

Wilkins v. Maryland State Police



PP-MD-002-003

REPORT OF JOHN LAMBERTH, PH.D.

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I, John Lamberth, am the immediate past Chairman of the Department of Psychology and the past Director of the Division of Social Psychology at Temple University, in Philadelphia. I have been on the Temple faculty in the Department of Psychology since 1973.

I have had extensive professional and academic experience with the design and use of statistically valid surveys, random sampling techniques, and the analysis of statistically-based measures of significance derived from survey, census, and sample data.¹ I have been qualified as an expert witness in statistics, surveying, and social psychology in the United States District Courts for New Jersey and Virginia, and in state courts in New Jersey,² Pennsylvania, and Virginia. I make this report in connection with the case *Wilkins v. Maryland State Police*, Civil Action No. CCB-93-483. Counsel for Mr. Wilkins have retained me to design and conduct a study and analysis of the incidence and significance of police searches along the I-95 corridor in Cecil, Harford, and Baltimore Counties. The overall goal of the study was to determine if Maryland State Police stop and search black³ motorists at a rate disproportionate to their numbers on the highway.

¹For a full recitation of my credentials, employment and experience, please refer to my curriculum vitae attached hereto as Exhibit A.

²Of particular significance to the *Wilkins* case, I served as an expert for the Gloucester County Public Defender's Office in *State of New Jersey v. Pedro Soto, et al.*, a case referred to below. There, the Superior Court of New Jersey relied upon expert survey and analytical work I performed to suppress evidence seized by New Jersey State Police in 19 consolidated criminal prosecutions. The Court there concurred in my opinion that state police unlawfully relied upon race in stopping and searching motorists on the New Jersey Turnpike, thus tainting the evidence.

³The generic term "black" is used in this report to identify people who may be African-American.

Toward this end, I have assisted in the design and conduct of a study to test the proposition that the Maryland State Police patrolling Interstate 95 search black motorists in significantly higher numbers, as measured statistically, than one would expect given:

- (a) the racial composition of the population of motorists on I-95;
- (b) the racial composition of the population of motorists on I-95 who violate traffic laws; and
- (c) the racial composition of motorists detained and searched by Maryland State Police on roadways outside the I-95 corridor.

I. DATA SOURCES UPON WHICH THIS STUDY IS BASED

A. Data Supplied By The Maryland State Police

Pursuant to a Settlement Agreement approved by the Court in January 1995, the Maryland State Police (MSP) has supplied the ACLU with data concerning searches of motorists they have conducted from January 1995 through September 1996. These data have been organized and summarized by the ACLU, then provided to me in summary form. See Exhibit B, attached hereto. The data summaries list the total number and location of searches, the name of the trooper who conducted each search, and racial breakdowns for the searches reported by MSP.

B. Data Gathered By The ACLU

I designed and assisted in implementation of a plan to gather statistically appropriate data on the population of motorists on I-95 in Cecil, Harford, and Baltimore Counties, north of Baltimore City. The "rolling survey", carried out by the ACLU, was to determine the racial composition of motorists on the highway and the racial composition of those motorists on the

highway who were violating traffic laws.⁴

Observers rode in cars at a constant 55 or 65 miles per hour (depending upon the posted speed limit) northbound from the White Marsh exit of I-95 (exit 67) to the last exit in Maryland (Elkton - exit 109) before the toll. They then stopped to rest or gas up for approximately 10 minutes and then proceeded southbound to the White Marsh exit.⁵ They were instructed to count the cars that passed them and classify them as traffic violators (i.e., speeders) and to count the cars they passed (i.e., non-speeders) and classify them as non-violators, unless they were violating some other traffic law. They were also to classify each car as to the race of its driver.

There were a total of 21 traffic observation sessions conducted on days and at times randomly selected by me, in accordance with professionally established and accepted procedures and methods. Sessions were conducted only during the 12-hour period from 8:00 a.m. to 8:00 p.m., as during these times the days were light enough to allow accurate counting.⁶

⁴I initially requested that a stationary traffic survey also be carried out, primarily to confirm general population numbers ascertained through the rolling traffic survey which was conducted. However, plaintiff's counsel informed me that their request to carry out such a survey was denied by the Maryland State Police.

⁵On eight occasions, either the weather and traffic conditions were sufficiently favorable or the surveyors did not stop at the northern terminus of the survey, and there was still some time in the two hour period designated for the survey. On these occasions, a "half pass" was executed. That is, the surveyors drove northward for half of the time remaining in the two-hour survey period and then drove southward for the other half of the time remaining. While this technically oversamples the southern part of the roadway, as a practical matter it had almost no effect. On the eight sessions when the half pass was executed, 16.7% of the highway population was counted as black, and during the sessions when no half pass was executed, 17% of the population on the highway was counted as black.

⁶A complete description of the survey is found in "American Civil Liberties Union of Maryland I-95 Corridor Traffic and Violator Survey" by Sarah E. Cushman and Christopher E. Kosmides, appended to plaintiffs' Memorandum as Exhibit 11.

