
Public Hearing

before

SENATE JUDICIARY COMMITTEE

"To review allegations of racial profiling by the New Jersey State Police"

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: April 26, 1999
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator William L. Gormley, Chairman
Senator James S. Cafiero, Vice-Chairman
Senator Louis F. Kosco
Senator Robert J. Martin
Senator John J. Matheussen
Senator Norman M. Robertson
Senator John A. Girgenti
Senator John A. Lynch
Senator Edward T. O'Connor Jr.
Senator Raymond J. Zane



ALSO PRESENT:

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*Office of Legislative Services
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New Jersey State Legislature

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PUBLIC HEARING NOTICE

The Senate Judiciary Committee will hold a public hearing on Monday, April 26, 1999 to review allegations of racial profiling by the New Jersey State Police. The hearing is scheduled for 10:00 AM in Committee Room 4, State House Annex, Trenton, New Jersey. If warranted the hearing will be continued on Tuesday, April 27.

The public may address comments and questions to John J. Tumulty, Committee Aide, or make bill status and scheduling inquiries to Karen M. DeMarco, secretary, at (609)292-5526.

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SENATOR WILLIAM L. GORMLEY (Chairman): Just so people know the procedure for today, we're going to have an initial presentation from the Attorney General's Office, approximately 15 minutes. We'll then open it up for Committee questions, approximately 45 minutes to an hour. At that time, I would call other witnesses who wish to testify today.

Attorney General Verniero, Mr. Zoubek will stay during the hearing. They'll be available to come back for further questioning, but I would like to get an initial round of questions in on the report. Okay.

The first witness -- witnesses would be the Attorney General and Assistant Attorney General Paul Zoubek.

General.

ATTORNEY GENERAL PETER G. VERNIERO: Thank you, Mr. Chairman, members of the Committee. Good morning. At the outset, I wish to thank Senator Gormley and the Committee for allowing me and my Office to present the findings of an interim report of the State Police Review Team regarding allegations of racial profiling.

Based on my growing concerns, I initiated an unprecedented review of State Police to examine such issues as racial profiling, in addition to procedures for processing complaints from members of the public and internal complaints from troopers, training programs for supervisors, and the current system of internal discipline.

In order to put this review in context, it is important to note that we began looking at some of these issues in detail a year ago. It was a year ago that we began an intense investigation into the shooting incident that occurred on the New Jersey Turnpike on April 23, 1998. During the course of that

investigation, an additional inquiry into the practices of State Troopers assigned to the Moorestown and Cranbury Barracks was initiated. Some of the data and information collected as part of the Moorestown-Cranbury reviews were used for today's report.

Originally, I asked the Review Team, headed by First Assistant Attorney General Paul Zoubek, to complete its work by June, but because of the deadlines in *State vs. Soto*, the Gloucester County racial profiling case, we completed this Interim Report on the racial profiling issue ahead of schedule. The report concludes that majority (*sic*) motorists have been treated differently than nonminority motorists on the New Jersey Turnpike. This is a very disturbing finding. How did we get to this point? A combination of circumstances contributed to the problem: ambiguities and misunderstandings about procedures; the inherent difficulties and pressures present in day-to-day police work; and the unfortunate and improper reliance on stereotypes that exist not just by a few in law enforcement, but by too many throughout society.

The Interim Report also states that the majority of State Troopers are honest, dedicated professionals who are committed to enforcing the laws fairly and impartially. But in those cases where there may be willful misconduct on the part of troopers, further investigations and certain discipline or prosecutions will be the order of the day.

The report is what I envisioned when I commissioned it, a candid, thoughtful, and fair review of State Police practices and methods. Its conclusions are unambiguous, and the suggested remedies provide a clear road map for the future. The Interim Report is just that, an interim statement of

the problem. More reports must follow. However, the Interim Report represents a major step never before taken signaling a recognition of the problem and proposing significant reform.

In light of the report, my Office recently withdrew the State's appeal in the *Soto* case. For the Committee's reference, I note for the record that the incidents at issue in that case occurred between 1988 and 1991; the discovery order was entered by the Court in 1992; the trial took place in 1994; and the State filed its notice of appeal prior to my appointment as Attorney General. Thus, when I took office in July 1996, the *Soto* case had been in the judicial system for over six years, and the decision to appeal it had already been made. At that time, there was no suggestion that my Office second-guess the handling of the matter by several of my predecessors, each of whose tenure touched some aspect of that case.

The problems we faced did not occur in a single month or year. They developed over many years. Given the nature of the problem, these difficulties will not be solved overnight, but I am convinced that the 18 steps outlined in our report will begin to remedy the situation at long last in New Jersey. The report also demonstrates that government can evaluate itself.

Let us not forget that behind the pages of this report are real motorists who have been treated differently simply because of their race. They are the victims here. Let us also not forget that law enforcement officers, the majority of whom are fair and honest, have a great interest in eliminating discrimination as well. Both points amplify, Senators, that this is the time for all persons of goodwill to embrace the report's recommendations and work together to eliminate all forms of bias in New Jersey.

This is our opportunity to say candidly on a bipartisan basis, we have a problem that has transcended several administrations in New Jersey and may be evident in other states. Racial profiling did not start with the Whitman administration, but we have begun the process of ending it. We simply must work together at this historic moment for the benefit of all citizens.

Thank you, Mr. Chairman, and members.

And with that, I'd like to introduce the First Assistant Attorney General, Paul Zoubek, who will give the Committee a brief overview of the report and its findings.

FIRST ASST. ATTY. GENERAL PAUL H. ZOUBEK:
Good morning, Senators.

What I'd like to do is give a brief overview of the report. I'm sure some of you have had an opportunity to read it at this point, but I thought I would go through the general findings of the report, the parameters of the report for the Committee this morning.

First and foremost, it's important to recognize that we focus this report on the Moorestown and Cranbury Barracks on the New Jersey Turnpike for two reasons in particular: one, because those were the barracks that were involved in the *State vs. Soto* litigation, and two, because it's very important to look at the Turnpike because that's an area in which, because the Turnpike has been known as a corridor for drug trafficking for a number of years and has been the focus of Federal and State efforts as it relates to interdicting drugs, that the issue of racial profiling and the impact of the effort and the zeal to

interdict drugs and examining what impact that has on the issue of racial profiling was particularly important.

As the General outlined in his statement, we found essentially two basic forms of racial profiling that provided us concern. And we defined racial profiling as any point in which a motorist and the stop, in the selection of being stopped, and also after the stop has occurred. There are a number of points that I will review in a moment in which discretion can come to play during the course of that stop and the decisions are made how to treat the motorists. We define racial profiling as treating anyone differently during the course of selecting someone -- a car to stop or the decisions that are made after that stop based on race. That's the simple definition of racial profiling. We think it's an important definition of racial profiling so that we can determine the nature of the study.

We found two specific instances of concern. One instance of alleged willful misconduct by officers who were selecting motorists may have allegedly been falsifying records in order to cover what they may have been involved in, in terms of selecting out motorists and treating motorists differently. And then, most significantly, a determination of a pattern as it relates to some of the statistics that we uncovered during the course of this review in terms of the percentages, in part with respect to the percentages of minority motorists that were being stopped but, more importantly, as it relates to the percentage of motorists who are being subject to consent to searches, which was nearly eight out of ten of the consent to searches that we reviewed were of minority motorists during the 1994 to 1998 period and selected periods that we looked at.

So with that backtrack, what I'd like to do is-- (begins slide presentation)

Ed (speaking to slide projector operator), if you can go to the next page.

One of the things that's important and I think one of things we tried to do was take and examine the issue of racial profiling anew in New Jersey and to look at it to ensure that-- Many times in the past -- the *Soto* litigation and other views of racial profiling had only focused on the issue of the stop itself. And that's much of what the *Soto* litigation focused on, but our report highlights that there are a number of discretionary decisions that an officer can make during the course of a stop after the motorist has stopped.

There has been some who have said, "Well, how can you even tell the race of the person that you are selecting out on the road if you're doing it based on a motor vehicle violation?" The stop is only one element in the decision that an officer has an opportunity to make. We thought it was particularly instructive to look at the issues of what was happening to motorists once they were stopped. And as I will review in a moment, we were particularly concerned about what was happening in terms of percentages regarding searches because, at that point in time, certainly there could be no question of the race nor ethnicity generally of the person that you're dealing with. You essentially have that first instance where you may stop someone based upon a motor vehicle violation. There's been much discussion that there are a substantial number of motorists still exceeding the speed limit and a wide arraying of people who could be stopped based upon a motor vehicle violation,

whether it's speeding, whether it's a problem with the car. There are a number of motorists who could potentially be stopped.

The contact itself in terms of what happens next is important to understand in terms of once the motorist has been pulled over. And that will become important-- I won't go into extensive details, some of the recommended remedial steps that we suggest, but the contact that is made with the motorist and the way in which that contact is made is very important. Obviously, we're always very concerned about officer's safety, and so the manner at which that stop occurs attempts to protect officer safety. But during the course of that contact, the officer has a number of opportunities to make decisions on how he or she is going to conduct that stop.

Based upon the consent to search numbers that we saw, where it was 80 percent minority motorists who were being asked to consent to search, we became concerned during the course of our review that despite years of practices and policies being put in place by the New Jersey State Police that said, "You cannot racially profile. You cannot racially profile," that what we may be seeing is a pattern in terms of improper stereotypes coming to play in terms of decisions that are being made by officers during the course of that particular stop.

Ed, if I could have the next.

What we found, and this was on Page 26 of the report -- we found in going through the stops of motorists from April of 1997 through November of 1998 that the percentages of black motorists being stopped out of the Cranbury and Moorestown Barracks was approximately 27 percent; Hispanic

was 6.9 percent; Asian was 3.9 percent. So you had approximately 60 percent of the motorists being stopped were white.

Now, in the *Soto* case, the Court in that case had examined evidence and had determined that percentages in that case were approximately 13 percent African-American in terms of general population traveling the highway and a “violator” survey that was conducted of the percentages by race of those who were violating the law of approximately 15 percent. Now, comparing those numbers to the *Soto* numbers, the numbers appear to continue to be disproportionate.

One of our recommendations in this report, however, is that-- In the *Soto* litigation, there were criticisms with respect to the methodologies used in that case. One of the significant recommendations we have is that the State of New Jersey work with the Justice Department and others to develop a reliable benchmark to determine the appropriate percentage to be comparing the stops against. So our proposal is that we work over the next 120 days to develop that particular benchmark, so we can utilize that as the basis of what we’ll talk about in terms of an early warning system to examine the issue of racial profiling, so we can monitor it.

Ed, if I can have the next chart, please.

Now, what we found with respect to searches and again two important things here-- If you’re looking at the issue of the use of discretion during the course of a motor vehicle stop, the notion in terms of asking someone to consent to search, New Jersey already goes beyond the Federal requirements and has done that for quite some time. In that requiring, there has to be a reasonable, articulable suspicion before an officer asks for a consent

to search. And that's a procedural safeguard that has been put in that goes beyond the Federal statute, but still, as it relates to a consent to search, there is a great deal of discretion that the officer has in terms of once he has met that threshold in terms of asking someone to consent to search.

And we were concerned it's not only the asking the consent to search, but particularly, since the Turnpike is in an area in which we have been asking -- all of us in the public have been asking the New Jersey State Police to interdict drugs on the highways, so we can get them out of our neighborhoods -- is, what has been the percentage of fines? What percentage of the time are we finding drugs on the people that we're asking to consent to search? And we're finding that 80 percent are being asked of minority citizens, and we find a range of between 19 percent to 30 percent, depending upon the period of time that we're looking at, in terms of actually finding narcotics on the individuals who were consenting to search. Obviously, that leaves a remaining percentage of 70 percent to 80 percent of the individuals who were being asked to consent to search who have nothing on them. And that figure is a concern to us and the Review Team and is one of the most significant issues that I feel that we must address and we do address and attempt to address in this report in terms of some of our remedial steps.

We also go through--

Ed, the next chart.

These are figures that are included for the Cranbury, Moorestown, and Newark Stations that highlight for the percentage of arrests is 61.7 black. That number that is released here is a little bit different than some of the numbers that have been released and featured in the *Star-Ledger* and other

newspapers that were slightly higher than this. That's because the data that we have in here comes from fingerprintable offenses that are stored by computer that we're able to track.

So, in sum--

If I could, Ed, go to the next chart.

In looking at these numbers and collecting these numbers from the Jersey State Police during the course of the Review Team's work, we had a number of concerns that we thought we had to address. First and foremost, as I highlighted, was the disproportionate use of the consent to search doctrine as related to minority citizens, and we have a number of remedial measures that I will address that are designed to attack that particular issue. Again I have heard people say, "Well, with respect to the stopping issue, how can you really tell what the race of the person you're stopping is?" Well, you can certainly tell once you're standing there on the side of the road and you're making decisions with respect to a consent to search. We are also recommending an evaluation in terms of the effectiveness of that particular procedure in terms of the amount of drugs that we're getting from that particular technique.

