg
Ernest S. Tullis
John Wilhelm

To assess the significance of racial disparities in the MSP data, plaintiffs have measured the data by two methods: First, plaintiffs have contrasted defendants' search data with the benchmark percentages of African-American and other minority motorists traveling and

violating traffic laws along the relevant segment of Interstate 95. Second, racial breakdowns for MSP searches conducted on I-95 have been compared with those for searches conducted by MSP on other Maryland roadways. By both measures, the racial disparities are extraordinary and surely make out a "reasonable showing" of a racially-based pattern and practice.

A. Determination of Population Benchmarks

Early last spring, plaintiffs' counsel asked MSP to cooperate with a "stationary survey" of the racial composition of motorists traveling Interstate 95 in northeastern Maryland. *See* March 11, 1996 letter from Deborah A. Jeon to Betty S. Sconion, attached hereto as Exhibit 8. MSP counsel would not consent to this survey, and even threatened to arrest ACLU surveyors. *See* March 22, 1996 letter from Betty S. Sconion to Deborah A. Jeon, attached hereto as Exhibit 9. Working under the supervision of Dr. John Lamberth, plaintiffs instead conducted a "rolling" traffic survey of motorists and traffic law violators traveling the relevant portion of I-95.(7) The methodology and detailed results of the rolling survey are fully set forth in the report of Sarah E. Cushman and Christopher Kosmides, attached hereto as Exhibit 11. Survey results for I-95 motorists and traffic law violators are as follows:

	All Motorists	Traffic Law Violators
White	75.6%	74.7%
Black	16.9%	17.5%
Hispanic	0.6%	0.6%
Other	3.6%	3.7%
All Minority	21.1%	21.8%
UnKnown	3.2%	3.4%

B. Search Data Outside the I-95 Corridor

Racial breakdowns in search data reported by MSP for the Interstate 95 corridor differ dramatically from those for motorist searches reported by state police on other Maryland roadways.(8) Non-Interstate 95 corridor data reported by MSP over the 21-month period breaks down as follows:

Whites searched:	63.7%
Blacks searched:	32.0%
Hispanics searched:	3.5%
Others searched:	0.6%
Total Non-Whites searched:	36.2%

IV. MSP Records Reveal a Striking Pattern and Practice of Racial Discrimination in Drug Interdiction Activities Conducted Along the Interstate 95 Corridor.

As set forth in Tables 1 through 16, attached hereto as Exhibit 12, MSP data reveals a striking and consistent pattern of racially disparate searches conducted by troopers patrolling Interstate 95.(9) When the I-95 search data is contrasted with data on racial

identity of motorists violating traffic laws on I-95, the racial disparities in MSP searches are undeniable.

	I-95 Motorists Searched	Traffic Law Violators on I-95
Whites	19.7%	74.4%
Blacks	72.9%	17.5%
Hispanic	5.6%	0.6%
Other	1.8%	3.7%
Total Minority	80.3%	21.8%

The racial discrepancies between MSP search data and population benchmarks are yawning. Indeed, the percentages for blacks and whites in these two groups are nearly inverted. Statistical analysis only confirms the obvious problem. See Report of John Lamberth, Ph.D., attached as Exhibit 13. The comparative disparity between black motorists stopped and searched by MSP and blacks subject to stop for violating traffic laws is 316.6%, and encompasses 34.6 standard deviations. See Lamberth Report at p. 8. Only about one in every six I-95 motorists is African American, yet three out of every four motorists searched by state police were black.

MSP officials have contended to the media that this pattern of discrimination is mere "coincidence." See "State police I-95 drug unit found to search black motorists 4 times more often than white," *The Sun*, May 23, 1996, attached hereto as Exhibit 14. Such an explanation begs reason. As calculated by Dr. Lamberth, the odds that three-quarters of MSP detainees would be black by happenstance are about one in a *quintillion*.(10) Lamberth Report at p.8.