From the beginning of this study I have assumed that the racial composition of the population of travellers on I-95 would be materially the same as the population of traffic violators. I have made that assumption based upon the proposition that blacks and persons of other races (1) are supposed to enjoy equality before the law; (2) are not materially different in motor, neural, and perceptual skills as they bear on the capacity to drive; and (3) the testimony of New Jersey State Police officers who in the case of *State of New Jersey v. Pedro Soto, et al.*, all testified that blacks drive indistinguishably from whites. As demonstrated in the traffic survey, this assumption has proven to be valid.

I have carefully reviewed both the design of the traffic survey and the reports from that survey. I consulted in the course of the survey with the supervisors in charge. On these bases, I am confident that the results of the survey accurately describe the racial population of the highway surveyed.

II. SUMMARY OF THE CONTENTS OF EACH DATA SOURCE

A. Traffic Survey Results

Five thousand seven hundred and forty one cars were surveyed in the 21 sessions comprising approximately 42 hours. In the vast majority of cases, 96.8%, it was possible to identify the race of the driver of the vehicle. Nine hundred and seventy three, or 16.9% of the cars, had black drivers. Four thousand three hundred and forty one, or 75.6% of the cars, had white drivers. The great majority of drivers -- 5,354 of 5,741, or 93.3% -- were violating traffic laws and thus were eligible to be stopped by State Police. Of the violators, 17.5% were black, and 74.7% were white. Overall results of the traffic survey and the count of violators are shown

in Table 1.

Table 1: Drivers and Traffic Law Violators by Race from I-95 Corridor Survey

	White	Black	Other	Unknown	All Minority
Number of Drivers Observed	4,341	973	241	186	1,214
Number of Violators Observed	4,000	938	232	184	1,170
Percent of Drivers (by race)	75.6%	16.9%	4.3%	3.2%	21.1%
Percent of Violators (by race)	74.7%	17.5%	4.4%	3.4%	21.8%

These results are consistent with the work I did in the case of *State of New Jersey v. Pedro Soto, et al.*, in which we conducted both a rolling survey and a stationary survey to determine motorist and violator populations on the southernmost segment of the New Jersey Turnpike (which ends 19 miles from the northern terminus of I-95 in Maryland.) There, 98% of the drivers were violating traffic laws and 15% of the violators were black. While I would not expect I-95 in northern Maryland and the southern portion of the New Jersey Turnpike to have identical numbers of minority motorists and violators, the similar percentages discerned in the surveys support and confirm their reliability.

B. The Record Of Searches By The Maryland State Police

1. Interstate 95 Corridor Data

Between January 1995 and September 1996, the Maryland State Police reported searching

823 motorists on I-95, north of Baltimore. See Exhibit B. Of these, 600, or 72.9%, were black.

Id. Six hundred and sixty-one, or 80.3%, were black, hispanic, or other racial minorities. Id.

Only 19.7% of those searched in this corridor were white. Id. Most of the I-95 searches -- 646, or 85.4% -- were conducted by 13 troopers.⁷ Search breakdowns for those troopers are listed in Table 2.

Table 2: Individual Troopers Who Made 10 or More Searches Along the I-95 Corridor and the Numbers and Percent of Blacks and Minorities Searched

Trooper Name	Total Number Searched	Blacks Searched	Total Minorities Searched	Percent Blacks Searched	Percent Minorities Searched
John E. Appleby	68	51	58	75.0%	85.3%
Melvin Fialkewicz	12	12	12	100%	100%
John R. Greene	30	23	27	76.7%	90.0%
Steven L. Hohner	65	53	55	81.5%	84.6%
David Hopp	37	8	11	21.6%	39.7%
David B. Hughes	150	125	131	83.3%	87.3%
Michael T. Hughes	70	57	59	81.4%	84.3%
Steven O. Jones	32	19	26	59.4%	81.3%
James Nolan	54	45	47	83.3%	87.0%
Paul J. Quill	70	41	52	58.6%	74.3%
Christopher Tideberg	26	23	23	88.5%	88.5%
Ernest S. Tullis	40	39	39	97.5%	97.5%
John Wilhelm	46	15	26	32.6%	56.5%

With the exception of David Hopp, all of these troopers are searching blacks and other

⁷Here, I include only troopers who have reported conducting 10 or more searches in the 21-month period.

minority motorists at much higher rates than these motorists travel on the highway. The trooper (other than Hopp) with the lowest percentage of black searches still searched blacks at nearly twice the rate they were found to travel the highway. The trooper with the highest percentage of black searches searched only blacks. Ten of the 13 troopers searched minority motorists at least 80 percent of the time.

2. MSP Data From Outside the I-95 Corridor

Data reported by MSP for motorist searches conducted outside the I-95 corridor is markedly different from that reported by troopers patrolling I-95. As shown in Table 3, 63.7 percent of motorists searched by MSP troopers working outside the I-95 corridor are white, as compared with only 19.7% of motorists searched by troopers along I-95. Black motorists travelling I-95 are searched by state police more than twice as often as are black motorists travelling other Maryland roadways.