Secondly, we highlighted -- all the New Jersey State Police has made some significant efforts over the couple of years to address this -- is missing data about the racial characteristics of the detained motorists. And we have some recommendations in the report to deal with that.

Thirdly was lack of automation as it relates to collecting this information. This is vitally important. If we are going to put in audit and monitoring systems to ensure on a long-term basis that New Jersey can control

and monitor this issue to protect its citizens appropriately, that we need to enhance the computerization. And we are in the midst of computer-aided dispatch being put out on the Turnpike and being in so that we'd be able to rely on that. We were concerned at some data that we saw with respect to when officers had greater discretion, when they weren't using radar that the percentage of minority motorists increased. We think there are methodologies that can be put in place to ensure -- and we recommend establishing some very clear and direct practical stop criteria so that we can ensure that the discretion is being channeled appropriately.

We talked about, and I mentioned this before, the significance of the stop statistics. Although it shows numbers consistent with some of the numbers in *Soto*, we believe that we have to set up a reliable benchmark in New Jersey that we can compare those numbers to. We talked about the arrest statistics, and one of the concerns that we have in the report with respect to the arrest statistics is essentially that the extent to which any inappropriate group associations or suspicion of criminal activity inappropriately based upon a race is occurring that that could have an affect on the arrest statistics. And we already talked about the significance of the issue of what percentage of the time that we're finding drugs when we're engaging in consent to search.

Now, if I could go to the next chart, Ed, please.

And I'll only talk about this briefly. It's set forth very strongly in the report. In examining and finding some of these numbers, we wanted to examine areas in which we -- were of concern to us that we think we have to address. So again we can ensure that when we have this situation in which the New Jersey State Police is sending constant messages not to engage in racial

profiling, why are we seeing this phenomena that we saw on the report? We identified ambiguities and misunderstandings about the law, and I would highlight there, as a former Federal prosecutor, there are Federal cases out there that say in some instances that race can be used. We recommend with respect to traffic stops in this report a very bright-line rule that we bring to our officers, so they have a clear guidance on that issue.

Ambiguities, imprecision, and omissions in standard operating procedures -- those are outlined specifically in the report, and we have specific recommendations on how to deal with that.

And very importantly, No. 3, conflicting, subtle messages in otherwise bona fide drug interdiction and gang-recognition training programs. There was much criticism in the *Soto* case and also in the media at times with respect to some of the training tapes that the State Police has seen and the impact that that may have if it focuses on a particular group. We try to make the point here clearly in the report there's an appropriate use of those training tapes so that it is clear that groups and gangs and enterprises that may be involved in drug trafficking that may, in fact, be terrorizing some of our neighborhoods in New Jersey -- it's appropriate for us to investigate and focus on those groups. It is a different situation, however, when you're sitting on the side of the highway making decisions among the thousands of motorists that you could stop and engage in conduct with respect to examining for consent to search. What is appropriate in terms of the use of race in those situations as it relates to gang activity? We make it absolutely clear in this report. We will be making it clear in the training that that cannot occur, and we have to have a very bright-line rule with respect to that.

We also highlight -- I guess, one of the favorite words in that report is this word -- tautological. What we mean, tautological use of statistics. And at times what we have heard is, "Well, the arrest rates for minorities with respect to drugs and weapons are high; therefore, that may justify these numbers." Well, there's a concern that we have to watch out for that, that doesn't become a self-fulfilling cycle, and that we point that out in the report, so it is absolutely clear. And we use the one example for nonminority persons that may be able to understand it a little bit more.

We know that New Jersey-- And, indeed, the Division of Criminal Justice, of which I am the director, was formed in the late 1960s because of the concern of the infiltration of organized crime in New Jersey. And we know we have la Cosa Nostra families up in northern New Jersey, southern New Jersey, Philadelphia, and New York. But it is certainly not the case that an officer sitting on the side of a highway could stop someone who is Italian-American or make decisions during the course of that stop based upon the fact that the person is Italian-American because they hold a reasonably articulable suspicion that that person is a member of la Cosa Nostra. And that's because the percentage chance of that person being in the la Cosa Nostra is so infinitesimal it's not an appropriate factor to keep in mind or for the officer to use. We think that that analogy also applies so that we make it clear that when we're looking for drugs, we make the appropriate decisions, and we don't catch up otherwise innocent persons in that process.

No. 5, we talk about formal and informal reward systems that may have encouraged troopers to be aggressive in pursuing drugs. We've asked them to go get the drugs. They have been getting the drugs. The issues with

respect to the Trooper of the Year Program and other award systems -- we ask that those be examined.

Inherent difficulties, No. 6, in the day-to-day supervision of troopers on the Turnpike. Troopers on the Turnpike have substantial periods of time when they're out on their own. We have to ensure there's appropriate line supervision of each of those troopers. We propose methodologies for accomplishing that.

And we have to-- In No. 7, we also need to have better procedures for identifying the problem officer and for helping that officer and putting in appropriate discipline.

If I can, Ed, just skip over in terms of time to the specific actions steps, which are the last three pages. Skip through that one, Ed.

Now, what we reviewed -- and I wasn't going to take your time to obviously go through the law that we reviewed in the report, but I think there's a couple of important portions. We focused on the impact on persons of color when there are inappropriate decisions being made. We focused very importantly and significantly that this issue of racial profiling is a national problem. It is a problem up and down the I-95 corridor, which is very much tied in to the issue of interdiction of drugs.

If I can just summarize with respect to some of the specific actions steps that we recommend. We recommend that New Jersey take a number of steps to ensure that we're out front on this particular issue. And paramount to that effort is the establishment of a early warning system. What do we mean by an early warning system? We mean by setting up procedures that will enable us to capture data that will enable us to do appropriate cross-checks to

ensure that the appropriate discretionary decisions are being made during the course of stops.

There are three important reasons for that: one, it protects the motorists; two and as important, it protects the trooper who is doing what is right out there so the trooper has the appropriate recordation of what has occurred during the stop; and thirdly, it will also serve to ensure that where a case has been handled appropriately it can be handled appropriately in court as well. The early warning system will give us a better ability to audit, to monitor, and to intervene more quickly on the situation.

Tied into the early warning system is a recommendation that we should be on a quarterly basis be reporting to the public what the percentages are out there as it relates to the traffic stops that are occurring so that the public can assist in the monitoring process or the Legislature can assist in the monitoring process, and so we can all observe our progress on this particular issue.

We also go through the report, and I'm not going to go through it extensively, a whole series of recommendations with respect to standard operating procedures. And keeping in mind, one of the things we hope to do is tie those standard operating procedures into one of the best advances that we have now, which is the video cameras on site. As it relates to the consent to search, we will be able to monitor the audio as it relates to what is happening during those consent to search to make sure that it's occurring appropriately, and we believe that we can establish the appropriate balance in terms of monitoring systems but to ensure that we're not making our officers into statisticians and mechanics as it relates to these particular issues. There

has to be an appropriate balance, and I think our recommendations address that.

We recommend enhanced training as it relates to the standard operating procedures. That, also, must involve training as it relates to the importance of this particular issue and the importance of addressing this issue to ensure that this is an issue that we in New Jersey have led the way of taking care of. We have also recommended, finally, a legislative recommendation as it relates to a parallel civil rights statute that would give the prosecutors in New Jersey an additional tool to deal with this issue. (ends slide presentation)

Obviously, it is a long report. There are a number of recommendations in it. I'll make myself available at any time today or after the hearing to answer any Senator's questions with respect to that.

I thank you.

SENATOR GORMLEY: Thank you.

What I'll do is-- I will lead it off with a few questions; then we'll go to Senator Lynch; then we'll go back and forth between the Committee members, and we will stick to that 45 minutes or an hour. And after we have the witnesses -- the other witnesses before us, then we'd ask you to be available for additional questions.

Simply stated, the procedures that you've outlined in terms of procedures for once a stop is made, once a search is made, once an arrest is made-- What we're trying to do is parallel what we do with the chain of custody and evidence -- wouldn't you say so? -- so that what you have is a procedure that is explainable to the court if a suppression motion would be filed and at the same time protects the rights of individuals. Is that-- Because

it seems to me, if you either look at the *Soto* case or you look at the information or the data that's been compiled, it's almost impossible to put a coherent line together, if you will, evidentiary line, because you have to go to statistics from different months and cross-reference them. It is impossible to make a coherent message, if you will, in terms of what the procedure has been in terms of these stops.

Mr. Zoubek.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, that's exactly what we're attempting to do with respect to the remedial steps that we have, and it's for both the motorists and for the trooper. It is to ensure that there are multiple sources of information that can be cross-checked as it relates to what happened during a particular stop. And by putting in the early warning system and the tracking of forms with respect to decisions made during the stop and decisions made with respect to consent to searches, we hope to establish a chain of evidence that the motorist will be able to rely on and the trooper will be able to rely on as we go forward in court. One of the important things is, as we make it tighter with respect to the evidence, we'll have a better trail to follow.

SENATOR GORMLEY: In terms of-- The report brings out falsification in terms of calls that have been made regarding the race of individuals. When did the Attorney General's Office first become aware of falsification? Was it before you filed, you started this review in February? When was that, if at all possible, could we know that there was knowledge of falsification?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: After the April 23 shooting -- and I also sit here as not only the author of the report, but as a signator of all the indictments that come out of the Division of Criminal Justice, so I have some limits of what I'm able to say--

SENATOR GORMLEY: Sure.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: --is-- After that incident, we began an intensive investigation of those two troopers. And off of that investigation, we began to audit the Moorestown and Cranbury Barracks to look at issues with respect to falsification. So that occurred after the April 23 shooting and was an intensive investigation that had more than 70 detectives out not only in New Jersey following up door to door to check on the race of motorists that were stopped, but also went to other states. So that continued all the way through well into the last couple of weeks.

SENATOR GORMLEY: So what you did is you ran down the names of individuals for whom you had a record, which it appears to be a problem finding records here. You'd run them down, and you'd go to the individual household to run down the information. Is that correct?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct. And one of the issues that may come out of this ultimately is to whether or not there needs to be national legislation that puts the race of motorists on driver's licenses.

SENATOR GORMLEY: You mentioned the radar unit, that those numbers would seem to indicate profiling because that was the unit that had a limited amount of discretion, to say the least, because it was focused merely on the use of radar for stops, and consequently, the percentages weren't out of

line to the area. That came out in the *Soto* case. It was one of the bases for the decisions in the *Soto* case. It would seem that that information, from my review of those matters, would appear to have been fairly strong information to indicate our weakness in that particular case. Would you like to comment?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. That was highlighted in the *Soto* case. One of the issues that we're concerned about is, after the *Soto* case, a number of steps were put in place by the New Jersey State Police in attempting to address some of those discretionary issues. And that in part was of concern to us to see these kind of numbers even after those steps were taken in lieu of *Soto*. But what we will be focusing on is putting together as a specific recommendation for a standard operating procedure to create practical stop criteria, which would obviously attempt as much as possible to use objective data as frequently as possible.

SENATOR GORMLEY: Although there were a variety of different methodologies used in *Soto*, as compared to your report, what I find striking is the 13.5 percent number comes up in both reports: *Soto* in terms of the ridership of African-Americans on the road, and 13.5 percent showing up in your report in terms of those who are African-Americans who were arrested or found with contraband, which would seem to indicate, as confusing the process as we've been engaged in to try to put history back together again, that they do seem to verify one another at least in terms of that statistic. Would you like to comment on that?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: One of the things that we're trying to do is because of the database that we have currently available we're not able to cross. Because when you go down to the

13 percent, find the actual numbers of those are so small, that to be able to correlate it totally back to *Soto* we're unable to do at this point. But that's why our recommendation is, instead of having the issue of the battle of the experts of what the right percentage is to use as a benchmark out on the Turnpike -- is that we commission a review in which we work cooperatively with the Justice Department in establishing what the correct reliable benchmark is.

SENATOR GORMLEY: Okay.

General, Page 23 of the report, first paragraph, under A, "In mid-March, the Review Team began to receive documents from the State Police--" That's mid-March of this year. "--pertaining to audits, compilations of data, and analyses of data about the racial characteristics of detained motorists, some of which had not previously been provided to the Office of the Attorney General or the Division of Criminal Justice." One, I'd like an explanation of that sentence, which I think is at best disheartening, but also, the next question that would follow after that, how long did that occur? Do we have any concerns regarding the availability of information that we might have provided through Judge Francis in the *Soto* case? And once we did get this information, did we uncover information that should have been provided at an earlier date?

ATTORNEY GENERAL VERNIERO: Well, let me answer the first question first. We did get certain documents in mid-March for the first time as a result of the inquiries resulting from this review. And in those documents there were certain statistics that we were seeing, that I was seeing for the first time in terms of the time frame -- the April to November time frame that is part of this report with respect to the search data, the consent to

search. It's interesting to note that in the *Soto* case the focus in that case was not on searches. It was on stops. And it's also interesting to note that one of the bases of our findings in this report is, yes, in part on stops but more on the searches. So we've actually developed a record as part of this report that is an enhanced record over and above what was the record in *Soto*, in terms of what the judge really focused on in the *Soto* case.

