

Report to Counsel RE: Arizona v. Foulkes Report, 2000

I make this report in response to the request of Counsel for 42 defendants stopped and arrested by the Arizona Department of Public Safety Officers, to determine whether there is a colorable basis for asserting that minority motorists are being targeted by the police.

The data that were available to me were the reports from Counsel, Lee Brooke Phillips, Lewis Levin and Angela Bradshaw concerning their clients who had been arrested on I-40 in the boundaries of Coconino County in the last 3 (?) years. These data indicated that of the 42 defendants, 17 were African American, 7 were Hispanic and 18 were Non Hispanic Caucasians.

The first step in making my determination of whether there appeared to be what has been termed “racial profiling”, the targeting of minority motorists to be stopped, searched and arrested, if contraband was found, I needed to know the racial composition of I-40 in Coconino County. To make this determination, I designed a violators survey of I-40 within the boundaries of Coconino County. This survey was carried out under my direction between the dates of June 4 and 7, 2000. From 12:00 AM, Sunday, June 4th until 8:00 PM Wednesday June 7, I randomly selected 15 four hour time periods. During these time periods, a car with a calibrated cruise control, drove at the speed limit starting from Flagstaff and proceeding either East or West to the County Line. At the County Line, the car turned around and proceeded back to Flagstaff, where the surveyors took a break before beginning the second half of the survey. They then proceeded, in

the same direction that they had been travelling prior to the break, to the County line, where they turned around and proceeded back to Flagstaff. Thus, the surveyors traversed the entire length of I-40 in Coconino County in both directions 15 times. The surveyors were instructed to note all cars that passed them as violators, as well as any other car that was violating a traffic law and to classify as non violators all other cars. They were to record the race/ethnicity of motorists in all cars they saw. Any car with a minority motorist in it, whether they were driver or passenger, was classified as a car in that racial/ethnic grouping. This survey was conducted in accordance with standards acceptable in the discipline of statistical analysis and were similar in nature to those I prepared that were accepted by the Court in the Case of *New Jersey v. Soto, et al.* and *Wilkins v. Maryland State Police*. A complete description of the survey is contained in the report of Deme Trujillo.

The results of the survey indicated that of the 677 cars observed during the approximately 45 to 48 hours of surveying, 374 were observed violating some traffic law, with 349 (93.3%) of those cars being racially identified by the surveyors. African Americans made up 2.9% of the racially identified violators. The rest of the racially identified violators were distributed as follows: 76.8% White Non Hispanic, 12.0% Hispanic, 6.6% Native American, and 1.7% Asian.

The racial make up of the 42 clients of Counsel for the Defendants in this case is as follows: 17 (40.5%) African American; 7 (16.7%) Hispanic and 18 (42.9%) White Non Hispanic. Thus, the appropriate statistical analysis is to

compare the 2.7% of African American violators on I-40 to the 40.5% African American motorists arrested on I-40.

The difference between the 2.7% African American violators and 40.5% African American clients is highly statistically significant ($p < .000$).

By convention statisticians accept the .05 level as being statistically significant. That is, when an event would occur by chance only 5 times in a hundred, we conclude that the observed difference is not the result of chance. In this instance, we are dealing with the hypothesis that too many African Americans are being arrested by the Arizona Department of Public Safety Officers. In the present case, the probability associated with the observed difference is far, far beyond the .05 level of significance.

One of the arguments made in the *Soto* case and accepted by the Court was that arrests were not reliable indicators in deciding the *prima facie* case of racial profiling. In that case, the Court asked me if I could give any information that would shed light on the proportion of African Americans that were carrying contraband and thus subject to being arrested. I answered truthfully in 1995 that I could not. However, since that time there are five and only five data sources of which I am aware, that have been developed that speak to that question. The first came from data provided by the Maryland State Police in the case of *Wilkins v. the Maryland State Police* and is contained in my report in that case (a copy of which is appended as Appendix B). The second came from the *Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling* (http://www.state.nj.us/lps/intm_419.pdf). Third to come to my attention was the

Report of the Attorney General of New York

(http://www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html) that included

174,919 stops by the New York City Police Department; fourth was the report

entitled *U.S. Customs Service Personal Searches of Air Passengers Results;*

Positive and Negative Fiscal Year 1998, which provided results of searches of

50,892 airline passengers and finally, the report entitled *Stop and*

Search(<http://www.met.police.uk/police/mps/mis.stop.zip>) by the Metropolitan

Police of London which reported that arrest rates for black and white people were

similar (p. 3). All of these data sources showed that there is virtually no

difference between the rate at which police find contraband on African Americans

and whites. Today I can strongly surmise, on the basis of strong and

unequivocal data, that the extraordinarily high arrest rate of African Americans

reflected in the client counts referred to above is most probably because of a

higher stop and search rate of African Americans by the Arizona Department of

Public Safety Officers.