

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MAJOR TOURS, INC., *et al.*,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF
TRANSPORTATION, *et al.*,

Defendants.

No. 1:05-CV-03091-JBS-JS

EXPERT REPORT OF JOHN LAMBERTH, PH. D.

QUALIFICATIONS

I received a Ph. D. in Personality and Social Psychology from Purdue University and served on the faculty of the Department of Psychology at Temple University from 1973 until my retirement in 2002. I chaired the department from 1989 to 1995. Since my retirement from Temple, I have served as CEO of Lamberth Consulting, a firm that provides assessment, training and litigation support to Police Departments, governmental entities, Civil Rights groups and litigators under the general rubric of racial profiling. I have been responsible for the conduct of assessment studies of police stops for police departments or state or local governments in Ann Arbor and Grand Rapids, MI, ten different departments in the state of Kansas, five departments in Santa Cruz county and in Sacramento, CA, San Antonio, TX and the Metropolitan Police Department in Washington, DC. I have directed studies of racial profiling in the Metro system in both Moscow and Paris. I was first qualified as an expert in statistics, surveying and Social Psychology in the early 1980s. I served as the expert for the defense in the case of *State v. Pedro Soto, et al.* in New Jersey where the Court relied upon my report and testimony in finding “that the New Jersey State Police were targeting blacks for investigation and arrest between April

1988 and May 1991 both south of exit 3 and between exits 1 and 7A of the Turnpike.”¹ For a more complete recitation of my professional experience, publications and education, please see my Vita appended to this report.

I was asked by the plaintiffs in this case to determine whether Minority Owned Bus Companies (MOBCs)² were inspected more often than would be expected by the Commercial Bus Inspection Unit (CBIU) and what those inspections showed relative to the inspections of other bus companies.

Opinions Expressed

My major opinions are as follows:

1. There are far more inspection of MOBCs buses that would be expected on the basis of the number of times their buses were at casinos ($z=19.88$, $p. < .00001$). The odds ratio for this difference is 4.75.
2. There are statistically significant differences in a number of comparisons with MOBCs buses:
 - a. Being subjected to longer inspection times than the comparison group (all other buses)
 - b. Being subjected to more full inspections than the comparison group
 - c. Found by the inspectors to have more violations found than the comparison group

¹ Opinion in the Case of New Jersey v. Pedro Soto, et al. 734 A.2d 350 (N.J. Super. App. Div. 1996)

² By MOBCs I mean a specific set of bus companies that I know are black and are plaintiffs in the case or closely associated with the plaintiffs. Information about the MCOBs is provided on page 4 of this report.

- d. Having fewer inspections with no violations found than the comparison group
 - e. Being found by the inspectors to have out of service violations proportionally more often than the comparison group
3. Discretion of police officers has been seen as an important variable in the determination of whether racial profiling was occurring or not. In fact, while the lack of discretion does not guarantee that there will not be profiling, its presence is an oft seen precursor to the practice. The inspectors from the CBIU have virtually unfettered discretion in selecting buses for inspection and determining whether a summons should be given for a specific violation even if the violation calls for a summons.
4. At least three inspectors/supervisors Mr. Schulze, Mr. Calorel and Mr. Bartolone were accused of using the pejorative word “nigger” with respect to black people and one of the individuals, Mr. Bartolone admitted using the word, while Mr Calorel admitted to using racial slurs. These overt prejudicial statements are consistent with the results of the data analyses found in Nos. 1 and 2 above.

SERVICE AS AN EXPERT WITNESS

I served as an expert witness and was deposed in the case of Jackson v. the State of New Jersey (DNJ 00cv-4875) in 2006 and in Maryland State Conference of NAACP Branches, et al. v. Maryland State Police, et al. (Civil Action No. PWG-98-1098) in 2007 and in the case of Commonwealth of Massachusetts v. Joseph Rosansky (Chelsea District Court # 0614-CR-1653 and 614-CR-4196) in 2008.

COMPENSATION

I am being paid \$300.00 per hour for the time that I work.