SENATOR GORMLEY: But the question is, should we have been enhancing the *Soto* record?

ATTORNEY GENERAL VERNIERO: I'll have to turn that over to Director Zoubek, who actually received and reviewed these documents from mid-March to determine that.

I think the bigger issue, Senator, is actually, in terms of this report and the recommendations, to have the early warning system and to have a regular publication of data at regular intervals will avoid these kinds of problems from ever occurring in the future, will avoid the Attorney General of having to constantly ask for information, will avoid the sudden appearance of documents, and so forth. That will all be resolved and will not reoccur if our recommendations are put into place.

SENATOR GORMLEY: I think this report is excellent. I think your Office through your First Assistant has done an excellent job in terms of this report and the information that it provides. But to those people since 1988 that this affected, I think they deserve an answer as to when information was sought, when it wasn't provided, and from whom the information was asked.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I can answer as it relates to Page 23 -- in the reference on Page 23. After February 10 when the Attorney General turned to me and said, "I want you to look at this racial profiling issue, making no assumptions, take it totally from scratch, take it wherever it needs to go," which is I took that as my mandate based upon my role as Director of the Division of Criminal Justice in charge of part of the April 23 shooting investigation--

SENATOR GORMLEY: So what you're saying is in April you started to ask for this information?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We had started to obtain and research information with respect to Moorestown and Cranbury of 1998. It is why on March 5, I filed a motion with the Appellate Division identifying that it was appropriate for us to reexamine our position in the *Soto* case and identify--

SENATOR GORMLEY: Excuse me, would you give me that date?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: March 5, 1999 I filed a motion with the Appellate Division and advised the Appellate Division during the course of that that there were some concerns that I had with respect to the numbers that I was seeing as relates to our investigation and that possible relevance back to that in the *Soto* case. Keeping in mind, that the record, technically, and this was the position that's been taken by defense in this case-- The position in the *Soto* case dealt from a record of 1988 to 1991. My concerns were more as a policy matter for the State of New Jersey and the ability to continue that litigation, which gave an appearance that we were denying that there was racial profiling. So when the final brief was handed to

me in late February for the *Soto* case, we recommended at that time that we file the motion saying with the penance of this review, so they could make a determination as to whether or not we would be withdrawing the *Soto* case. It related to the information that we were obtaining at that time that showed that some of the numbers were maybe consistent with some of the numbers in the *Soto* litigation.

SENATOR GORMLEY: You as an officer of the court reacted properly and filed with the Appellate Division once you became aware of the fact or the potential fact that certain data that you had asked for before had not been made available. You would say that you had started to ask for this information right after the shooting in '98?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: After the shooting in 1998, there were issues with respect to allegations of falsification of data that we began to examine. In addition, when we started the review on February 10 and I sought the production of records from the New Jersey State Police, which I received a great deal of cooperation, I did get those production of records and received those in mid-March, which had some of the data that we're concerned about in this particular report. That's why we took the position we did with respect to not being able to go forward potentially ethically on some of the issues in the *Soto* case. And that's why we took that position at that time.

SENATOR GORMLEY: General, what's the status of the Federal investigation or review?

ATTORNEY GENERAL VERNIERO: Well, I can't really speak for the Justice Department. It is still ongoing as I understand it. They have

not filed any notice with us of any complaint, and so forth. There's been no formal filing as far as I'm aware of. I did speak directly with Attorney General Janet Reno on April 20, the morning we released this report, because I've always felt that our investigation and investigational review by the Justice Department was being done in concert and as partners. I wanted to alert General Reno firsthand to the fact that we were issuing this report, that it contained fairly significant findings which we landmarked in nature and might actually affect the work of the Justice Department in other states. It was a very good conversation. It was well received. And Director Zoubek has had conversations with the Justice Department since then, and it is our present intention to actually go down to Washington and personally brief the Justice Department as to the contents of this report; although, we saw to it that they had hand deliveries the morning we released it to the media.

SENATOR GORMLEY: This is a yes or no question.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR GORMLEY: It would be fair, then, to assume that the information that became available, the information for which you made the filing with the Court this year -- that was not available in 1995 and 1996 prior to the decision in *Soto*.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Most of it dealt with a subsequent period of time than the *Soto* period of time in terms of the material that we have in this report with respect to stops, which are April of 1997 through 1998, that that would have been post the *Soto* decision, and it would have been post the record.

SENATOR GORMLEY: But the same or similar type of information, let's say, from '94 or '95, '96 was not available at the time. That data wasn't kept so that it couldn't be made use of in the *Soto* case. We don't know if it was kept or available. We don't know the answer to that.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: There are different data that were kept by the New Jersey State Police as it relates to some stops and some other data that they had back for 1994 and to 1996. I can't say that I specifically know what all that data is, sitting here today.

SENATOR GORMLEY: But it would be fair to say that data, and we'll give it the comparison to chain of evidence, was less than seamless in terms of-- That's why we're recommending the reforms today.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: And indeed, if you look at *Soto*, one of the big problems that the Court faced in *Soto* was that 65 percent of the records that they were examining we were not able to tell the race of the individual who was stopped, so you were dealing with the only data available was on 35 percent of the stops. So that affected the percentages there. That has been one of the key issues which is the quality of the data, the consistency of the data, and in some part, accuracy of the data, and that's what we tried to attack dead on in this report.

SENATOR GORMLEY: The only thing more confusing in the *Soto* case was the State's expert.

One final question. Back to Paragraph A, Page 23, who didn't provide the information?

ATTORNEY GENERAL VERNIERO: I'm sorry, Senator.

SENATOR GORMLEY: Who didn't provide the information?

ATTORNEY GENERAL VERNIERO: I can't answer that question, Senator.

SENATOR GORMLEY: Okay. By the nature of an ongoing investigation?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR GORMLEY: Senator Lynch.

SENATOR LYNCH: Thank you, Mr. Chairman.

Mr. Verniero, the subject area of this Interim Report was, you said, the barracks of Moorestown and Cranbury? What's that jurisdiction? What does that cover? Does that cover all the Turnpike?

ATTORNEY GENERAL VERNIERO: No. It is most of the Turnpike. I believe you would have to add Newark -- is that right, Paul? -- through the three barracks.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe it goes just above -- towards New Brunswick. There are three barracks. It's the Moorestown Barracks, the Cranbury Barracks, and the Newark Barracks. The *Soto* case focused on the Moorestown and Cranbury Barracks so that was what we initially focused on.

SENATOR LYNCH: And they cover at least half the Turnpike between those two barracks or more?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I can find that out exactly, Senator, but I think it's at least half.

SENATOR LYNCH: Is that all part of Troop D?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: Is the Newark Barracks on the Turnpike also part of Troop D?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR LYNCH: So the entire Turnpike trafficking comes under the domain or jurisdiction of Troop D?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That's my understanding, sir.

SENATOR LYNCH: Mr. Verniero, at the time of the hearings in the *Soto* case, which apparently were 72 days of hearings back in -- beginning in November of '94, you were then Governor's Counsel?

ATTORNEY GENERAL VERNIERO: I was either the Counsel or the Chief of Staff. I was in the Governor's Office.

SENATOR LYNCH: So were you aware of those hearings at the time?

ATTORNEY GENERAL VERNIERO: No. I had no independent recollection of those hearings.

SENATOR LYNCH: Was there any discussion about this issue surrounding this profiling during the transition era of the Whitman administration of November of '93 to January or February of '94?

ATTORNEY GENERAL VERNIERO: The transition from the Florio administration to the Whitman administration?

SENATOR LYNCH: Right.

ATTORNEY GENERAL VERNIERO: I don't recall any expressed conversation on this. No.

SENATOR LYNCH: Okay. Were you aware of the -- in-- The oral arguments in *Soto* occurred a year later in November of '95. Were you aware of those oral arguments?

ATTORNEY GENERAL VERNIERO: I first became aware of Judge Francis's decision after it had been issued. I had a brief conversation with then Attorney General Poritz.

SENATOR LYNCH: I asked you whether you were aware of the oral arguments back in November of '95.

ATTORNEY GENERAL VERNIERO: No.

SENATOR LYNCH: And so when the decision came in March of '96, you then had some awareness of the decision?

ATTORNEY GENERAL VERNIERO: Yes, I did.

SENATOR LYNCH: And at that time, you were Chief of Staff?

ATTORNEY GENERAL VERNIERO: I was the Governor's Chief of Staff. That is correct.

SENATOR LYNCH: In what context did you become aware of that?

ATTORNEY GENERAL VERNIERO: I had a conversation with then Attorney General Poritz, who had briefed me on the decision essentially. It was a long record. She gave me a summary of the decision, and at that point, she was considering whether or not to appeal. I may have had a second conversation with her after she had decided to appeal.

SENATOR LYNCH: And the decision to appeal -- there's a whole lot of ramifications because it would affect a lot of cases and affect other cases on the Turnpike and maybe throughout the state. Correct?

ATTORNEY GENERAL VERNIERO: Yes. Unlike the manner in which this issue often comes to light in other states, in New Jersey the *Soto* case was a criminal case. It was a suppression motion. So the analysis and the implicated issues are different in a criminal case than as if -- instead of if this were a civil case.

SENATOR LYNCH: How many defendants in *Soto* were affected by this motion to suppress?

ATTORNEY GENERAL VERNIERO: Originally, 17, part of the judge's decision.

SENATOR LYNCH: Were they all-- Were any of those in jail during these proceedings, or were they all out?

ATTORNEY GENERAL VERNIERO: I don't know the answer to that question, Senator.

SENATOR LYNCH: And then in May of '96-- I'm sorry. When did the State file its appeal?

ATTORNEY GENERAL VERNIERO: The notice to appeal, I believe, was filed in May of 1996. I would have to get the exact date for you.

SENATOR LYNCH: And you became Attorney General when?

ATTORNEY GENERAL VERNIERO: In July of 1996.

SENATOR LYNCH: So when you arrived as Attorney General, did you become familiar with the details of the *Soto* case? Was it one of the things that you were interested in, in the early part of your tenure as Attorney General?

ATTORNEY GENERAL VERNIERO: I was aware of the case, obviously, from my brief discussion as the Governor's Chief of Staff. I was

aware of the fact that following the notice of appeal there would have to be briefs filed in the case. I had seen those briefs or knew what would be in those briefs prior to their being filed. I also was aware of the fact that, although the State Police and then Attorney General Poritz felt pretty strongly that the case should be appealed for various reasons, that the State Police had put some steps in place in response to the *Soto* case, even though it was going to be appealed. And Director Zoubek alluded to those in response to an earlier question.

There was a committee put in place that required that all the existing training materials be inspected to ensure that they were adequate. The then Superintendent had sent an initial and memorandum to all of the troopers to ensure that they understood in no uncertain terms that racial profiling was not to be tolerated. There was an in-service training program that was revised, and for the first time, there was a very clear checklist put in place to make very clear that you could not use race in connection with the motor vehicle stops.

SENATOR LYNCH: Does this reflect that in some understanding on the part of the State Police and your Office that some of the things that were alluded to in *Soto*, some of the proofs may have had some basis in reality and, even though some of the scientific analysis that was done in *Soto* may have been less than scientific, that there was something to be concerned about?

ATTORNEY GENERAL VERNIERO: I don't know if that was the initial reason why the former Attorney General put these action steps into place.

SENATOR LYNCH: No. I'm not talking about the former Attorney General. Under her watch, an appeal was filed. Subsequent to the appeal, you have to prepare papers--

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: --to present to the court, and that came on your watch.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: And as part of that review, all of this data that came out in the *Soto* trial or motion of 70-some days of hearings became known to you. Correct?

ATTORNEY GENERAL VERNIERO: Well, they were cited to in the briefs. Yes.

SENATOR LYNCH: You had nothing to do with any of that?

ATTORNEY GENERAL VERNIERO: When you say, known to me, I did not--

SENATOR LYNCH: Weren't you monitoring what the action was going to be taken by the Attorney General's Office in terms of the *Soto* appeal because of its significant ramifications?

ATTORNEY GENERAL VERNIERO: Oh, yes. We knew-- I knew what would be in the briefs.

SENATOR LYNCH: And did you know at that time, of course, that the State Police had taken some action to ensure that some of the allegations in *Soto* could not happen again or it would not happen again?

ATTORNEY GENERAL VERNIERO: Yes, but your question--

SENATOR LYNCH: Isn't that what you just said before?

ATTORNEY GENERAL VERNIERO: Yes, but your question implies that at the time we filed our briefs, we knew that the allegations in *Soto* were true, and that is not the case, Senator.

SENATOR LYNCH: I didn't say that you knew they were true. I said that you thought that there was some concern, and therefore, that's why the State Police have taken some actions to implement new procedures to ensure that if they were true that they would be abated. Correct?

