

ROBERT WILKINS' VOICE

“As a Black man living in the United States, I am no stranger to racial discrimination. As a young boy growing up, I faced name calling at school by White students, as well as violence and threats of violence by White children. Over the years, I also learned about countless incidents of racial discrimination that were endured by my mother and grandparents.

Despite all of that, May 8, 1992 is a day that will always stand out in my mind. On that day, I saw racial discrimination, but it was not discrimination by an individual, it was discrimination by the State.

On that day, just before dawn, I was traveling on a highway in the state of Maryland with my cousin, my uncle and my uncle’s wife. We were quite tired, because we had driven all night. We were also tired because we were emotionally spent. We were returning from my grandfather’s funeral in Chicago, Illinois, and on the previous day, we had buried my grandfather and watched my grandmother wail as her husband of over 50 years was lowered into the ground. We had left Chicago the previous afternoon and driven all night, because we were all due back at our jobs on that morning; I am a lawyer, and I even had a court appearance in Washington that morning. My cousin Scott was driving; I was in the front passenger seat, and my uncle and his wife were in the back. I should also add that myself and my family are African American, while all of the police officers involved were Caucasian.

As we were driving on the highway, an officer from the Maryland State Police stopped our car and told my cousin that he had “paced him” driving 60 miles per hour (mph) in a 40 mph zone. The officer took Scott’s license and the rental car contract and returned to his marked police car. (Our car, a Cadillac, had been rented by my uncle for the trip.) Approximately five minutes later, the officer returned and asked Scott to step out of the car. After a brief discussion between the two of them, Scott leaned toward the car and said “Daddy, they want to search the car.”

At that time, my uncle and I got out of the car. I politely explained to the officer that I was an attorney, indeed a public defender, and I asked what was happening. The officer showed me a “Consent to Search” form that he had asked

Scott to sign. Scott had not signed it, and I told the officer that we did not consent to him searching anything and that my understanding of the law was that he could not search our car unless he was arresting Scott and was making a search incident to that arrest. The officer informed me that such searches were routine, that he had never had any problems before with people refusing consent, and that "if we had nothing to hide, then what was the problem." I responded that we had a right not to be searched and that this is not a police state. My uncle told the officer that he was not going to allow him to search all of our things out there in the rain. I asked the officer what justification he had for this request, and he simply replied that "he wanted to search the car." He also mumbled something about "problems with rental cars coming up and down the highway with drugs." I told him that we were coming from the funeral of my grandfather and that we were driving all night so that I could make a court appearance in D.C. I told the officer that if he did not believe me, I would get a copy of the obituary from the trunk. He responded that "he did not want to see any obituary, he wanted to search the car." We continued to refuse a search, so he informed us that we would have to wait for a narcotics dog to arrive. We got back inside the car.

About fifteen minutes after we got back into the car, my uncle and I got out to speak with the officer. By this time, another Maryland State trooper, had joined him. My uncle asked the first officer whether he was going to write Scott a ticket, and he responded that he was going to give him a warning. My uncle then asked him how much longer we would have to wait for the dog, and the officer said probably about five more minutes. My uncle asked him to write the warning now so that we could be on our way. The Officer refused, stating that we would have to wait for the dog. I told the officer that what he was doing was wrong, because the United States Supreme Court had ruled, in a 1985 decision called United States versus Sharpe, that he could not detain us for a dog search unless he had reasonable, articulable suspicion that we were carrying drugs and that he had no such reasonable suspicion in this case. I also told him that he was supposed to detain us for as brief of a time as possible, that it had already been at least twenty minutes, and that the detention was therefore too long. The officer pretty much ignored my citation to legal authority and informed me again that this was "routine," that they did it all the time, and that we would just have to wait.

About ten minutes later, another police officer arrived, and he came to our car and informed us that he was going to be taking a dog trained in the detection of narcotics around the car. He told us that we had to step out of the car to the curb. We told him that we did not want to get out of the car, because it was unnecessary and it was raining. When we asked him why we had to get out of the car, he said that it was routine procedure and that it was for our safety from the dog. We informed him that we felt a lot safer inside the car, with his dog outside. We were

told that if we did not cooperate, “we could not get through this.” We got out of the car.