Data Sources Considered

1. The Safetynet Database provided by the Defendants on February 8, 2010.

2. Mr. Georgiades affidavit of February 8, 2010.
3. The MCMIS Database produced by Defendants in discovery.
4. The data provided pursuant to subpoenas from 11 casinos and provided in discovery to Defendants (See Table 1).
5. The three depositions of Thomas Harcar on April 21, 2009, August 31, 2009 and Sept. 11, 2009.
6. Deposition of Wilfred Grotz on 9/17/09.
7. Deposition of Vincent Schulze on 10/20/09.
8. Depositions of Michael Calorel on 2/8/2008 and 11/24/2009.
9. Deposition of Vincent Bartolone on 12/23/2009.
10. ASCII Specification Integrations. It should be noted that there were 27 variables included in the Safetynet Database provided by the Defendants on February 8, 2010 that had no definition in this document.
11. Data from the Casino Control Commission.
12. MCASP Roadside Vehicle Lists provided by the Defendants in discovery.³
13. Deposition of Diane Legreide 4/21/2008.
14. In addition I was in Atlantic City on Feb. 20, 2009 and observed the CBIU inspectors selecting buses to be inspected at several casinos and then went to the inspection site and observed some of the inspections as they were being conducted.

The Safetynet Database

³ See Appendix 1.

The Defendant's provided a Safetynet database for the years 2000 through 2007 to the Plaintiff's on February 8, 2010. That database contained over 300,000 records of inspections for both buses and trucks. As the litigation involved only buses, I removed the truck inspections from the database and was left with 25,214 bus inspection over the 8 year period. This was the exact number of bus inspections that I was told the state's expert had in the file on his computer by Ms. Wagner at the time of my telephone conversation with that expert, Mr. Georgiades⁴. As the litigation involved only bus inspections in Atlantic City, I further reduced the bus inspection data by using two variables in the Safetynet database, InspLocationCode and InspLocationDesc. Utilizing the information provided by Mr. Harcar in his deposition, I included all of the inspections that occurred and were labeled 102, the code for Atlantic City. This left a relatively large number of inspections that had blanks in the column for location code. Each one of these blanks were scrutinized with respect to the description that was provided in the InspLocationDesc column. The locations in this column were quite varied. Many times the inspectors had entered Atlantic City and that was accepted as an Atlantic City inspection. On other occasions, other locations in Atlantic City where bus inspections were carried out were named, such as Hanson's parking lot, Surf parking lot, casino names and the like. I consulted with plaintiff's attorneys in determining which of these were actually in Atlantic City. The resulting data file has 9872 bus inspections that occurred in Atlantic City during the relevant time period. However, that file had inspections by both the New Jersey State Police and the Department of Transportation so I removed the 1897 inspections that were listed in the variable RptNum as NJSP. There remained a file of 7975 bus inspections in Atlantic City.

I further inspected the file to determine how many inspections of MINORITY OWNED BUS COMPANIES (MOBCs) were in the file and found 130. The list of MOBCS or their DBA names is as follows⁵.

⁴ This conversation took place during the deposition of Thomas Harcar on September 11, 2009.

⁵ These companies were provided by Counsel and each is a plaintiff or closely associated with a plaintiff (e.g. leased the plaintiff's buses).

Cadillac International
A&L Cadillac International
A&L Tours
M&M Tours
Major Tours
John McClintock
Rac Tours
Glen Ragin
Glen and Ruth Ragin
JAMM Tours
James E. Wright
Ocean Tours
JW Auto
James Revels
CMT
CMT Express
Rahman Muhammad
Yours Charter Service

The proportion of inspections of MOCBs in this database is 0.0163.

I wish to make the point that I cannot know now what type of condition the buses that were inspected in Atlantic City were in during the time period of this litigation.

The Benchmark

It is well understood in racial profiling research that knowing the proportion of a group that is inspected is insufficient to understand whether that group is over inspected, under inspected or inspected at about the appropriate rate. That is because it is necessary to face what

has become to be known as the “denominator” question. What is the appropriate comparison for the proportion of inspections in the database? The Courts in New Jersey and elsewhere⁶ have held that the benchmark must be a measure that allows a meaningful comparison group. The New Jersey Courts have held that the appropriate benchmark for stops by police on a roadway are traffic violators, which was virtually identical to traffic in the Soto case. The appropriate benchmark for buses inspected is, analogously, the proportion of buses at the casinos during the relevant time period.