ATTORNEY GENERAL VERNIERO: I don't think there was that kind of admission on the part of the State Police putting those actions in place, no. I think it was--

SENATOR LYNCH: There was a recognition that there could be a problem?

ATTORNEY GENERAL VERNIERO: Well, I think it was a reaction to the fact that out of an abundance of caution there ought to be in no uncertain terms a clarification of what the issues were. Keep in mind, Senator, that Judge Francis, although he found that the defendants did carry a burden of proof sufficient to shift it to the State, he also found that there was no official policy of racial profiling at the State Police, and that was the context in which I reviewed the *Soto* case.

SENATOR LYNCH: Well, nobody ever suggested there was a specific policy. As a matter of fact, there was a specific policy against it. Correct?

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR LYNCH: But that's not to say that culturally or otherwise by motivation, by incentive, and so forth, that some of this might have been going on in a de facto way or a de facto policy. Correct?

ATTORNEY GENERAL VERNIERO: I have no way of knowing that. I think it is important to--

SENATOR LYNCH: But it was a concern--

ATTORNEY GENERAL VERNIERO: If I may just respond, Senator, because I think the time sequence here is very important. The incidents at issue in the *Soto* case were from 1988 to 1991. The SOP-55, which was really the SOP that made it very clear in no uncertain terms that there could be no profiling -- that did not come into effect until 1990 so that was pretty much after the majority of complained-of activity had already occurred in *Soto*. The reason I make that point is, there's been some implication that we did no more than just file the brief in *Soto* and then look the other way. That's simply not the case. The SOP in connection with this issue was put in place pretty much toward the end of the *Soto* time frame. It was a good SOP; although, in this report, we found even some ways to enhance that.

The outgoing Attorney General had put some procedures in place to ensure that the training was completely updated, so there would be no room for any doubt. And the Deputies in my Office and I were satisfied that there were good and sufficient arguments to justify our appeal. And until I received this report and began having these issues crystallize in my mind in terms of this issue after the Turnpike case, there was no basis for me to withdraw the appeal until the time in which I did.

SENATOR LYNCH: Well, you've finally determined to withdraw this appeal after you've received some parts of this Interim Report, which shows some statistical data that pretty much mirror the unscientific, if you will, data that was put forth in the *Soto* hearings. Correct?

ATTORNEY GENERAL VERNIERO: I don't understand your question, Senator.

SENATOR LYNCH: Well, the reason that you are now saying that this appeal was withdrawn is that this data that you've achieved for purposes of this Interim Report shows that the factual presentation, albeit it might be somewhat unscientific in *Soto*, could very well be accurate.

ATTORNEY GENERAL VERNIERO: I don't know if it's accurate to say that the factual presentation was accurate in *Soto*, as much as the fact that *Soto* did contain a body of statistics and data which our own review found enough similarities that I thought we should withdraw the appeal. That is correct.

SENATOR LYNCH: So if you had this data from back in 1994 when these hearings began or certainly by some time in the first half of '95 -- if the State had this data about these incidents, or the statistical data in *Soto* from those 72 days of hearings, why is it that the Attorney General's Office or the State Police -- of course, the Attorney General does oversee the State Police -- why is it that the survey that you just conducted over these last couple of months wasn't done when the early warning occurred after the *Soto* hearings to determine whether or not what they were saying had a basis in fact? Why did we wait four years or plus -- or four years to conduct a survey?

ATTORNEY GENERAL VERNIERO: Since I wasn't in the Office at the time frame that your question suggests, I don't know the answer to that question, Senator.

SENATOR LYNCH: Well, from the time you got there in the middle of 1996 and these issues were coming up in front of you and when you filed the 113-page brief from the State back in March of '97, which in some respects tried to refute the so-called scientific analysis done by the defendants in *Soto*, did you at that point consider whether or not it would be worth your while to conduct a survey to see if, in fact, this was a practice or a procedure and that this data was correct?

ATTORNEY GENERAL VERNIERO: Well, I think you have to take a step back and look at the entire brief that was filed on appeal in *Soto* because--

SENATOR LYNCH: No. I'm just asking you whether or not you considered it.

ATTORNEY GENERAL VERNIERO: Well, I think I have to give you an answer in context, Senator, if I may.

The *Soto* appeal was based essentially on three things. One is we disagreed with Judge Francis's shifting of the burden of proof, in lowering the standard of that burden in favor of the defendants. We did not think that was an appropriate ruling. Also, we disagreed with the Judge's systematic suppression of several cases without individualized review of those cases to see if, in fact, any of the defendants were subject to unfair treatment. And, thirdly, yes, there were the concerns that we had with respect to the data not only in the fact that there was missing data, but we objected to the traffic survey, for

want of a better term, that the Public Defender's Office had put into evidence in that case. And even to this day, we have concerns about a reliable benchmark.

So it wasn't just one particular bit of data, whether it be stopped data or any other data that made up our appeal in *Soto*. It was a collection of the various issues that we found that were reversible and appealable. Now specifically with respect to all parts of *Soto*, I was assured by the Deputies, the professionals in this Office that carried forward over these many terms, that this was an appeal that was appropriate. It was certainly done in good faith at the time, and at that time, I had no reason to think otherwise.

SENATOR LYNCH: Let me ask the question again. At the time that you filed this brief in *Soto* in March of 1997, did you consider the need for a survey to determine whether or not there was, in fact, de facto profiling going on, on the Turnpike?

ATTORNEY GENERAL VERNIERO: Based on the briefings that I have received and the assurances that I received, no, I did not consider a need to have independent review done at that time.

SENATOR LYNCH: And so there was no statistical analysis ongoing under your watch until some time in -- after the shootings in April of 1998. Correct?

ATTORNEY GENERAL VERNIERO: If there was an analysis going on at that point in time somewhere in the Department of Law and Public Safety, I was not aware of it in July of 1996, no.

SENATOR LYNCH: I'm looking at a *Star-Ledger* article from February 10 that indicates that the *Star-Ledger* was trying to get information

from the State Police and your Office about statistics on the Turnpike, and it appears as if they began looking for that information right around the time of the April 1998 shootings. Is that correct?

ATTORNEY GENERAL VERNIERO: I don't have that article in front of me, but it sounds correct.

SENATOR LYNCH: And that they alleged that they were negotiating for the release of various records over an eighth-month period. Do you recall that?

ATTORNEY GENERAL VERNIERO: I recall their making that statement. I don't have my calendar in front of me. I can't tell you whether it was eight months or several months.

SENATOR LYNCH: So they were trying to do their own statistical analysis in some form.

ATTORNEY GENERAL VERNIERO: They were making requests for information, and part of the problem that we had in complying with those requests was the lack of automation specifically tied to the numbers that they were asking. One of the strongest recommendations, I believe, in this report is to now put the State Police on a fully automated system, so we can have the easy retrieval of information. Their information request, as I recall, Senator, was very specific. They wanted not just raw numbers. They wanted the names of troopers. They wanted the exact dates. They wanted the race of the motorists. It was a very specific information request that required a great deal of time and effort on the part of the Deputy Attorney General who handled these matters in my Office to actually compile the information. When it was

compiled at least for part of the time frame during -- as part of the request, we furnished it to the paper.

SENATOR LYNCH: But your office, through Mr. Zoubek, began some retrieval of statistical information sometime shortly after the Turnpike shooting of April '98?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I'd like to answer that if I could. What I don't want to have happen here is get confused at various criminal investigations that we have, which are subject to certain criminal restrictions, after the April 23 shooting and confuse the statistics that relate to audits we were doing at Moorestown and Cranbury that went to falsification of records with the data that we obtained after February 10, as it relates to the percentages of minority motorists on an aggregate basis. That was obtained after February 10, 1999.

SENATOR LYNCH: But what-- You alluded in your testimony earlier that you began gathering some data sometime shortly after the April '98 incident, no?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: And that was with respect to certain potential criminal investigations that we had; and I highlighted that I have two hats here, one for the head of the State Review Team and also as Director of Division of Criminal Justice who signs the indictments that comes out of that unit, so I am limited. That was a focus as it relates to looking at potential acts of willful misconduct, not looking at aggregate numbers.

SENATOR LYNCH: So you weren't looking at the kind of information that was provided by the defense in *Soto*?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: No.

SENATOR LYNCH: And that didn't happen until you began to work on this Interim Report in February of 1999, and that seems to have taken place correspondingly with when the *Star-Ledger* released this story about February the 10th, 1999. Correct?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: All I know is that on February 10, 1999 is when the Attorney General turned to me and asked me to do a comprehensive review from scratch of this particular issue, and that's when we began to look at the aggregate data. Prior to that, after April 23, we were looking at issues with respect to falsification of potential willful misconduct. I just want to make sure that that was clear.

SENATOR LYNCH: So, from the time of the *Soto* hearings that began back in November of 1994 until February of '99, there was no survey specifically being conducted that would have mirrored the type of statistical analysis that was done in the *Soto* case by the defense?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: My time period to be able to answer that question is limited because I only joined the-- I left the U.S. Attorney's Office and joined the Attorney General's Office in late 1997, so I'm not able to speak to the prior period of time.

SENATOR LYNCH: And this began after the *Star-Ledger* headline that says, "State Police reveals 75 percent of arrests along Turnpike were of minorities."

ATTORNEY GENERAL VERNIERO: Senator, I think I understand the premise of your question. If not, you can correct me. The issue of racial profiling and these allegations began to crystallize in my mind

firsthand around the time of the Turnpike case of April 23, 1998. As I indicated, we took that shooting very seriously. We converted the matter from a county to a State grand jury. I appointed a special attorney general, a Deputy Attorney General, to serve, in essence, as a special prosecutor. We had a particular review team in place. These other two audits were initiated on the Cranbury and Moorestown Barracks. We then, during that period of time, began to have other troopers, sworn officers, filing complaints alleging that racial profiling might be an issue at State Police. We then had the *Star-Ledger* release of information and data, which I was seeing for the first time in that particular form. So it was a combination of all of these things that crystallized in my mind and culminated in a very broad first-of-its-kind review being initiated in February of 1999. But I wouldn't say it was any one particular factor. It was a combination of factors that began to crystallize and coalesce in my mind starting about a year ago.

SENATOR LYNCH: Well, let me read from your brief filed in March of '97 in the *Soto* case on Page 2.

ATTORNEY GENERAL VERNIERO: Mr. Chairman, just a point of information. I do not have copies of the brief. May I be presented with a copy of the brief if I am going to be asked questions on that?

SENATOR LYNCH: Well, let me read it, and then I'll give it to you--

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: --because I only have the one copy.

“Additionally, acceptance of the reasoning of the Court below in *Soto* would plunge all participants in the State's criminal justice system in both

the judicial and executive branches into a quagmire of expensive and time-consuming litigation in which certain defendants will be able to charge the State with selective prosecution as a matter of course.” Do you recall that language?

ATTORNEY GENERAL VERNIERO: As you read it to me now, I recall it, yes.

SENATOR LYNCH: Was that one of the overriding reasons why you weren't going to jump in and do statistical analysis on your own?

ATTORNEY GENERAL VERNIERO: No.

SENATOR LYNCH: That it would trigger off all these other problems with other cases that might be dismissed, civil suits being filed, and so forth.

ATTORNEY GENERAL VERNIERO: No. As I say, I would not say-- I tried to answer this earlier, Senator Lynch. The brief in the appeal was made in *Soto* not on any one particular factor. It was a combination of issues that we disagreed with in terms of the lower court opinion. I wouldn't say there was any one overriding issue that warrant the appeal.

SENATOR LYNCH: Why did you wait--

ATTORNEY GENERAL VERNIERO: Again I don't have the brief in front of me, but if I'm not mistaken, there was also a discussion in that brief of how other appellate courts had dealt with the issue. Keep in mind, of course, that at the time, back in July of 1996 and June of 1997, when these briefs were being filed, *Soto* was still the only case of its kind on appeal. And, in fact, there was an Appellate Division case, *State vs. Kennedy*, I believe, which suggested very strongly that perhaps Judge Francis did, in fact, misapply the

standard of proof. And we did devote some segment of our brief speaking about criminal law policy and what the implications might be if Judge Francis's case was not reversed. But I wouldn't say it's fair to designate those sections of the brief or indeed any one brief point as the overriding reason for the appeal.

SENATOR LYNCH: It wasn't until after the shooting of April of '98 that you believed that it was worthwhile or necessary to do your own statistical compilation to determine whether or not there was, in fact, a de facto profiling going on.

ATTORNEY GENERAL VERNIERO: I would say that it was around the time of the Turnpike shooting case where these issues began to crystallize in my mind. I can't tell you, as I sit here, precisely the moment that I felt we ought to do our own analysis, but it was clear to me about a year ago that these were very real issues.

SENATOR LYNCH: Are you suggesting it had nothing to do with the Turnpike shooting, that that was purely coincidental?