The four of us stood outside in the rain while Brown slowly and thoroughly took his German Shepherd around the Cadillac. The dog sniffed everything, but it never barked or did anything unusual. Several cars passed us along the highway during this time. When they were finished, we were told that we could get back inside the car.

So there we were. Standing outside the car in the rain, lined up along the road, with police lights flashing, officers standing guard, and a German Shepard jumping on top of, underneath, and sniffing every inch of our vehicle. We were criminal suspects; yet we were just trying to use the interstate highway to travel from our homes to a funeral and back again. It is hard to describe the frustration and pain you feel when people presume you to be guilty for no good reason and you know that you are innocent. I particularly remember a car driving past with two young White children in the back seat, noses pressed against the window. They were looking at the policemen, the flashing lights, the German Shepard, and us. I fear that those children, upon viewing this spectacle, likely concluded that these black people standing along the road certainly must have been bad people who had done something wrong, for why else would the police have us there? Those children were being miseducated about me and Black people in general by this spectacle, but there was nothing in the world that I could do about it.

A few minutes later, Hughes returned to the car with the two driver’s licenses and a \$105 ticket for my cousin. We were finally able to continue on our way. In addition to the anger, frustration and embarrassment, the detention caused us to hit the peak of morning rush hour traffic, and I missed my appearance in court that morning.

After such a humiliating and degrading experience, my family and I were determined to take whatever action we could to ensure that something like this would never happen to anyone else. We were particularly outraged because of what was happening in the United States during that time. At that very moment, Los Angeles, California was still smoldering, following the riots that erupted when the White police officers who were captured on videotape beating a Black motorist named Rodney King were acquitted of all charges before an all-white jury. This was a time when Black people all over the United States were asking themselves whether the country was making tangible progress in fighting racial discrimination and whether the country’s vaunted legal system was truly equipped and able to right these wrongs.

We decided to take legal action, and we were fortunate to obtain the services of attorneys who took our case without cost. Once we began the legal process, one of the first documents we received from the Maryland State Police was the now infamous “Criminal Intelligence Report,” a blatant racial profile.

The Criminal Intelligence Report discussed the crack cocaine problem in the Cumberland, Maryland area, and recklessly and indiscriminately advised state troopers that the traffickers “were predominately black males and black females” and that these dangerous armed traffickers generally traveled early in the morning or late at night along Interstate 68, and that they favored rental cars with Virginia registration. Well, we fit the profile to a tee. We were traveling on I-68, early in the morning, in a Virginia rental car. And, my cousin and I, the front seat passengers, were young black males. The only problem was that we were not dangerous, armed drug traffickers.

It should not be suspicious to travel on the highway early in the morning in a Virginia rental car. And it should not be suspicious to be black. Yet the Criminal Intelligence Report, which was issued just two weeks prior to our incident and posted in the barracks to which these state troopers were assigned, encouraged them to believe that they were justified in stopping and searching us “because they had problems with drugs and rental cars,” as Trooper Hughes related to me on the highway when I was imploring him for an explanation. These troopers had taken some information about a small number of individuals and generalized it to apply any black person in a rental car. That simply was not right.

And it wasn’t even good police work either. The experts from the training academy of the Maryland State Police later testified in depositions that profiles do not work well for highway drug interdiction. Drugs are found in all types of vehicles, driven by people of every race and age, and in various different circumstances. Thus, the experts testified, any profile developed for highway drug interdiction would either be too narrow, excluding potential trafficking situations, or too broad, making nearly everyone a drug trafficking suspect.

A. The First Settlement Agreement

In January 1995, we settled the lawsuit. The Maryland State Police (MSP) agreed to, among other things:

1. Pay a modest financial settlement of \$50,000 in damages to the four of us who were in the car and \$46,000 in attorneys fees to our lawyers for their three years of legal work.
2. Prohibit the use of race-based drug courier profiles as a law enforcement tool. The new MSP policy would “specifically prohibit consideration of race as a factor for the development of policies for stopping, detaining, or searching motorists.”

3. Train all new and previously hired troopers on the contents of the new policy.
4. Maintain computer records of all traffic stops in which a consent to search is given by a motorist or a motorist is searched with a drug-sniffing dog. Information about the date, time, reason for the stop and race of the people stopped would be collected. This information would be collected for several years and be forwarded on a quarterly basis to the federal judge monitoring the lawsuit and us, the plaintiffs.
5. Discipline troopers who violated the non-discrimination policy or failed to maintain proper documentation of stops and searches.
6. Remain subject to the jurisdiction of the federal court if the computer records showed a pattern and practice of discrimination, so that we, if necessary, could seek further equitable relief.