Table 3: MSP Search Data for Roadways Outside the Interstate 95 Corridor

	All Searches	Black	White	Hispanic	Other	Total Minority
Number of Searches Reported Outside the I-95 Corridor	1,549	496	986	54	10	560
Percentage of Total	100%	32.0%	63.7%	3.5%	0.6%	36.2%

3. Statewide Data on Drug "Finds" Through Motorist Searches

The total number of motorist searches reported statewide by MSP during the time period is 2,372. In only 666, or 28.1%, of these searches was contraband found. Overall "find" rates were about the same for searches conducted on I-95 and those conducted elsewhere in the state.

That is, of 823 searches conducted along the I-95 corridor, a controlled dangerous substance was recovered in 246, or 29.9% of the time, while on roadways outside the I-95 corridor, CDS was recovered in 420 of 1,549 searches, or 27.1% of the time. Even more importantly, "find" rates were the same statewide for searches of black and white motorists: According to MSP data, contraband was recovered in 311 of 1,096 searches (28.4%) of black motorists, and in 331 of 1,148 searches (28.8%) of white motorists.

III. STATISTICAL ANALYSIS

The data concerning the searches carried out by Maryland State Police along the I-95 corridor is extremely revealing. The State Police conducted a total of 823 searches in this area, finding some reason to arrest the driver of the car in only 246 (29.9%) of the searches. In 70 percent of the cases the search was fruitless. Of the 823 searches, in 600 (72.9%) of them, the person searched was black, and in 661 of them (80.3%), the person searched was a racial minority.

For purposes of this analysis, the proper statistical comparison contrasts the 72.9% of blacks searched to the 17.5% of traffic law violators who were black.⁸ This assumes that blacks, once stopped by police, behave in a similar manner to any other motorist stopped by the police.

The accepted convention for statisticians to conclude that a difference is real and not

⁸An ideal comparison would be the percentage of black traffic law violators to the percentage of blacks *stopped* by the Maryland State Police. Stop data has not been made available by MSP however. In the absence of that, the percentage of blacks searched provides a rough approximation of the percentage of blacks stopped, given the fact that in 70% of the cases the search turned up no contraband. As set forth below, the difference between the percentage of blacks travelling I-95 and the percentage of blacks searched is highly statistically significant.

chance is the finding that if the same study was done many times, the present results would occur only five times out of a hundred. This .05 level is determined by computing the number of standard deviations that the observed result differs from the expected. The .05 level of statistical significance is reached at about two standard deviations. The probability drops to one in 100 when 2.58 standard deviations is reached.

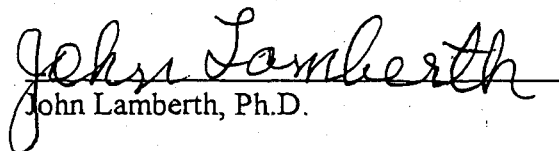
Here, the difference between 17.5% of blacks who are eligible to be stopped and the 72.9% of blacks searched by state police encompasses 34.6 standard deviations. The absolute disparity is 55.4% and the comparative disparity is 316.6%. An important alternative comparison contrasts the 72.9% rate of black searches on I-95 to the 32% of black searches on other Maryland roadways. The absolute disparity in these figures is 40.9%, and the comparative disparity is 128%. This difference encompasses 20.45 standard deviations.

Such statistical significance is literally off the charts. It means, in layman's terms, the probability that black Interstate 95 drivers are subjected to searches at so high a rate by *chance* is less than one in one quintillion. It is wildly significant by statistical measures.

IV. CONCLUSION

The evidence examined in this study reveals dramatic and highly statistically significant disparities between the percentage of black Interstate 95 motorists legitimately subject to stop by Maryland State Police and the percentage of black motorists detained and searched by MSP troopers on this roadway. While no one can know the motivations of each individual trooper in conducting a traffic stop, the statistics presented herein, representing a broad and detailed sample of highly appropriate data, show without question a racially discriminatory impact on blacks and

other minority motorists from state police behavior along I-95. The disparities are sufficiently great that, taken as a whole, they are consistent with and strongly support the assertion that the Maryland State Police are targeting the community of black motorists for stop, detention, and investigation within the Interstate 95 corridor.


John Lamberth, Ph.D.

	All Searches in Maryland			
	January 1995 through May 1999			
TOTALS:	6393	detentions & searches		
	2535	African-American	=	39.7%
	288	Hispanic	=	4.5%
	101	Other	=	1.6%
	3469	White	=	54.3%
	2924	Total Non-White	=	45.7%

	Corrected All Searches on I-95 in Maryland			
	January 1995 through June 1999			
	(Searches conducted on Interstate 95 in Baltimore, Cecil, Harford, Howard, and Prince George's Counties)			
TOTALS:				
	1983	detentions & searches		
	1231	African-American	=	62.1%
	126	Hispanic	=	6.4%
	23	Other	=	1.2%
	603	White	=	30.4%
	1380	Total Non-White	=	69.6%