ATTORNEY GENERAL VERNIERO: No. That had nothing-- No. I am saying that it was around the time of the Turnpike case -- because of the Turnpike case and because of other issues that were coalescing around that point in time that I felt we needed to do more in terms of getting our arms around what could be a very significant issue and problem at State Police. And from that point forward, the issue and the facts devolved into a point where I thought this -- the unprecedented report now issued was appropriate.

SENATOR GORMLEY: John, I think Martin and Zane-- I'd like to--

SENATOR LYNCH: I'm sorry.

SENATOR GORMLEY: If I could, if you could wind it up, we'll come back later, but I'd like to go to Senator Martin and Senator Zane.

SENATOR LYNCH: I'll yield my time to the Senators.

SENATOR GORMLEY: Fine. Go ahead.

SENATOR LYNCH: I only have a few more minutes to--

SENATOR GORMLEY: Okay. Go ahead.

SENATOR LYNCH: --question on this line. I assume later on today, we're going to have more time.

SENATOR GORMLEY: Sure.

SENATOR LYNCH: After the shooting of April of '98, you said, to repeat, that was so significant you were going to present this to a State grand jury as opposed to a county grand jury. What's the significance of that?

ATTORNEY GENERAL VERNIERO: A county grand jury has a little bit broader authority and jurisdiction. A county grand jury is just a little bit easier for the State to deal with because we deal with the county grand jury on a regular basis. They sit in my Office for--

SENATOR LYNCH: You're talking about State grand jury as opposed to county?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR LYNCH: You said county grand jury.

ATTORNEY GENERAL VERNIERO: No. I'm sorry. No. The State grand jury has a little bit more jurisdiction and authority than a county grand jury, and I felt that these issues were important enough to require as

broad of an investigation as possible, and that would result from a State grand jury.

SENATOR LYNCH: When did you convene that State grand jury for purposes of presenting evidence from the April '98 shooting on the Turnpike?

ATTORNEY GENERAL VERNIERO: I'm not at liberty, Senator, to go into that level of detail with any grand jury.

SENATOR LYNCH: There seems to be some evidence in the record, at least in the media, that that State grand jury was impaneled in the Turnpike shooting on November 18, 1998.

ATTORNEY GENERAL VERNIERO: That was not verified by my Office, Senator. If that appears in the paper, I don't know how that appeared in the paper.

SENATOR LYNCH: Looking at a *Star-Ledger* article dated November 19, 1998, "The State has picked 23 people to sit on a grand jury that will decide whether two New Jersey State Troopers broke the law," etc., etc. I'm sorry, with the first meeting being in December.

ATTORNEY GENERAL VERNIERO: I'm not at liberty to confirm that, Senator.

SENATOR LYNCH: You didn't put that information out?

ATTORNEY GENERAL VERNIERO: No, sir.

SENATOR LYNCH: When did it start to crystallize to you -- was it just earlier this year? -- that there, in fact, might be a cultural issue or a de facto profiling going on as described in the Interim Report, which in most cases is not an intentional circumstance, but is a de facto profiling policy, if you will?

ATTORNEY GENERAL VERNIERO: As I said, Senator, the whole question and issues began to crystallize in my mind about the time of the incident on the Turnpike. As is the case with any major issue that I am confronted with, I always try to keep an open mind until there's a significant body of evidence before me. And I don't know if I could say with precision when I concluded that there might be some de facto issues. I don't recall the precise date and time. Much of that, I was waiting for the Review Team to make its own recommendations or conclusions before I reached any conclusions myself.

SENATOR LYNCH: When did you personally get fully engaged in looking at the profiling issues? Was it post-shooting of April '98, or was it before that?

ATTORNEY GENERAL VERNIERO: Well, it depends on how you define engaged. As I said, I became very concerned or increasingly concerned from the point in time of the April 23, 1998 Turnpike case forward, and I think, using that as the time frame, you see an unbroken chain of steps that I took to determine the truth of the matter.

SENATOR LYNCH: Right. So you were somewhat concerned about the statistical data produced in evidence in the *Soto* case.

ATTORNEY GENERAL VERNIERO: Well, I--

SENATOR LYNCH: You became more concerned after the shooting incidence of April '98?

ATTORNEY GENERAL VERNIERO: I was aware of the basic data in the conclusions of Judge Francis. Whatever concerns I may have had at the time were addressed by the Deputies who assured me that there were

flaws in that data, that the Court was in error -- the lower court -- and out of an abundance of caution, my predecessor had done these other steps that I alluded to. So based on all of that information, I did not second-guess the decision whether to appeal and, in fact, maintained the appeal. It was then a point of time forward from April 23, 1998 where I became aware and concerned of information. And even to this day, I'm not at liberty to disclose all of what I may have learned at that point in time because there is still a criminal investigation pending.

It was then as a result of that information and other information where I turned to First Assistant and said, "We need a broad and full-scale review of State Police practices." That had never been done before by anyone in New Jersey. We have now done that. The findings are before you, and I find it to be very significant that we finally have a report in this state unlike any in any other state that deals with this issue head-on in an unambiguous fashion.

SENATOR LYNCH: One brief line of questioning, Senator Gormley, and I'll be concluded, because I'm trying to get here, and my questions are briefer than the answers, obviously.

Just quoting from the Interim Report for a moment.

ATTORNEY GENERAL VERNIERO: What page, Senator?

SENATOR LYNCH: Page 4, in the last full graph. The Interim Report concludes that "the potential for the disparate treatment of minorities during traffic stops may be the product of an accumulation of circumstances that created and reinforced the message that the best way to catch drug traffickers is to focus on minorities, which may have undermined other

messages in both official and unofficial policies prohibiting any form of disparate treatment. These circumstances include” -- and I’ll jump to Page 5 -- third graph on-- I’m sorry, I’m looking at the Executive Summary.

ATTORNEY GENERAL VERNIERO: Oh, okay. I don’t have that in front of me.

SENATOR LYNCH: It’s very brief. It says, “One of those circumstances includes formal and informal reward systems that encourage troopers to be aggressive in searching for illicit drugs, thereby, providing practical incentives to act upon these stereotypes.” In reading the full report, those incentives are promotions, and so forth, depending upon how aggressive you are, and so forth. Correct?

ATTORNEY GENERAL VERNIERO: The embodiment of those rewards is the Trooper of the Year -- you had to identify one single embodiment of it, but I think it was a collection of things, not just the Trooper of the Year, but that’s become the symbol of what we’re talking about in that report.

SENATOR LYNCH: And one of those people who received the Trooper of the Year Award is now the -- or was, maybe still is -- head of Troop D?

ATTORNEY GENERAL VERNIERO: That I don’t know.

SENATOR LYNCH: Captain Franz?

ATTORNEY GENERAL VERNIERO: That I don’t know, sir.

SENATOR LYNCH: Do you know Captain Franz?

ATTORNEY GENERAL VERNIERO: I do not know him personally, no.

SENATOR LYNCH: Do you know of him?

ATTORNEY GENERAL VERNIERO: I really don't know, sir.

SENATOR LYNCH: Who signs off on-- Before any promotion or major assignments are concluded by the Superintendent of State Police, isn't it a fact that you have to sign off on those?

ATTORNEY GENERAL VERNIERO: Not assignments, no. For promotions, yes.

SENATOR LYNCH: And as a matter of fact, you've had a request for promotion sitting on your desk for the last four or five months?

ATTORNEY GENERAL VERNIERO: I don't know the exact time. There is a pending promotion list on my desk, yes.

SENATOR LYNCH: For many months?

ATTORNEY GENERAL VERNIERO: Several months, yes.

SENATOR LYNCH: And you don't know Captain Franz?

ATTORNEY GENERAL VERNIERO: That-- I don't have an independent recollection of that name.

SENATOR LYNCH: Are you familiar with the *Bellaran* case?

ATTORNEY GENERAL VERNIERO: I am generally familiar with *Bellaran*, yes.

SENATOR GORMLEY: Excuse me. Excuse me.

Senator Lynch, I want to go to Senator Martin. We'll come back. He's not leaving.

SENATOR LYNCH: Sure.

SENATOR GORMLEY: Because that's another line.

SENATOR LYNCH: Sure.

SENATOR GORMLEY: Okay.

Senator Martin.

SENATOR MARTIN: Good morning.

ATTORNEY GENERAL VERNIERO: Good morning, Senator.

SENATOR MARTIN: This hearing is about racial profiling, and I think a lot of it has been sort of predetermined by the fact that, if I understand the admission last week of the Governor and your Office, General, there is an admission that this -- if I have at least one quote correct -- "We conclude that the problem, disparate treatment, is real and not imagined." That more or less sums up the fact that there has been racial profiling going on for a long period of time that includes all of your administration and goes back to some long period of time even before the Whitman administration and going back to the '80s. Is that sort of a fair characterization?

ATTORNEY GENERAL VERNIERO: I don't know if we actually put a time frame-- I think it is a fair characterization to say that this report validates the fact that the conditions and all of the factors and circumstances that lead to this conclusion of disparate treatment have been present in New Jersey for quite a period of time.

SENATOR MARTIN: So if I understand some of our purpose today, it's about looking forward and looking back about this situation, which we now I think all of us acknowledge to our shame has been part of the circumstances in New Jersey with respect to the State Police. I'm going to focus on going back, but I do want to commend the Offices.

As I understand the Interim Report -- I have looked at it -- I think I understand the steps that are put in place. I think all of them are essential.

There may be more. I think it needs to be reviewed. I think it's important that you have emphasized that this is an Interim Report, which means that it will have further input from a broad variety of sources, some of which may be testifying today, as far as recommendations by others other than your Office. And we would hope that a new superintendent will be certainly amenable. I think that's really key to going forward as is to have someone in charge who will be prepared to carry out a whole range of areas to get us back on track.

Going back, the racial profiling that has now been admitted to will lead, I gather, and this may be speculation-- But it seems from a State point of view, there may be persons, as I understand it in papers, and it would just strike me as sort of reality-- There will probably be cases where individuals will bring charges going back some indeterminate period that they have -- their civil rights have been violated because of the circumstances in the State Police -- cases that have not occurred, but are likely to occur. Is that likely to happen?

ATTORNEY GENERAL VERNIERO: That is anticipated, and we actually speak to that in the report itself. Our position will be to take each case on an individual basis. We have begun the process of asking the prosecutors in the 21 counties to begin reviewing any cases that they may identify. And the best I could say in the way of a predictor, Senator, is that, yes, some of those motions will be filed. It's almost impossible for me to guess how many. Probably fewer than some might think because we will argue and I believe the courts will still insist on a case-by-case analysis of those cases.

SENATOR MARTIN: I don't know if there's any other-- Just so I get some understanding of the consequences to individuals in the state because of this occurrence-- I can think of at least three bad things that could

happen: one of which is there are individuals who will claim, and probably truthfully, that their civil liberties have been infringed upon; that because of that, there will be civil suits that will occur in which there will be, if they're found to be accurate, both State and Federal civil suits that are brought in violation of their civil liberties; and thirdly, there will be a number of persons who will probably be guilty of crimes, who because if you follow the *Soto* line, that the evidence will be suppressed, those charges even though guilty under various constitutional standards -- those cases will not be processed. Is that correct? Are those at least three bad circumstances that will flow out of this problem?

ATTORNEY GENERAL VERNIERO: It is possible that those kinds of motions will be filed. In our perspective, the consequence of that was greatly outweighed by our need to tell the truth as insofar as these issues are concerned. This report is the right thing to do. It's candid and thoughtful in tone and in text, and we will have to deal with the implications of this report on a going-forward basis. And we were not willing to allow those implications, however difficult, to stand in the way of our producing a dead-honest report to finally get to the bottom of these very troubling issues.

SENATOR MARTIN: Just so you understand me, General, I think the report is absolutely essential. There are some who might say that it should have been produced earlier, so it's not that I'm--

ATTORNEY GENERAL VERNIERO: No. I understand.

SENATOR MARTIN: --suggesting that it should not have come forward.

ATTORNEY GENERAL VERNIERO: No. I appreciate that.

SENATOR MARTIN: In the interim, people-- The State may be exposed to untold millions of dollars in civil lawsuits that are just in defending suits, which will occupy a huge amount of time from your Office because of it. So I certainly appreciate what you're saying. There's a lot of others, and I don't want to--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator?

SENATOR MARTIN: --take up a lot of time.

ATTORNEY GENERAL VERNIERO: Director Zoubek would like to add some points.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I just wanted to add a point. One of the things we tried to do with this report is-- There's always been a focus, and if you look at it, New Jersey was different because it came up in a criminal context in the *Soto* case. In Maryland and other jurisdictions, it came up in a civil context in which it was dealt with on a policy basis. We are going to continue to argue where appropriate that the numbers themselves don't necessarily mean that every single individual was stopped inappropriately or was searched inappropriately. The record could certainly reflect that. So just so it is clear that where appropriate we will ensure that someone who had 10 kilos of crack on the Turnpike and there were appropriate indicators and it was handled appropriately, we will appropriately defend those cases. But we are at the same time asking Prosecutor's Offices to review those cases to make sure we are only defending the appropriate ones.