My family and I, with the help of our attorneys, began to monitor the MSP with the hope that the suffering we endured would be stopped or minimized by the Settlement.

Unfortunately, the MSP data began to show a disturbing trend immediately. From 1995 to 1997, MSP data showed that 70-75% of the people searched on Interstate highway 95 (I-95) were African American, though African Americans were only 17% of the drivers on the highway and only 17% of the traffic violators. I-95 runs from Washington, DC to Baltimore, Maryland and northward towards New York.

These disparities raised serious questions. Initially, the MSP responded by arguing that since 70-75% of the people who had illegal drugs or other contraband seized from them were African American, there was actually no disparity at all.

But those numbers told only half of the story. Because we had the more detailed computer records from the Settlement, we learned that:

1. For every 100 blacks searched, and every 100 whites searched, the number of people found with drugs or contraband was almost exactly the same. Thus, if you used the practices of the MSP and searched 100 blacks, you would find drugs just as many times as when you searched 100 whites
2. However, for every 100 whites searched by the MSP, over 400 blacks were searched. This disparity in law enforcement use of traffic stops and searches was therefore the sole explanation for the fact that 70-75% of the people arrested for drug violations were African American.
3. This disparity existed despite a lawsuit, a settlement, new policies, updated training, and the knowledge that MSP supervisors, the ACLU and a federal judge were monitoring traffic stops by MSP troopers.

We were therefore forced to seek further court action against the MSP, because the data showed a serious violation of the Settlement Agreement. Indeed, we believe that the subsequent events have shown that while the MSP had issued a policy statement on paper, they had done little or nothing to enforce it. Thus, 1998, we were compelled to file a new class action lawsuit on behalf of the Maryland National Association for the Advancement of Colored People (NAACP) and minority motorists who were targeted for discriminatory stops and searches on I-95.

B. The Second Settlement Agreement

In 2003, after a great deal of further litigation and negotiation, we reached a second settlement agreement with the MSP that encompassed both lawsuits. The second settlement, called a Consent Decree, incorporated the first agreement, but it also incorporated a number of new provisions, including:

1. Enhanced training requirements for all troopers who patrol the highways, including regarding the data collection policies and the results shown by the data .
2. The hiring of an independent consultant to review MSP policies, training programs, personnel and supervision and to prepare a report and recommendations regarding those issues.
3. The appointment of an MSP supervisor who is specifically responsible for all aspects of implementation of the Consent Decree
4. A commitment by the MSP to seek the funding to install videotaping equipment in all of its cars patrolling the highway.
5. The implementation of a new process for handling citizen's complaints regarding racial profiling, including a requirement that all citizens are offered a brochure explaining the complaint process following every stop and that all such complaints are forwarded to counsel for the NAACP.
6. The creation of a police-citizen advisory committee to discuss issues relating to racial profiling and to promote mutual understanding.
7. The implementation of more stringent management oversight of complaints, the trends shown by the data regarding the overall practices of the MSP, and the trends shown by the data with respect to the stops and searches of individual MSP officers.

As was the case with the first settlement, we believe that the second settlement resulted in some improvement in certain areas with respect to racial profiling within the MSP. However, many of the recommendations of the independent consultant have not been implemented, and the MSP data still shows vast disparities in the number of stops and searches of minority motorists. Furthermore, I still hear about troubling incidents on the highways in Maryland, including reports from African American motorists about illegally stops, searches of cars, and even strip searches by the police. Perhaps most disturbing, even though the MSP agreed to fully investigate

all complaints of racial profiling, we have learned that almost 100 such official complaints have been filed since 2003, but the MSP has never found a single one of those complaint to be sustained. Thus, the MSP has never found one of its officers guilty of racial profiling.

We have responded by suing the MSP for disclosure of all the records of those investigations, because they have refused to allow the public to see whether and how they undertake these investigations. The case is on appeal, and will be heard by the court in less than two weeks, on May 11.

Thus, 16 years after that traffic stop in Maryland, the struggle continues. And I still ask myself how much progress we have made in the United States in the fight against racial discrimination and whether the courts are fully equipped to right those wrongs.”