To determine a benchmark against which to compare the buses inspected, all 11 casinos were subpoenaed for their records on buses that came to their casino from 2000 through 2007. All 11 responded and the records they provided covered the following years:

Casino	Dates	Bates Numbers
Bally's	8/29/2005-12/32/2007	18220-19331
Borgata	7/5/2003-12/31/2007	25263-25572
Caesars	8/29/2006-12/31/2007	14885-15576
Harrah's	7/1/2004-12/31/2007	15577-15675
Hilton	6/15/2005-12/31/2007	18211-18218
Resorts	1/1/2006-12/31/2007	13561-14881
Showboat	4/15/2003-12/31/2007	15676-18209
Tropicana	1/1/2000-12/31/2007	13559 (TXT File)
Trump Marina	1/1/2000-12/31/2007	21342-22188
Trump Plaza	12/1/2004-12/31/2007	19960-21340
Trump Taj Mahal	1/1/2000-12/31/2007	22189-25261

⁶ For example see *Lora* (Commonwealth v. Lora, 451 Mass 425 (2008))

Table 1. Casino bus production, dates and bates numbers.

In addition, it was possible to obtain the total number of buses that went to the casinos in Atlantic City from data published by the Casino Control Commission. There were three casinos that provided information for the entire time frame and one, the Borgata that provided information for the entire time they had been open during the time period. The other 7 casinos provided partial material. The data provided made it possible to estimate the proportion of MOBCs buses that journeyed to Atlantic City casinos during the years 2000 to 2007.

As a check on the accuracy of the data provided by the casinos in their subpoenas, I had all the bus data for 2007. There were 215,644 buses in the data provided by the 11 casinos for that year. The data from the Casino Control Commission indicated that 215,887 buses traveled to Atlantic City casinos that year. This extraordinarily close correspondence (99.9% agreement) between the two sources of data provided support for the accuracy of each.

All of the casino bus data were further analyzed in two ways, First, a random sample of all buses was placed in a database. This 2.5% sample was available to make determinations about bus companies as needed. Further, every casino database was scrutinized for the names of MOBCs as they appeared. They were noted and placed in a database of MOBCs buses. These two databases were available for data analysis.

The best estimate for MOBCs buses that traveled to Atlantic City over the 8 years that the litigation covers is contained in the bus data that are available from the casinos pursuant to the subpoenas. While there are missing data, it appears that there is relatively close over all correspondence between the proportions of MOBCs buses that appeared in the data. While all of the casino data points to a larger and more stable sample, the year 2007 is complete. Therefore, I calculated the proportion of MOBCs buses that appeared in all of the casinos over all of the years for which data was available. Given that there are 11 casinos and 8 years of time covered by the litigation, there would be 88 data points possible. For three years, the Borgata was not in existence, therefore there are 85 possible "data years". Of these, I had complete information for

45 (for the first year of the Borgatta's existence buses were listed beginning in July of 2003) and data for 6 partial years (for Caesar's and Bally's in 2006, the Hilton in 2005, Harrah's and Trump Plaza in 2004 and Showboat in 2003). Therefore there was full data for 53% of the data years and partial data for another 7%. When one is working with an historical period and attempting to determine a benchmark, it is sometimes difficult to ascertain exactly what the circumstances were several years previously. As an example, in the Soto⁷ litigation, the stops by the New Jersey State Police occurred between 1988 and 1991. The benchmark traffic surveys occurred in 1993. Therefore, the benchmark in the present case is much more complete as it covers a majority of the time covered by the litigation.

As a further check, I calculated the percentage of MOBCs buses in the casino data for all of the years provided and the percentage of MOBCs buses in the 2007 casino data. For all of the years, there were 994,070 buses that went to Atlantic City casinos of which 2,392 were MOBCs buses. This works out to be .002533 of the buses. For the year 2007 there were 215,644 buses that journeyed to Atlantic City casinos of which 545 were MOBCs buses. That is .002527 of the buses. The two proportions are essentially identical.

There are, however, two other issues that need to be addressed. During the time that this litigation covers there were 2 casinos that went out of business. In 2002 the Claridge merged with and was taken over by Bally's. In 2006, the Sands ceased business and was demolished. Both the Claridge and Sands were small casinos and as such would probably not have had as extensive bus traffic as some other casinos. However, to be as systematic as possible I must account for bus traffic to these two casinos for portions of the time of the litigation. As we have no data from either casino, I have chosen to merge the two and assign them the proportion of MOBCs buses for the benchmark that is the highest observed among all the casinos for the entire period of time. Thus, I am calculating the benchmark for analysis purposes on the basis of 12 casinos with the 12th being attributed a MOBCs bus percentage of 0.9055 percent which is the

⁷ State v. Pedro Soto, et al. (A734A, 2d 350 (N.J. Super. Ct. Law Div. 1996)

highest observed for a casino either in the data for all casinos or the data for each casino in 2007. This strategy has the effect of increasing the proportion of MOBCs buses in the benchmark and thus, decreasing the probability that differences between the benchmark and the inspection data will be found.