SENATOR MARTIN: But you can foresee -- can't you? -- that there will be many, many cases in which persons who will bring a claim both to their criminal conviction for a motion to suppress, as well as, if successful,

will bring a civil suit against you. Just the amount of time which your Office will now spend in defending those suits will be significant.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't disagree with that. I only wanted to just point that out with respect to the criminal cases.

SENATOR MARTIN: The other area I have is, if I understand the Attorney General's Office-- I'll speak collectively, but I'd like the General to respond. I have heard, if I understand it, basically, a rather strong defense of your Office, basically saying -- if I have this right or I don't have this right, correct me -- that given caution, given the timing of information that there has been an appropriate response at each and every point even though more troubling information eventually came forward.

There is fault being placed, but I haven't-- If I'm wrong, again tell me. I haven't heard any responsibility assumed by the Attorney General's Office and those at the top. If there is fault -- and I think there is -- and there are consequences and there are potentially millions of dollars but, more importantly, persons whose civil liberties have been infringed upon, is there going to be any acceptance of blame through the Attorney General's Office, or is it other people's fault and not yours?

ATTORNEY GENERAL VERNIERO: Well, I've not pointed the finger of blame at anyone to my knowledge.

SENATOR MARTIN: I'll phrase it another way. Given the-- Senator Lynch asked you a series of timing questions. I'm just interested to know that-- You've been the General for three years or almost three years, July of 1996 to May or late April of 1999. Has your Office -- your Office -- done

the best that it could do throughout this from the *Soto* case, which preceded your assignment to AG? Has the Office been doing the best it could under all circumstances? I know hindsight is easier to make predictions.

I have yet to hear any blame placed on your Office. Has there been a series of mistakes of maybe fault finding with-- I understood that there has been blame placed upon previous AGs, at least it was implied, and also at least with some individuals in the State Police, so I have seen, at least, I believe, some finger-pointing.

ATTORNEY GENERAL VERNIERO: I have not engaged in finger-pointing, and I have not intended any comments that I have said to date to imply blame on any of my predecessors. I've tried not to make excuses, but rather to explain the situation as I know it to exist. I feel that my Office has acted appropriately given the circumstances and the information at various points in this process throughout my tenure. Hindsight isn't always perfect, Senator. Unfortunately I was not born with 20/20 hindsight.

I've been Attorney General for about 33 months or 34 months. I've spent almost a third of my time dealing with these issues, and I haven't talked about a number of other things that I've done to deal with the issue of the perception -- the terrible perception -- on the part of persons of color and how they feel about State Police. That is not really germane to this hearing.

So I have been very committed to these issues, and I believe we have acted appropriately given all those facts and circumstances. And I think, when history ultimately gets written, this will be the time when we look back and say we took definitive action, we started a process that will finally end--

SENATOR MARTIN: I know where we are now. Let me just say-- I'll end with one simple question. You assume no personal responsibility for problems that have developed up to this time?

ATTORNEY GENERAL VERNIERO: In all honesty I do not, Senator.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: What we are going to do is go to Senator Zane, and then we are going to go to the witnesses.

Senator Zane.

SENATOR ZANE: General Verniero, I'm actually astounded by your last comment, and I really didn't begin -- or think that I would begin there. I really didn't.

Senator Martin, I think, asked you a very, very open and telling kind of question. I don't know how you can sit there and say-- If anyone has responsibility, if any other Attorney General, if anyone else who was a head of the State Police, such as you are, has any responsibility, then certainly you do as well. I mean people aren't Attorney Generals for 25 and 30 years. It is a political position. It's one that is appointed by the Governor, and there are certain responsibilities that go with it. I'm just absolutely astounded.

And very frankly my first question to you is going to be, are you comfortable with the answer you just gave Senator Martin that you have no responsibility in this?

ATTORNEY GENERAL VERNIERO: I am because his question was Do you have personal responsibility? And I believe, in good faith, the answer to that question is no. Now, if you are asking me would I have done

some things differently had I been aware of certain information and data, perhaps the answer would have been yes.

If you are asking me whether my Office and I have ultimate responsibility, in the official sense the answer to that question is of course. But to say that I am personally responsible for maintaining the *Soto* case in light of the information that I had at my disposal at that time or to hold me personally responsible for infractions that may have occurred at the station house level or at the barracks level in the State Police I believe is not fair, Senator, not in a personal term.

SENATOR ZANE: I don't think that anyone is looking to hold you singularly responsible.

ATTORNEY GENERAL VERNIERO: Well, when I hear the word personal, that's how I interpret it, Senator.

SENATOR ZANE: Well, then let me just finish. I don't think anyone is looking to hold you singularly responsible for it because, obviously, it has gone on for some period of time, but to suggest that there is no responsibility just to me is absolutely amazing.

You indicated that perhaps you weren't aware and that's why -- and, if you had been aware, you may have done things differently. I think that's what you just said, am I correct?

ATTORNEY GENERAL VERNIERO: I'm suggesting that if-- When you go back in time and you look at what I knew and what the circumstances were and you judge my actions according to those circumstances, I acted appropriately. If you say, "Put on the lens of perfect 20/20 hindsight

are there things that you could have done differently-- I think all human beings could have done things differently.

That's, frankly, not a relevant or germane question to ask because we can't act on hypothetical. We have to act on the here and now, and I believe my Office and me personally have always acted appropriately based on the facts and circumstances presented.

SENATOR ZANE: General, you confused me a little bit earlier when Senator Lynch asked you several questions. And I think you indicated that you were present and had several discussions with then Attorney General Poritz when she initially made the decision to, at a minimum, file a notice of appeal, isn't that correct?

ATTORNEY GENERAL VERNIERO: My recollection is they were not several discussions. I had at least one discussion with General Poritz, who gave me a brief summary of the legal issues in the case. And I can't recall -- because this is now some time ago, I can't recall whether it was in that same discussion where she also indicated that the State should appeal the case or whether that discussion occurred in a separate conversation. But there were not several conversations, Senator.

SENATOR ZANE: Okay, then a conversation, but you did indicate-- Because I'll tell you what I wrote down. Poritz appealed various reasons. You said that there were various reasons. What were the reasons that she gave to you that you were referencing when you made that statement?

ATTORNEY GENERAL VERNIERO: The same basic reasons that are captured in the briefs, which my Office then filed. We objected to the shifting of the burden of proof by the lower court. The State objected to the

summary disposition of motions to suppress as opposed to a case-by-case analysis of each individual defendant's treatment. And we did have concerns about the data in *Soto*, specifically the lack of data -- the big gap in the numbers -- and the methodology of the benchmark that the Public Defender had offered in that case.

SENATOR ZANE: But that's not what you-- You didn't limit your appeal just to that, did you?

ATTORNEY GENERAL VERNIERO: Well, those are the essential issues. Again I don't have the brief in front of me; it's a lengthy brief. There may have been discussion of other issues, but those were the main issues of concern.

SENATOR ZANE: There is really nothing in your appeal that-- Let me say it this way to you. The appeal does not ask that the findings of the judge that there in fact be profiling not be appealed. In other words, you were appealing that as well, were you not? His findings that there was profiling.

ATTORNEY GENERAL VERNIERO: You know I don't know as a technical matter if we made that an actual brief point. I'd have to refer to the brief itself, Senator.

SENATOR ZANE: Would you like to see it?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: Can we present it to him? (affirmative response)

ATTORNEY GENERAL VERNIERO: Are you referring to a particular page, Senator?

SENATOR ZANE: No, where the relief that you were asking for within the appeal-- I mean, you were actually asking, as I read it-- Since you didn't limit it, it wasn't for a partial appeal. You were actually asking that the findings of a -- that that there was, in fact, de facto policy of discrimination-- you were asking that that be set aside as well.

ATTORNEY GENERAL VERNIERO: There is no specific brief point, but I think it's fair to say that was, by implication, one of the things that we were arguing the case, yes.

SENATOR ZANE: So, therefore, it's not really fair to say you were only arguing in those three areas. You were actually attacking the entire decision of Judge Francis, correct?

ATTORNEY GENERAL VERNIERO: No, the question was posed to me what were the major issues that we were concerned about, and I think I did fairly describe those three major issues. Now, by implication, of course, if we succeeded on those issues, we would have accomplished an entire overruling of that case, which would have included the findings with respect to de facto discrimination.

SENATOR ZANE: General, I don't want to waste anyone's time and duplicate what has already been asked, but let me just ask you this. Has your Office established, even tentatively, a task force for dealing with potential civil rights cases that will arise out of what has happened here in New Jersey -- what we are talking about?

ATTORNEY GENERAL VERNIERO: The Review Team that has been assembled for purposes of the report would essentially also serve as a task force for that purpose. Jeffrey Miller, who is the Director of Division of Law

that's presumably with civil in nature, is a member of the task force, and I would be relying on his expertise on a going-forward basis in that regard.

SENATOR ZANE: Can I ask you also this. Is one of the reasons for withdrawing the appeal because you now accept Judge Francis's findings that there was, in fact, de facto profiling on that portion, at least, of the New Jersey Turnpike?

ATTORNEY GENERAL VERNIERO: Well, we certainly have enough concern based on our own report that that may be true. Yes, Senator.

SENATOR ZANE: I would like to find out what role Superintendent Williams played in this. Would you tell us?

ATTORNEY GENERAL VERNIERO: Well, again, I was not--

SENATOR ZANE: When I say "in this," I am really specifically referring to profiling.

ATTORNEY GENERAL VERNIERO: You'd have to be a little bit more specific, Senator, for me to be able to answer that question.

SENATOR ZANE: Well, Senator -- Superintendent Williams was either terminated, asked to resign in light of this controversy, and I would like to know why. I'd like to know what role did he play in it. Is there an implication that he made that he was directing profiling, or very frankly, as some have said, is he sort of a scapegoat? And I'd like to know, for the sake of many New Jersey State Troopers who are very honorable and also possibly Superintendent Williams, why, in fact, he was relieved of duties here at the State.

ATTORNEY GENERAL VERNIERO: The best I can do to answer that question is to state that the ultimate decision to discharge Colonel

Williams of his responsibilities came from the Governor. She put out a statement at that time. My recollection is that she was very concerned with the tenor of his statements and particularly their timing -- coming at a very sensitive time -- as we were grappling with these issues, and she discharged his services at that time. Beyond that, you'd have to refer really to the Governor.

SENATOR ZANE: Wasn't there a meeting at Drumthwacket that you attended regarding the subject matter prior to the termination?

ATTORNEY GENERAL VERNIERO: No, the meeting was at the Governor's personal residence in Oldwick.

SENATOR ZANE: And you attended that meeting?

ATTORNEY GENERAL VERNIERO: I did, yes.

SENATOR ZANE: Did anyone else attend that meeting that was of a decision-making type of individual?

ATTORNEY GENERAL VERNIERO: Yes, but I really feel it's not necessarily for me to say who the Governor invited to her house to advise her or to make recommendations. That's a question best posed to the Governor's Chief of Staff, I feel.

SENATOR ZANE: Don't you think policy was being made there?

ATTORNEY GENERAL VERNIERO: Well, certainly a decision had to be made, and we made a decision -- the Governor ultimately made a decision. I don't know if we discussed policy per se. I'm not sure what you mean by that term.

SENATOR ZANE: Was there a recommendation made by you based upon the information you had at that time?

ATTORNEY GENERAL VERNIERO: I am not going to get into my private recommendations, whatever they may be, to the Governor, Senator. I've never done that in my tenure as one of her officers and cabinet officers, and I think it would be unfair for me to begin now. That's up to the Governor to disclose what recommendations she got from any of her advisors.

I will say this: I agreed with her decision at the time.

SENATOR ZANE: Do you agree with it today?

ATTORNEY GENERAL VERNIERO: I do.

SENATOR ZANE: Were you there when Superintendent Williams was hired initially? I think you were Chief Counsel then.

ATTORNEY GENERAL VERNIERO: Actually-- I don't recall whether he was hired during the transition or in the earlier stages. My recollection is it was sometime within the first several months of the first year, so I would have been the Chief Counsel.

SENATOR ZANE: He was nominated on March 31, 1994.

ATTORNEY GENERAL VERNIERO: Then I would have been the Chief Counsel.

SENATOR ZANE: Were you involved in any discussions with him and possibly with the Attorney General regarding various policies here for the State pertaining to State Police matters?

ATTORNEY GENERAL VERNIERO: I don't recall. I was not on the search committee. It was a committee of Attorney General Poritz and I believe two former Attorney Generals. I was not part of that search process.

SENATOR ZANE: The impression that I am getting is that prior to you becoming the Attorney General you were not really that focused on the issue of profiling. Is that accurate?

ATTORNEY GENERAL VERNIERO: I think that is accurate to say, yes.