MSP's own data demonstrates that this racial distortion is unnecessary to successful drug interdiction. Comparison of I-95 search data with that for other Maryland roadways reveals that troopers patrolling I-95 search black motorists at more than double the rate that troopers do elsewhere in the state. Yet the rates at which troopers uncover contraband on motorists are nearly the same on and off I-95. Lamberth Report at p.8. Even more significant, MSP data shows that statewide, police find contraband on black and white motorists at equal rates. Blacks were found in possession of contraband in 28.4% of searches, whereas whites were found with contraband 28.8% of the time.(11) *Id.*

V. Immediate Relief is Necessary.

A. Citation and Penalty for Civil Contempt

Defendants have continued to rely upon race in drug interdiction efforts in blatant disregard of the Settlement Agreement, despite their awareness that the Court and the plaintiffs are monitoring their actions. Maryland State Police have had notice, trainings, and ample warning about the illegality of their conduct. Plaintiffs and ACLU counsel have attempted to work with defendants and their counsel to facilitate enforcement of the Agreement and the non-discrimination policy in this case, yet have been met with resistance at every stage. First, MSP officials withheld computer records from plaintiffs for nearly a year in an attempt to hamper plaintiffs' enforcement efforts, finally producing the records only after the Court imposed a penalty for their not having done so earlier. Next, defendants rebuffed plaintiffs' effort to cooperate in conducting a traffic survey, suggesting that ACLU volunteers would be arrested if they attempted to conduct the survey without the State's consent. At the same time, MSP officials unreasonably refused to stipulate to use of traffic

survey results from southernmost New Jersey (less than 20 miles north of the relevant segment of Interstate 95 in Maryland,) thus forcing plaintiffs to undertake the enormous effort of duplicating this survey in Maryland. And according to sources within the agency, drug interdiction trainings conducted by MSP officials pursuant to the Settlement have included gratuitous insults toward the ACLU and plaintiffs' counsel, while stressing that MSP officials admit no wrongdoing in connection with their law enforcement practices and that the agency is going along with monitoring efforts *not* because there is any problem but only because it is being forced to do so by the Court and the ACLU.

The seriousness of MSP's violation cannot be gainsaid. Racial discrimination in law enforcement results in denial of liberty on the basis of race. It encourages and reinforces the stereotype that African Americans and other minorities are more likely to be criminals than are whites. It fundamentally undermines and subverts the Constitutional principle that all citizens are due equal protection of the law.

It is imperative, therefore, that the Court send a message condemning MSP's unabated pattern of discrimination. Plaintiffs ask that defendants be held in contempt of court as a result of their continuing violation of the Settlement Agreement.(12) To give teeth to this citation, plaintiffs suggest that the Court impose a conditional civil contempt monetary penalty in the amount of \$250,000, payable to the Court. Defendants could purge the violation and obtain return of the funds by showing by a date certain (*e.g.*, December 31, 1997) that the racial disparities in their drug interdiction activities have been substantially eliminated. *See International Union, UMW v. Bagwell*, 114 S.Ct. 2552, 2558-59 (1994); *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 633 (1985).

B. Extension of Jurisdiction and Record Keeping

The Agreement prescribes that upon plaintiffs' "reasonable showing" of a pattern and practice of race discrimination in MSP searches and detentions, the Court's jurisdiction and defendants' record-keeping obligations automatically will be extended for one year.(13) Plaintiffs submit that they have met the "reasonable showing" standard, and thus that this Court's jurisdiction and defendants' record-keeping obligations should be extended through December 1998.

C. Further Identifying Information on I-95 Motorists

Also upon plaintiffs' showing of a pattern and practice of racially disproportionate searches, MSP must supply (under seal) "further identifying information" on individual motorists affected by the practice. Accordingly, plaintiffs now ask the Court to order defendants promptly to provide the names, addresses, and telephone numbers of all motorists detained and/or searched along Interstate 95 from January 1995 to date. This information is sought for each entry listed in Exhibit 15 hereto, as well as for I-95 searches conducted since September 1996. Plaintiffs additionally request that all future quarterly reports include "further identifying information" for those motorists searched along the I-95 corridor.

D. Expansion of Required Reporting to Cover I-95 Stops

The foregoing amply demonstrates that there exists within the MSP a pattern and practice of conducting stops and searches on the basis of race. It also strongly suggests that MSP engages in a discriminatory pattern and practice in initiating stops, which stops may or may not result in a search. The *Wilkins* Agreement, and the non-discrimination policy implemented by MSP pursuant to the Agreement, prohibit racial discrimination in motorist stops. To date the MSP has not provided the information that would allow an incontrovertible determination of this issue: the racial identity of every motorist stopped by the MSP. Accordingly, plaintiffs respectfully request that the Court order MSP to provide stop information, with the same frequency and with the same level of detail, as the stop and search data. Further, plaintiffs request that the Court order MSP to produce historical stop

data -- for the period from January 1995 to date -- and take measures to protect such data from destruction.(14)