The other issue to be addressed is that there were decreasing numbers of buses going to Atlantic City Casinos from 2000 to 2007. Therefore, I deemed it prudent to weight each casino and each year to adequately estimate the MOBCs buses for the entire time period. To do this, I determined the proportion of the total bus traffic that each casino generated in the data that I had available. Further, I determined the proportion of MOBCs buses for each casino from the available data. I calculated the estimated proportion of buses for each casino for the missing years and assigned the residue to the 12th casino. From these data I calculated the proportion of MOBCs buses that traveled to Atlantic City casinos over the entire period which was .00344. That is my estimated benchmark.

Comparison of Inspections and Benchmark

The comparison proportion for the inspections is .0163 and for the benchmark it is .00344. There are several ways to analyze these data but I will utilize two that have been used in racial profiling litigation previously. The first of these is the difference in independent proportions (percentages) and the second is the odds ratio.

The first of these is an indication of whether the observed difference between the proportion of inspections of MOBCs buses versus the proportion of MOBCs buses in the population is a chance finding or, is real in statistical terms. The difference between the observed proportions, .0163 for inspections and .00344 for MOBCs buses in Atlantic County is .01283 and is highly statistically significant ($z=19.88$, $p < .00001$).

By convention, statisticians typically agree that a result is statistically significant when the observed result would occur by chance only five times in 100. This level of significance is reached when the analysis is at about 2 standard deviations. At 2.6 standard deviations the results would occur only 1 time in 100 by chance. Most tables used to obtain probability levels

from a resulting standard deviation analysis do not go beyond 4 standard deviations, with an associated probability of being a chance finding of 6 in 100,000. The one in a million level is reached at 5.3 standard deviations. It is obvious that there is not a linear relationship between standard deviations and probabilities. At 19.88 standard deviations, it is safe to say that the chances of the observed result being a chance finding are far less than one in one million. This is an exceedingly high level of statistical significance. This means that if we were to repeat this study one million times, we would find the reported results far less than one time by chance.

The second statistical measure that I will utilize to describe these results is the odds ratio. The odds ratio is intended to provide a description of the odds of being inspected if you are a MOBCs relative to the odds of being inspected if you are not a MOBCs. The odds ratio for these data is 4.75. That is a MOBCs bus is 4.75 as likely to be inspected as is a non MOBCs bus. This level of disparity is very close to what was found in the Soto litigation for the New Jersey State Police on the southern end of the turnpike (4.85). Both of these statistics mean that these differences rise to an exceedingly high level of scientific confidence.

Inspection Outcomes

In determining whether undue targeting of MOBCs is occurring, it is crucially important to compare the inspections of the group compared to their presence in the group from which buses are chosen to be inspected as I have done above. However, it is also important to determine what happens to the buses during the inspection for which they are chosen. To do that, it is necessary to scrutinize the available inspection database and compare what occurs during the inspections to see if black bus owners are treated differently than are non-black bus owners. The ideal situation would be to compare those bus companies that are owned by minority owners against all the other bus companies owned by non minority owners. However, given the huge number of bus companies that deliver passengers to Atlantic City resources made it impossible to make an accurate determination about the race of the ownership of every company. This has the effect of not finding differences in the outcomes of the inspections that I would otherwise find as I explain below. Therefore, I chose to select a group of black owned bus

companies as the black bus owners, as I know who they are and that they are black. The other category for comparison purposes is all other buses that were inspected in Atlantic City. When this methodology is used I know that there are black owned bus companies in the “other” group. Because of this any comparison I make will be skewed against finding differences between the two groups because of the presence of an unknown number of black bus companies in the “other” group. This, of course, most probably has the effect of making any differences found an underestimation of the “real” difference. In reality, the real differences are quite likely greater than reported here.