SENATOR ZANE: You heard, and I know I heard, Mr. Zoubek say that this problem is not something that's just here in New Jersey, that it is national. Do you feel in retrospect that there should have been a heightened awareness in light of the fact that it is -- if the First Assistant is correct -- a national problem?

ATTORNEY GENERAL VERNIERO: I think that's one of those questions where you say, if I knew then what I know now, I would we have done things differently.

Sadly, in this state and in this country, too few individuals were focused on the issue of racial profiling. The *Soto* case, Senator, as you know is a Gloucester County case. You are a very prominent lawyer in that area. It became a prominent case in the courthouse. I think, you know, we could probably go down a list and ask ourselves what was the response to the *Soto* case in the Attorney General's Office, what was the response in the Governor's Office, what was the response by legislators, what was the response by the United States Attorney General, what was the response by the editorial writers, what was the response out of the White House, and we probably could put on our perfect lens of hindsight and say there was not enough of a response by any of those officials. But that doesn't mean they are bad officials, that they were operating in bad faith. It means that we had several lawyers who were very

strong in their belief that the decision was an appealable decision, that it was important, but yet an isolated case, and that the appeal should go forward.

I think what we should be doing now, with respect to this report, is to say finally in New Jersey we have reached the core of the issue. More work needs to be done, certainly. This is just an interim report, but finally we have an official document that doesn't exist anywhere else in the country, and I believe that we ought to acknowledge that and give credit for that for all concerned, not just the Attorney General's Office, but everyone who made this report possible, and work together to begin putting in place some steps that will finally begin to eliminate this practice.

SENATOR ZANE: General, the work on the report--

Just a couple of more.

SENATOR GORMLEY: Okay.

SENATOR ZANE: The work on the report, the Interim Report, began in February of 1999, is that accurate?

ATTORNEY GENERAL VERNIERO: That's when I formally requested the First Assistant to produce a report in terms of some of the data and information used and cited in the report. That actually begun in terms of collection last year as a result of the Turnpike case and these two audits in Morristown and Cranbury.

SENATOR ZANE: And you used figures from 1997 through 1998, about a six-month period, isn't that correct?

ATTORNEY GENERAL VERNIERO: I'd have to ask Director Zoubek. He is more familiar with that than I am.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I believe it covers the period of time, Senator, from April of 1997 through November or December of 1998.

SENATOR ZANE: So like a year and a half.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct.

SENATOR ZANE: Or there about.

How long did it take to assemble the information needed to have this report that you have given us -- the statistical information? How long did it actually take you to compile that and have it ready? Because the report from beginning to end is two months, correct?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Correct. Is that in a normal workday or a 24-hour workday?

SENATOR ZANE: I don't really care.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: It took us a period of time. We got good cooperation from the State Police. I sent over a request for specific documentation, and I started to receive a production of records from the State Police in mid-March that we started to collate and then started to react quickly to the numbers that we had received from New Jersey State Police at that time.

SENATOR ZANE: So how long?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We were--

SENATOR ZANE: A couple of weeks?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We were designated to this as of February 10th. I received the documents after a period of 30 days in terms of collection, and we delivered the report on April 20th.

SENATOR ZANE: Okay, I have no other questions.

SENATOR GORMLEY: Senator Matheussen.

SENATOR MATHEUSSEN: Just to start perhaps, Mr. Zoubek, where you left off. You just made a quote, "In good cooperation from the State Police in compiling the data for this Interim Report." But I'll go back to the beginning questions presented by the Chairman, Senator Gormley, which disturbed me when I read this report on Page 23 indicating that you had started compiling information in mid-March as a review team but noticed that that information that you have been receiving, and I quote, "some of which had not been previously been provided to the Office of the Attorney General of the Division of Criminal Justice." Who did not provide the information to either the AG's Office or to the Division of Criminal Justice?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: It had not been received out of the -- had not previously been received by the Attorney General's Office. I made a specific request when I designed what we were going to look at in terms of this study and identify the data that we needed. And we received data with respect to the stops and the searches at Cranbury from 1997 through 1998 that had been collected on a periodic basis by the State Police which we had never received before.

SENATOR MATHEUSSEN: And who did not provide it before? Was it requested before and not provided? That's what I'm led to believe, that it had been previously requested but not provided.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct. We had not received the stop and the consent to search data prior to that time. I myself became First Assistant Attorney General Designate, and I did not have direct contact with the State Police. We are examining issues with respect to that production right now.

SENATOR MATHEUSSEN: So I'm still not clear on your answer. Who didn't provide it?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We are looking at this issue because, in terms of the request that was made, it would have come out of the Superintendent's office -- it should have come out of the Superintendent's office. It did not come out of the Superintendent's office.

SENATOR MATHEUSSEN: When was that information requested?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I requested that information a couple of weeks after I began the review after we designed what we were going to look at.

SENATOR MATHEUSSEN: That says the Review Team, but previous to that when was it requested? It did not come out of the Superintendent's office.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We are looking at that. I was not First Assistant at the time. We are examining that issue to see what requests were made and what was not produced because it was of great concern to us, as well as why it is referenced on Page 23 in the report.

SENATOR MATHEUSSEN: Will that answer then supplement this Interim Report when it is received by your office?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We are examining putting some of those portions as it relates depending upon what the investigation reveals.

SENATOR MATHEUSSEN: I'm not sure whose statement this was, either the General's or yours, Mr. Zoubek, but there was a statement before that the lower court, Judge Francis in particular, had lowered the standard of proof -- lowered the standard of proof. What had been the standard of proof prior to that?

ATTORNEY GENERAL VERNIERO: It was actually the-- I was referring to the burden of proof. Judge Francis ruled that once the defendants made a prima facie showing of uneven law enforcement, then the burden automatically shifted to the State to disprove that showing. And we felt, at the time, that was a misapplication of the law. That the defendants had a much higher burden of proof before any presumptions or burden shifted to the State. He used a very low threshold for that burden.

SENATOR MATHEUSSEN: And previously had it been case--

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: --law to establishing that burden?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: And Judge Francis's ruling then went against the grain of that previous case law.

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: And was that one of the three items that specifically the brief, which was filed by the State, objected to?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR MATHEUSSEN: Let me just switch if I could. Getting back to the State Police. I don't want it to look as a result of these hearings or any other hearings that anyone is being made a scapegoat here for what is taking place. I'd like to explore, if I could, what training previous to this Interim Report coming out -- what training has been provided to the State Police, incoming officers, incoming troopers, with regard to how do they make a stop, what do they do, how does it go about, how does one go about making a stop. What exactly happens, and who would give us those details?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: If I can, Senator, just briefly. We did examine some of the training available to State Police. One of the key things though that we wanted to focus on was there had been plenty of training which was no, no, no, you can't racially profile. One of our concerns is -- and we highlight it in the report -- that we have to have a more proactive training to demonstrate exactly what you need to do during the course of a stop so that it is clear that race isn't playing a factor. There is training down at the academy. There are interdiction programs, and indeed, we have postponed a couple of interdiction program trainings over the next couple of weeks so that we can ensure that aspects of the Interim Report are able to be provided in the course of that training.

Again, as the report reflects, just telling them that they can't engage in that particular practice-- We have to go through each of the

individual steps to ensure that they know what they can do positively, appropriately if they are looking for drugs.

SENATOR MATHEUSSEN: Knowing what we know from the *Soto* case and even data perhaps before the *Soto* case, what, if any, affirmative action will we as the State be taking to aid new troopers coming in on how to -- proactively now -- how to make a proper stop other than just saying no?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: After the *Soto* decision came down--

SENATOR MATHEUSSEN: Or during the *Soto* decision.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: It's my understanding that the 1990 State Police Procedure 55 that is referred to, that was put in, in 1990, was an initial reaction by then Superintendent Dintino and then Attorney General Del Tufo to aspects of what was happening at the trial. Thereafter, when the *Soto* decision came out, there were further steps taken in terms of requiring troopers to actually sign a form that identified that they understood that they weren't allowed to engage in this kind of practice. Additional training measure are put in place, some search and seizure procedures are put in place, some newsletters were sent out with respect to search and seizure. And, frankly, that's one of the things that caused us concern when we saw these numbers for 1997 and 1998. That despite all that training, we still had some of these problems.

SENATOR MATHEUSSEN: But is it fair to say that that training took the course of more of a prohibition than it did actually of a definitive action to take?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That was one of our preliminary conclusions at this time, Senator.

SENATOR MATHEUSSEN: The statistics that we were able to compile for this Interim Report -- what details do we actually make in making a stop? What details does the trooper take with regard to the person who is being pulled over? And I mean specific details with regard to gender, race, national origin, any of those. What are the details that are taken?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Generally, with respect to some of the identifiers, they are outlined in the report. Recently it has included race, age, address -- the normal factors that you would anticipate if you open up record keeping with respect to the individual, the gathering of the license -- the information that you can obtain off of the license.

Right now one of the things we are looking at is how we may supplement some of that information that needs to be taken so that we don't necessarily overburden the officer, but we get the information that is necessary for us to put the early warning system in place. And we have some specific steps in here with respect to information, with respect to stop, as to whether or not a frisk takes place, whether or not there are other discretionary decisions that the officer takes during the course of that particular stop. So we are looking to enhance that data at this point.

SENATOR MATHEUSSEN: In preparing the Interim Report and the statistics compiled, did you find that there was a uniformity among the three trooper barracks along the Turnpike, or was there a disparity in the information taken by each one of those barracks?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: One of our concerns during the course of the review was the quality of the information that was being obtained, the accuracy of the information that was being obtained, and the supervision of troopers to ensure that the material was accurate and complete at all times, and that is one of the fundamental recommendations. Our report is to ensure that each of the barracks-- There were concerns at both of the barracks. There were some disparities of times between supervisors as it relates to the exact accuracy, and we have to make sure that across the board that there is accuracy and accountability.

SENATOR MATHEUSSEN: When you say that there was discrepancy among the supervisors, what specifically do you mean?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: All I can say at this point is it relates to some of the cases that we have investigated as it relates to misconduct and keeping track of information. One of the things we are also looking at is the backup systems that should have been in place with respect to the supervisors to catch and follow some of that up.

SENATOR MATHEUSSEN: Is that as basic as perhaps as looking at a report and making sure all the information has been compiled on that report, let's say an arrest or a stop record?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: What we emphasize in this report and reaffirm in this report, in essence, is some very basic issues with respect to that factor in terms of the supervision. Keeping in mind that what we are trying to do is build upon and make sure there is monitoring and accountability of the State Police that a number of these

procedures already set up is the question of whether they are always being followed.

SENATOR MATHEUSSEN: So then we are finding cases perhaps that supervisors are not keeping on top of the individual troopers out on the road saying that this is what you need and this is what you have not done.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct. And even on an interim basis, I know that within the last two months, within the last six weeks, I know the State Police has created an inspection audit team to go out, even while we are working on the Interim Report -- to go out more frequently to the barracks to do some auditing of records and arrests and have begun that process and have worked over the last couple of weeks very cooperatively with us to identify additional procedures that we can set up to ensure that accountability is there.

SENATOR MATHEUSSEN: And from the various highest levels of law enforcement, have we tried to reinforce that by personal visits to troopers and to trooper barracks in indicating how important this information is, or have we just left that to the individual immediate supervisors?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I know that the Acting Superintendent Lieutenant Colonel Michael Ferdorko has been out visiting a number of barracks and has been very cooperative over the last few weeks as we have been putting this Interim Report together in making sure that the message is getting down the ranks. I know he has already met with his majors, and they have all read the report, and we are working on the process of making sure the message is provided at all levels.

SENATOR MATHEUSSEN: One of the footnotes that I saw in the report that leads me to this question is the statistics of the officers themselves, the troopers themselves. Do we keep a record of who are making -- what troopers are making the stops and what record do they keep with regard to the information that is compiled for each individual arrest or stop?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That has happened at times. One of the things that we recommend here is that through our early warning system, if you've tied into the computer-aided dispatch, we should be able to keep track of some of those identifiers that we are talking about so that you would then be able to access this data on a more regular basis not only for the Department of Law and Public Safety and State Police monitoring, but on an aggregate basis to then make some of these statistics available to the Legislature and to the public.

SENATOR MATHEUSSEN: I guess the question that I really want to ask is-- We have found that there is racial profiling with regard to the stops and to the searches that are being made and that there is a disproportionate amount of minority members who are being stopped as well as, more importantly, searches being made. Is there a profiling on the troopers making the stops, or is that pretty much even across the board? Do we find any disparity among the troopers making stops and making searches?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We have been looking on an aggregate basis at this point in time. We will be looking towards narrowing that down on a trooper-by-trooper basis. One of the things you would hope to do by a monitoring system would be setting up some basis

to identify troopers who have percentages that are, in terms of comparative basis to the other troopers, inappropriate, so those can be followed up on.