E. Production of MSP Investigative and Disciplinary Files

As an aspect of the *Wilkins* settlement, defendants agreed that "MSP will enforce the [non-discrimination] policy through appropriate investigation and disciplinary action." Agreement at ¶6. In order for the plaintiffs to determine if defendants have complied with this provision of the Agreement, plaintiffs must review MSP investigative and disciplinary files for those troopers shown by MSP records to have engaged in interdiction activities in a racially discriminatory manner during the monitoring period.(15) Accordingly, plaintiffs ask that the Court order MSP to produce to the plaintiffs any and all files and documents reflecting any general investigative and/or disciplinary actions taken by MSP to enforce the non-discrimination policy, any actions involving the Special Traffic Interdiction Force (including all documents pertaining to the 1996 alteration of the STIF,) and any actions specifically involving the following troopers: John E. Appleby, Bernard Donovan, Melvin Fialkewicz, John R. Greene, Steven L. Hohner, David B. Hughes, Michael T. Hughes, Steven O. Jones, James Nolan, Paul J. Quill, Christopher Tideberg, Ernest S. Tullis, and John Wilhelm.

VI. Conclusion

For the foregoing reasons, plaintiffs request that the Maryland State Police agency be cited for civil contempt, and that additional relief be granted as described above.

Respectfully submitted,

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Notes

1. For the period from January 1995 through September 1996, MSP troopers reported a total of 2,372 motorist detentions and searches state-wide. Of these, 823 searches (34.7%) occurred north of Baltimore along Interstate 95, in Harford, Cecil, and Baltimore Counties, according to MSP records.

2. As publicized by the Maryland State Police, the Special Traffic Interdiction Force is or was a specialized team of troopers trained and solely focused upon drug interdiction activity along Interstate 95. See "In Drug Fight, Police Now Take to the Highway," *New York Times*, March 5, 1995, attached hereto as Exhibit 3. Plaintiffs are informed and believe that until late spring of 1996, the STIF was composed of six white troopers: John E. Appleby, Bernard Donovan, Steven L. Hohner, James E. Nolan, Paul J. Quill, and John Wilhelm. During June of 1996, however, the STIF reportedly was cut from six to three members. See "Md. State Police Reduce I-95 Drug-Search Team," *Washington Post*, June 29, 1996, attached hereto as Exhibit 4. Approximately one month prior to this change, a

nationally-circulated *Associated Press* investigative analysis using the data generated under the Wilkins Agreement (covering the period from January 1995 through September 1995), reported that STIF members searched African-American motorists four times as often as they did whites. See, e.g., "Md. drug squad searches more blacks than whites," *USA Today*, May 24, 1996, attached hereto as Exhibit 5. It was widely reported that the Wilkins data, the *Associated Press* expose, and attendant publicity were factors in MSP's decision to alter the STIF. See, e.g., "State police cuts I-95 drug search team in half," *Sunday Star*, June 30, 1996, attached hereto as Exhibit 6.

Plaintiffs are not certain which of the six members were removed from the STIF, except that Cpl. John Appleby was one of the three removed. Reportedly, Appleby has since been charged with felony theft in connection with his drug interdiction activities, and has been suspended from his employment with the Maryland State Police pending prosecution. See "Maryland Trooper Charged With Taking Planted Cash," *Washington Post*, September 20, 1996, attached hereto as Exhibit 7.

3. As used by plaintiffs in connection with their settlement enforcement efforts, the terms "Interstate 95 corridor" and "I-95 corridor" refer to the section of Interstate 95 running north of Baltimore City, through Baltimore, Harford, and Cecil Counties, to the Delaware state line.

4. In monitoring I-95 corridor activity, plaintiffs simply separated out data recording searches and detentions conducted on Interstate 95, north of Baltimore, from other MSP data. In compiling Interstate 95 corridor data, plaintiffs counted every entry reported by state police in which the location was identified as Interstate 95 (north of Baltimore City) and the County was listed as Harford, Cecil, or Baltimore County. All but a handful of these were coded by MSP with the number "62"; The remaining few bore the code "55". As set forth in the Certification of Sarah E. Cushman, attached to the Lamberth Report as Exhibit B, all of this sorting was performed by computer, using a Microsoft Excel program.