Having said that, I now turn to possible variables in the inspection table of the SafetyNet Database that could show differences in treatment of buses after they are selected for inspection. These are a) duration of inspection b) level of inspection c) number of violations found d) proportion of inspections that found no violations e) number of out of service (OOS) violations found.

Duration of Inspection

The duration of inspection is an important variable in that longer inspections may be a more diligent attempt to discover some defect in the bus. The duration of an inspection ranged from 1 minute to 1490 (over 24 hours) minutes, Quite frankly, 1490 minutes is probably a mistake in entering the data, as the next longest inspection was 785 minutes. Duration is arrived at by subtracting the inspection start time from the inspection end time and thus, I would assume includes the time that the inspectors actually work on the bus. Buses may be waiting in line for some period of time prior to the beginning of the inspection. The mean (average) inspection duration for a MOBCs bus was 52.36 minutes, while it was 40.52 minutes for all other buses. If we use the amount of time that the other bus companies were inspected as our comparison, this means that MOBCs companies were inspected for a 29.3% longer period of time than were all other buses. This difference is statistically significantly difference ($t=4.367$, $p<.006$).

Level of Inspection

There are 6 levels of inspection in ASCII Integration Specifications which Mr. Harcar provided the plaintiffs in his deposition and stated that it explained Safetynet variables: 1) full inspection, 2) walk around inspection, 3) driver-only inspection, 4) special study, 5) terminal inspection and 6) RAM inspection. Over 75% of the inspections were full inspections and there were no RAM inspections. The full inspection is the most complete and, from the viewpoint of the bus companies, the most onerous, as it takes more time. MOBCs companies received full inspection 88.7% of the time while all other received full inspections 76.3% of the times they were inspected. This difference is statistically significantly different ($z=2.618$, $p. <.01$). It is obvious that there is correlation between level and duration of inspection. However both variables are important in understanding the treatment received by MOBCs during the inspections.

Number of Violations

The total number of violations found in any one inspection ranged from 0 to 42. As might be expected, the largest number of violations in any one inspection for non MOBCs was one. That is, the modal number of violations for non MOBCs was one. However, the largest number of violations in any one inspection or the mode for MOBCs was 8. The mode is the number of violations that has the greatest frequency for a group.; The mean number of violations for MOBCs companies was 8.63 while it was 5.21 for the other companies. This difference is statistically significantly different ($t = 6.6$, $p. <.006$)

Inspections with no violations

There are 1421 inspections in the database that resulted in no violations. This is 17.8% of the total inspections. MOBCs received no violations only 10.8% of the time, while all other companies received no violations 17.9% of the time This difference is statistically significantly different ($z=2.118$ $p.< .04$).

Out of Service Violations

The most serious violations and by far the most disruptive to the bus companies are Out of Service (OOS) violations. MOBCs companies had an OOS violation .431 of the time they

were inspected, while other bus companies received OOS violations .252 of the time. This difference encompasses 4.6 standard deviations and would occur by chance only 2 in 10,000 times.

All of these inspection outcomes rise to a high level of scientific confidence.

Discretion

In 1999 the Attorney General of New Jersey faced a difficult decision. Three years earlier a trial court, in the case of *State v. Pedro Soto, et al.* (A734A. 2d 350 (N.J. Super. Ct. Law Div. 1996)) had ruled that the New Jersey State Police were targeting black motorists on the southern end of the New Jersey Turnpike. The State appealed the ruling and the Attorney General ordered a review of State Police procedures. As the appeal of the Soto case approached oral arguments the Attorney General decided to withdraw the appeal, and issued an interim report on the activities of the State Police. At the heart of the case and the interim report is the issue of officer discretion. Discretion is both what makes a good police officer function well, but if left unsupervised can lead, among other things, to extreme violations of the rights of minority groups. The Interim Report on racial profiling, promulgated by the New Jersey Attorney General had this to say:

“Information and analysis compiled by the Public Defender’s Office during the course of the Soto litigation and relied upon by Judge Francis suggests that troopers who enjoyed a wider ambit of discretion, by virtue of the nature of their duty assignment, stopped and ticketed minority motorists more often. Specifically, the Public Defender’s statistical expert compared the tickets issued on 35 randomly-selected days by three different State Police units: (1) the Radar Unit, which uses radar-equipped vans and chase cars and exercises comparatively little discretion; (2) the Tactical Patrol Unit, which focuses on motor vehicle enforcement in particular areas and exercises somewhat greater discretion; and, (3) the Patrol Unit, which is responsible for general law enforcement and exercises the most discretion. Between Exits 1 and 7A of the Turnpike, the Radar Unit was found to have issued 18% of its tickets to African-Americans, the Tactical Patrol Unit issued 23.8% of its tickets to African-Americans, and the Patrol Unit issued 34.2% of its tickets to African-Americans.

Tickets issued south of Exit 3 yielded similar results: the Radar Unit issued 19.4% of its tickets to African-Americans, the Tactical Patrol Unit issued none of its tickets to African-Americans, and the Patrol Unit issued 43.8% of its tickets to African-Americans.”⁸ www.state.nj.us/lps/intm_419.pdf

Discretion is a very important consideration in planning for racial profiling data collection and analysis projects. In a resource center funded by the United States Department of Justice that was established at Northeastern University discretion is discussed

“As discussed earlier, discretion is at the core of a law enforcement officer's job, permitting innovative, flexible problem-solving. However, it also provides opportunities for conscious and unconscious racial discrimination to affect decision-making. While in both low-discretion and high-discretion stops, the driver has, in fact, violated the law, officers vary most often in their responses to high-discretion situations. Therefore, disparate treatment is more likely to occur in high-discretion rather than low-discretion situations.”⁹

The similarity of the situation at issue before the Court to the law enforcement situation, particularly in New Jersey is striking. Inspectors who are employed by the State of New Jersey have great powers to carry out their duties—duties that are of great import to the safety of citizens who travel on New Jersey's highways. Just as NJSP Patrol Officers exercised a great deal of discretion in targeting black motorists, this also is a situation in which the more discretion inspectors have to decide which buses to inspect and whether to issue a summons¹⁰ the more important it is that fundamental procedures should be in place to assure that the job is performed in a non-biased manner. From the beginning of the time period covered by the present litigation, bus inspectors, primarily those employed by the Commercial Bus Inspection Unit (CBIU) in

⁸ www.state.nj.us/lps/intm_419.pdf

⁹ <http://www.racialprofilinganalysis.neu.edu/planning/#reason>

¹⁰ Deposition of Michael Calorel, 2/8/2008 at p. 83.

Atlantic City had virtually unfettered discretion in determining which buses were sent for inspection and how those inspections were to be conducted.¹¹ While there appeared to be some attempt at sequential selection of buses inspectors were able to include buses that would not be selected randomly for inspection on the basis of a poor safety rating or an obvious safety violation. They also apparently exempted buses from inspection if they had recently been inspected.

Random selection is a process that reduces the discretion that inspectors have, but it has a precise meaning. It is that every bus has an equal probability of being selected for inspection. To do this, it is important to assure that the selection has specific criteria that must be met to assure that the probabilities are equal.

While the imposition of a sequential bus selection process at each casino may be seen as a laudable attempt to remove the discretion that inspectors had in selecting buses, it was woefully inadequate. First, the attempt at random selection began not at the beginning of the selection process, but “mid stream”. Inspectors first made a decision a) as to which of 11 (or 12) casinos to go to or b) to view buses coming into Atlantic City or c) at the parking lot where they park during the time the patrons they brought are in the casinos, and so forth. At least with Mr Schulze one of the supervisors of the Commercial Bus Inspection Unit, there appeared to be no understanding why random selection of casinos would be important.

¹¹ At least three supervisors of inspectors, Mr. Schulze, Mr. Bednarz and Ms. Legreide say in their depositions that they did not provide verification that inspectors were carrying out their duties properly, but trusted that they did. Mr. Schulze (Deposition 10/20/2009 @ p. 370) describes a situation where inspectors were spending too much time in Atlantic looking for buses that were “illegal” and not spending time inspecting casino buses. He said that he told them to spend time on the casino buses and when he didn’t hear about any more problems assumed that it was solved. Bednarz (6/25/2008) @ p. 47 admits that he would not know what the inspectors are doing unless he is there and that he goes to Atlantic City about once a month. Ms. Legreide says (Deposition 4/21/2008 @ pp. 47-48) “I would have taken the word of my employees that they have gone through the data and that it is a fair system and the information is there”.