5. STIF activity was monitored only through March of 1996 due to the reported changes made to the team in late spring and plaintiffs' uncertainty as to the team's membership following this action.

6. Although Trooper Donovan did not report substantial activity along I-95, he was nevertheless included in plaintiffs' individual monitoring due to his membership on the STIF.

7. Because the rolling survey provided information about traffic law violators (*i.e.*, persons fairly subject to being stopped by police) as well as general motorist numbers, it actually supplied more apt data for plaintiffs' purposes than the stationary survey would. The ACLU rolling survey was patterned after a 1993 study conducted 19 miles north of the Maryland study area, on the New Jersey Turnpike. Like the Maryland survey, the New Jersey survey was conducted under the direction of Dr. Lamberth, by the Gloucester County Public Defender's Office. The methodology and results of the New Jersey study were approved by the Superior Court of New Jersey in *State of New Jersey v. Pedro Soto, et al.*, March 4, 1996, attached hereto as Exhibit 10. Indeed, the *Soto* Court relied upon results of the traffic violator survey to suppress evidence seized by New Jersey State Police in 19 criminal cases in which searches were challenged as tainted by racial discrimination.

As one might expect given the close proximity of the study areas for the New Jersey and Maryland surveys, the results of the two surveys are nearly the same. In anticipation of this outcome, prior to undertaking a separate survey of the Maryland highway (and to address MSP's stated concerns about the unsafety of a stationary survey) plaintiffs' counsel asked MSP counsel to stipulate to use of the New Jersey survey results to approximate racial breakdowns of Maryland I-95 motorists. But MSP counsel refused to so stipulate.

8. For purposes of this analysis, "non-Interstate 95 search data" includes all motorist searches reported by MSP from January 1995 through September 1996, *except* those conducted along the Interstate 95 corridor, north of Baltimore, in Harford, Cecil, or Baltimore Counties.
9. Of all troopers individually monitored by plaintiffs, only Trooper David Hopp reported searches in numbers not grossly disproportionate by race. *See* Exhibit 12, at Table 8.
10. A quintillion is defined as a cardinal number represented (in the United States) by a one followed by 18 zeros. This substantially exceeds a billion, which is a thousand million (a one with nine zeros), a trillion, which is a million million (a one with 12 zeros), and a quadrillion, which is a one followed by 15 zeros.
11. That is, 311 of 1,096 black motorists searched, statewide, by Maryland State Police were found to be in possession of a controlled dangerous substance (CDS) while 331 of 1,148 white motorists searched, statewide, were found with CDS. Lamberth Report at p.8.
12. The only express restriction upon relief available upon proof of violation of the Agreement is the statement that "[t]he relief under this Agreement is limited to relief available for violating an injunction, and specifically does not include money damages for individuals who are stopped." *Id.* at ¶11. A contempt citation such as that sought by plaintiffs certainly is a remedy available upon proof that an injunction has been violated.
13. The Agreement anticipated that the year's extension would run from July 1997 through June 1998. However, due to defendants' prior violation of the Settlement by their failure to produce required computer records, jurisdiction previously was extended through December 1997. *See* March 6, 1996 Order. Thus, the year's extension now sought will run from January 1998 through December 1998.
14. Even if MSP does not maintain a database of stop data comparable to that maintained for search data under the *Wilkins* Agreement, plaintiffs are informed and believe that defendants record certain stop data (with racial identifiers) in the form of traffic ticket records. Thus, production of the ticket records will provide plaintiffs with stop information, at least for those motorists who are issued traffic citations.
15. Although plaintiffs are only now seeking enforcement of the Settlement Agreement, the information underlying plaintiffs' case has been in defendants' hands throughout the monitoring period. Indeed, for much of the period MSP had far more meaningful access to the data for purposes of analyses, as the agency maintained the data in computer record form, while withholding the computer records from the plaintiffs. Furthermore, in related litigation, ACLU counsel previously submitted data compilations and raised concerns about patterns of racial discrimination emerging in drug interdiction activities conducted along Interstate 95. *See* Exhibit 16, Affidavit of Deborah A. Jeon, filed March 6, 1996 in *Carter, et al. v. Maryland State Police, et al.*, Case No. 03-C-96-000156 (Balt.Co.Cir.Ct.). Given these circumstances (to say nothing of publicity generated by the Associated Press investigation), defendants can scarcely claim lack of notice about potential problems warranting investigation.

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