Q. Did you ever check to see whether
10 or not because it was so convenient to the
11 Showboat that it ended up with the Showboat having
12 a disproportionate number of buses drawn from it?
13 A. No. There weren't.
14 Q. How do you know that?
15 A. I know that.
16 Q. Did you check it?
17 A. Yes.
18 Q. When?
19 A. I looked at the sheets. We were
20 drawing from all of the casinos. Why would it
21 matter if they were pulled from Showboat anyway?
22 I mean it is a casino. Wouldn't matter if they
23 were all pulled from the Showboat for that matter.¹²

The decision to exclude the place where the process began (casino, city street or other place) which could have great impact on the proportion of MOBC buses be included in the sampling process appears not to have been addressed in any way with regard to random selection or in any instructions to inspectors. The inspectors were free to pick the point of contact to proceed to on some basis known only to the inspectors. To adequately randomize the selection process the first step would be to select the casino or other point of contact to be visited for the selection randomly. The data that I have available indicate that casinos were where the vast majority of contacts were made.

Next, while sequential inspection is a form of random selection, inspectors were allowed to select buses out of sequence. In general casinos have a number (10 or more) of bays into

¹² Schultz Deposition 10/20/2009 @ p. 241.

which the buses pull to discharge passengers and inspectors selected buses for inspection from the line of buses in the bays. However to select buses randomly strict adherence to a starting place is necessary. There appears to be no adherence to the starting place for enumerating the buses given to or by the inspectors¹³. They were also allowed to select buses out of sequence for the stated purpose of selecting buses that had visible safety issues or received a safety report (variously referred to as ISS or IV with a percentage sometimes appended to it) that was unsatisfactory. The ISS report is based on inspections made by these same inspectors in earlier years. The information I have had access to about this process consists of a number of MCSAP Roadside Inspection Vehicle Lists (RSIVL) (produced by defendant in discovery. These lists, which are not consistent in the data they record but generally provide the date, the US DOT number of the company from which the bus comes, the License Plate number, State, whether ISS or Past Inspection Query was checked and whether the bus was sent for inspection, the reasoning for sending or not sending the bus and the time. On some of the forms, the Point of Contact (with the bus) is listed. In his deposition, Mr. Bednarz,(p. 36-37) who is currently Director of Inspection Services in which capacity he oversees the CBIU indicated that an (ISS) of 90 or above meant to inspect the bus, a score of 80-90 meant that inspectors could (or could not) inspect and below 80 was a pass.

If the inspectors utilized a coherent inspection policy it is not reflected in the RSIVLs that I have had access to. For example, on 4/15/05 an ISS of 76% led to an inspection even though it was in the area that should result in a pass. There are many references in the lists of an IV rating in place of an ISS rating. The standards for IV ratings appear to be different than the standards Mr. Bednar related for the ISS. Moreover, there are two curious instances of seemingly questionable treatment of bus companies. On 2/27/04 three buses were not inspected and the “reasoning for sending or not sending” is Recently Insp.(Bates # NJ056531) However, later that year one of the plaintiff’s buses was inspected on 7/23/04 and again on 7/29/04 (Bates #sNJ057992 & NJ058058). The second curious instance occurred on 6/17/05 when one of the

¹³ Calorel Deposition 2/8/2008 @ pp. 80-82.

plaintiff's buses with an IV 45 was sent for inspection but a bus with an IV 47 was not (Bates #NJ060758). This occurred on the same night, apparently at the same casino within 10 minutes by the same two inspectors J. Grace and D. Herbert. This certainly seems to be arbitrary.

The discretion which the CBIU inspectors had was virtually unfettered. There appears to be no written instructions on how the buses were to be selected for inspection. The inspectors could select buses for inspection based on several competing criteria and were restrained in no way from selecting buses sequentially, on the basis of safety information or on the basis of visual defects. Further they appeared to have minimal supervision and at least one of their supervisors did not understand random selection well enough to implement it if he had wished to do so. If there was any evidence of racial prejudice among the inspectors or their supervisors in this case, the fact that they were allowed to select buses in a manner that was unclear would rise to an even higher level of concern. We turn now to the indicia of prejudice evident in the inspectors and their supervisors.

Prejudice

Prejudice is a feeling or opinion or attitude about a group that attributes characteristics, usually negative to members of that group. Overt indicia of prejudice are often not available in racial profiling litigation¹⁴, but accusations of prejudice appear in the testimony of Wilfred Grotz, about Vincent Schulze, Vincent Bartolone and Michael Calorel. Mr. Grotz accuses all three of using the word "nigger" in reference to blacks. Specifically, Mr. Grotz accused Mr. Schulze of referring to a worker in the office as a one eyed "nigger". He accused Mr. Bartolone of utilizing a saying along the lines of "do your work with vigor or be replaced by a nigger." He accused Mr. Calorel of saying that "niggers run junk," and that he moved out of his house in

¹⁴ In the Soto litigation there were training videos that appeared to suggest that certain race/ethnicities dealt in different drugs. In 1999 the Superintendent of the New Jersey State Police was relieved of his duties because of his assertion that minorities were responsible for the marijuana and cocaine trafficking ("Whitman Fires Chief of State Police" Newark Star Ledger, March 1, 1999). However, overt prejudicial statements of the sort alleged and/or admitted to by two inspectors in this litigation are extremely rare.

Sayerville because an African American family moved in next to him. Furthermore, there are admissions from both Mr. Bartolone¹⁵ that he used the pejorative word “nigger” and from Mr. Calorel¹⁶ that he used racial slurs.

How does this prejudice impact on the inspection of buses in Atlantic City? I do not know that either of the two inspectors/supervisors allowed their prejudicial statements to affect their decisions about MOBCs, but it is so unusual in late 20th and early 21st century America to hear such overt prejudicial sentiments that the possibility of their being prejudiced against blacks must be taken seriously. And, of course, that extends to the possibility of their attitudes affecting their selection and inspections of buses. The data from the excess number of inspections of MOBCs buses relative to their presence in Atlantic City as well as the findings of the inspections are consistent with targeting of these bus companies owned by blacks.

Conclusions

MOBCs are subjected to inspection at a much higher rate than would be expected by their presence in Atlantic City. The difference between their expected and actual rate of inspection is so high that it is impossible for me to know exactly what the probability associated with such large disparities is for the simple reason that disparities this large are so seldom seen that finding exact probabilities to associate with the results is exceedingly difficult or impossible. The statistics found with regard to these inspections are exceeding close to those found when the Attorney General of New Jersey issued the Interim Report at about the time he withdrew the appeal of the Soto decision.

MOBCs are subjected to longer inspections, more full inspections, have more violations found, have fewer inspections that find no violations and have more Out of Service violations found than do the comparison group which are all other bus companies. All of these differences are statistically significant at levels well beyond the generally accepted .05 level.

¹⁵ Deposition of Vincent Bartolone, 12/23/09 at p. 24.

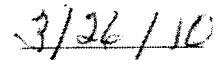
¹⁶ Deposition of Michael Calorel 11/24/09 at p. 28.

One of the important variables occurring when racial profiling is found has to do with discretion. Generally speaking, the more discretion an officer has the more likely racial profiling can occur. These inspectors had great discretion in selecting buses for inspection and determining whether a summons would be issued.

In addition to the analyses and discretion discussed above, there are extraordinary allegations and admissions from some of these inspectors. Mr. Grotz alleges that Mr. Schulze, Mr. Calorel and Mr. Bartalone used the pejorative word "nigger" when referring to black people. Mr Schulze denied the allegation, but Mr. Calorel admitted that he used racial slurs and Mr. Bartalone admitted that he used the word "nigger". While I cannot say that these inspectors allowed their feeling to influence their work and who they inspected and how harsh they were, the data are consistent with targeting of MOCBs.



John Lamberth Ph. D



Date

APPENDIX 1

NJ 052522	NJ 059776
NJ 056800	NJ 060034
NJ 060035	NJ 060327
NJ 056219	NJ 060230
NJ 056834	NJ 053386
NJ 060034	NJ 054048
NJ 061785	NJ 054899
NJ 062048	NJ 055419
NJ 049715	NJ 056531
NJ 050913	NJ 059596
NJ 052565	NJ 059650
NJ 055450	NJ 059952
NJ 057254	NJ 059907
NJ 058512	NJ 061453
NJ 061440	NJ 058866
NJ 054899	NJ 059887
NJ 060231	NJ 059864
NJ 058526	NJ 060356
NJ 051558	NJ 060139
NJ 051468	NJ 060528
NJ 056338	NJ 060390
NJ 059775	NJ 061126
NJ 059596	NJ 061450
NJ 060233	NJ 056544
NJ 061582	NJ 057992
NJ 058360	NJ 058058
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NJ 056801	