SENATOR MATHEUSSEN: Do we have any initial statistic? It would seem that in one of the footnotes that I have read, and I can't find it right at this very moment, that on a general sense all troopers are making these kinds of stops with regard to the numbers of -- disproportionate numbers of stops as well as disproportionate number of searches regardless of their race.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That was correct for a period of time in which there was a specific review. We have not looked at that issue across the board comprehensively. That's why we were particularly concerned as it relates to some of the association aspects of the interdicting drugs and decisions that were being made.

One of the things we highlight also in the report is we are going to identify other steps of discretion that can be tracked appropriately to see also what the impact is on some of those steps.

SENATOR MATHEUSSEN: When did we first determine that the, I guess, evenhandedness -- if you want to call it that, but I guess that is hard to determine in this particular case -- that all troopers were pretty much acting the same with regard to this?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, if I can. Obviously the numbers with respect to the consent to search are problematic. It is because it happens rarely. It's in excess -- it's about 1000 consent to searches.

One of the things we tried to point out here was we were concerned about the pattern, what impact, and the causes of the particular

pattern. There are instances in which, on a specific day with a specific trooper, even when there is a percentage, that on that particular day and that particular decision made by that trooper could have been very appropriate under the circumstances. So one of the things we are doing is we are looking at this in terms of the pattern and the concern for policy and setting bright-line rules and setting up a monitoring system. But then, when it comes down to the issues of motions to suppress evidence in a particular case, we highlight in the report that we still wish to argue that there should be an individualized analysis.

SENATOR MATHEUSSEN: I have nothing further.

SENATOR GORMLEY: What we are going to do now-- We are going to come back to questions. What we are going to do now is we're going to call three of the witnesses. We'd ask the General and the Assistant Attorney General to stay available for questions. We are going to take three witnesses.

We are going to take a short-- One thing I know I can keep the break time accurate. We are going to take a 15-minute break after the witnesses, and then we will continue with the questions.

The first-- The next witness is Senator Wayne Bryant.

SENATOR GIRGENTI: Will we have the opportunity to address questions?

SENATOR GORMLEY: Oh, yes, they are going to come back up. Sure.

SENATOR GIRGENTI: Because I'd like to ask a few questions.

SENATOR GORMLEY: Yes, they will come back for questions.

SENATOR ROBERTSON: How about to the witnesses?

SENATOR GORMLEY: Pardon.

SENATOR ROBERTSON: How about to the additional witnesses?

SENATOR GORMLEY: I'm sorry.

SENATOR ROBERTSON: The additional witnesses as well. I'll have an opportunity to ask questions if we need to?

SENATOR GORMLEY: If you care to, sure.

Senator Bryant.

SENATOR WAYNE R. BRYANT: Thank you, Mr. Chairman.

Good morning to the members of the Judiciary Committee. It is my pleasure and honor to testify before this blessed body on behalf of the New Jersey Legislative Black and Latino Caucus. Assemblyman Joe Charles, the Chairman of the Caucus, could not be here today, so I am pleased to present this testimony as a Senate member of the Caucus.

Our Caucus, which consists of 19 black and Latino members of the New Jersey Legislature, is in the midst of a series of public hearings. Our focus is on the matter of abusive power by the New Jersey State Police and the employment practices used by the State's top law enforcement agencies.

The goal of the Caucus is to get to the truth as it concerns the use of racial profiling by State Troopers and the existence of employment discrimination within the New Jersey State Police. Moreover, we are seeking to put faith on the accusations leveled against the State Police. Although the Caucus is firmly committed to completing our hearing process, it is important to note here that two Caucus members, Assemblyman LeRoy Jones and Senator Shirley Turner, introduced legislation to conduct bipartisan, bicameral

public hearings on racial profiling more than a year ago. President DiFrancesco, Senator Collins (*sic*) failed to respond to this legislation.

On the willingness of the presiding officers to act was predicated on the number of investigations and lawsuits which were pending. The absence of public hearings conducted by legislative standing committees prompted the black and Latino Caucus to hold its own hearings to our dismay. Efforts by minority lawmakers to explore this issue of racial profiling met continuing indifference, if not resistance, from the legislative presiding offices.

The Caucus was denied full access to the resources of Office of Legislative Services, thus, and conducted our public hearing. The Black and Latino Caucus was forced to pay out of its own pocket for hearing-related expenses that legislators ordinarily would not bear. Moreover, we invited the Attorney General and the acting former Superintendent of the New Jersey State Police to address our concerns. These invitations to testify were declined in all cases.

As we conclude our public hearing process, I want to reiterate for the record on behalf of the Caucus our belief that the preponderance of the New Jersey State Troopers performed their duties honorably and within the bounds of the law. Our hearing process was not designed nor have we attempted to demonetize or belittle the efforts of New Jersey State Police. However, let me be very clear, the Caucus will not shy away from bringing to light intolerance, unconstitutional abuses of authority by members of the State Police.

Despite the findings of Superior Court Judge Robert E. Francis in the *State vs. Soto* case, many people in New Jersey government closed our eyes

and ears to complaints by racial profiling victims. The Caucus forced ahead and provided a forum for victims to share compelling and painful accounts of blatant violations of their civil rights, initially and regrettably the (indiscernible), including our own Governor, their Attorney General, law enforcement personnel, proponents of law enforcement community. As a result of our hearings, the powerful testimony advanced by a diverse cross section of New Jersey residents, experts' testimony, adversary groups, and recently the findings pertained in the study undertaken by Attorney General Peter Verniero in which he conceives that profiling is real, Governor Whitman and Mr. Verniero have made a 180-degree turn and found religion.

We in this Caucus are encouraged that the Governor and the Attorney General have recently relinquished their hold on abject denial as it concerns racial profiling. However, we are not distracted by their-- (remainder of comment indiscernible) Although we are told by the Governor and Attorney General and the Acting Superintendent there is no written official police policy on racial profiling, the fact remains that the patterns and practices of racial profiling remain in part of the culture and fabric of the State Police.

We were however deeply disappointed that the Governor and Attorney General previously dismissed the number and quality of stories and experiences of New Jersey residents who were racially profiled to April 20, 1999. The Governor and Attorney General have yet to acknowledge the systemic nature of racial profiling in the State Police operation. The fact that racial profiling has been present in New Jersey for many generations and that it seemingly doesn't exist in writing or any other official document suggests that profiling is indeed systemic. Racial profiling is communicated and

perpetuated through patterns and practices by intolerant New Jersey State Troopers.

As legislators, we have for some time received complaints, official and unofficial, from black and Latino constituents claiming they were being unfairly singled out for unwarranted stops and arrests by State Troopers. The hearing process simply confirms that which reasonable people of goodwill acknowledge from the outset.

During our second hearing on April 20th at Essex County in Newark, expert testimony on racial profiling was presented by Dr. John Lambert, Chairman of the Psychology Department at Temple University of Philadelphia, Pennsylvania. Dr. Lambert offered unrefutable and compelling statistical evidence -- was proved that the rights of black motorists were violated through the stop and arrest patterns employed by State Police.

Dr. Lambert concluded his study as an expert witness in the *Soto* case. He documented that on the New Jersey Turnpike between Exits 7a and 1 blacks accounted for approximately 35 percent of the stops, 73 percent of the arrests by State Troopers. Between Exit 3 and 1, blacks accounted for 46 percent of the stops and 73 percent of the arrests. Lambert also found that black motorists driving between Exit 3 and 1 accounted for approximately 15 percent of the actual number of traffic violators.

The statistics of violators verses stops and arrests are staggering and conclusive. Black motorists are targets of State Troopers. That, my Senate colleagues, is racial profiling. The statistics speak for themselves. It is difficult to articulate the pain and anguish I felt as I sat there through two public hearings listening to several accounts of systemic overt acts of violence,

brutality, civil rights violation, and raw manifestation of hatred and racism. It deeply saddens me to note that the scourge of intolerance continues to permeate American society and that the sins of racism clearly directs the action of some New Jersey State Troopers.

As this Committee deliberates over the racial profiling issue, a myriad of troubling questions concerned to which the Governor and Attorney General and/or the Acting Superintendent must respond and be committed to correct are:

1. What steps will be taken by the Attorney General or the Acting Superintendent to alter the culture of the State Police which instructs or tolerates racial profiling? The practice of profiling is not limited to a few bad apples. Racial profiling is a systemic condition. The culture of the State Police creates and tolerates racial profiling. Eliminating profiling and other illegal practices will not result from cursory quick fixes. Instead to eliminate profiling and other discriminatory practices warrants a wholesale evaluation and adjustment in the State Police personnel and practices. Needless to say, some of the State Police personnel and practices must go.

And what form is the practice of racial profiling communicator among the ranks of the troopers? Does it occur via word of mouth from veterans to rookies? Is there a manual of profiling?

What was the involvement of the New Jersey State Police in the development and use of the infamous training tapes featuring the Jamaican posse and Latino drivers which encourage profiling? What is the current status of profiling and training today?

3. What type of discipline has been administered against troopers for acts of violence, brutality, and hate? For example, we understand that the Troopers John Ryan and Patrick O'Dryer (phonetic spellings) who brutalized Mrs. Dorothy Cobbs of Long Island, New York, who successfully sued the State, were never punished and continued to patrol roadways of New Jersey. Errant troopers must be penalized for their actions. Since the Governor and the Attorney General and the Acting Superintendent have been remissed to that end, the Caucus will advance suggestions to address troopers who abuse their authority.

As a concern to internal operations of the State Police, expert testimony documented that black troopers are five times more likely to be fired than white troopers -- five times more likely. What are the reasons for such disparities? If black candidates can pass the test to become a trooper, complete the academy, why are they deemed inadequate to serve as troopers after a brief stint of only five years? What is wrong with the culture of the State Police -- limits the upward mobility of black and Latino troopers?

As legislators, we are empowered to create policies which govern this great state. To that end, we must confront, head-on, the problems staring us in the face. Racial profiling has been deemed a reality in a court of law and through the truthful testimony of numerous victims and their advocates.

We the policy makers of the State must act expeditiously to end racial profiling and eliminate the forces -- the State Police which tolerate -- employ this practice and, finally, change the environment of the New Jersey State Police which allows this hateful practice to flourish. The New Jersey Legislative Black and Latino Caucus stands ready to eradicate racial profiling,

to alter the culture of the New Jersey State Police which tolerates it. The Caucus maintains the belief that the New Jersey State Police is a respected segment of the law enforcement community to the degree that we can work together to remove the cloud of indifference from the New Jersey State Police and allow the light of justice to shine (indiscernible) operations. The people of New Jersey will be better served.

In closing, some people want to smooth over racial profiling in New Jersey by acknowledging the problems that are occurring on a national basis. The concern of the Caucus is the State of New Jersey. Everyone is saddened and concerned with any acts by police which violate the civil rights of anyone. However, as New Jersey legislators, our primary concern is the Garden State. Eliminating racial profiling as systematic and shameless assault on the constitutional rights of people requires the Governor and the Attorney General to move beyond acknowledging the existence of this discriminatory practice.

The time is now for Governor Whitman and Attorney General Verniero to admit racial profiling as a systematic problem which diminishes the stature and effectiveness of the New Jersey State Police. Then, and only then, can we as legislators work cooperatively with this administration to eradicate racial profiling in New Jersey.

It is the hope of the Caucus that all members of the Legislature will join with us and other progressive-minded persons to embrace change that will improve the internal and external operations of the New Jersey State Police.

Mr. Chairman, I would like to thank you for the opportunity to share the views of the New Jersey Legislative Black and Latino Caucus.

If there are any questions, I would be pleased to respond.

SENATOR GORMLEY: Questions from members of the Committee?

Senator Martin.

SENATOR MARTIN: I have one question. It is not directly what you're talking about, but obviously, it is connected.

Earlier, there was talk about one of the real troublesome areas -- deals with consent searches, which -- the way it's framed under consent searches is-- There is a reason for a stop, such as speeding, which since most people speed on the Turnpike, although within, let's say, more or less acceptable reasons, it gives State Troopers a lot of discretion. Consent search is then-- Once stopped, somebody is asked if they want to have a search. I'm not sure that everybody appreciates consent versus, given the circumstance, being stopped by a State Trooper-- I don't know why anyone wants to spend more time and have somebody make a consent, but I -- if they were concerned about racial profiling further down the road, the next five miles down, or thinking that maybe this could lead to other types of invasion of privacy, one might sort of go along with it.

But since the detailing has shown us that the consent searches have been applied more to minorities than to the white majority-- I'm concerned about this burden of proof. Right now, the consent search can be done -- was set under a higher standard than the Feds, but it's still called -- I

think it's analogous, under constitutional law, that (indiscernible) which, at least, was described before as an articulable suspicion.

What I'm getting at is I don't know why, given the fact that I'm not so convinced that consent searches are all that, consent, and this is a real troublesome area of discretion, why the level shouldn't be probable cause to engage in a search. Now, I'm not talking about the other types of ways in which a search can be conducted at a stop. If something-- If contraband is in plain sight, then somebody can search. If an officer or trooper is concerned about their safety and they think that somebody has a concealed weapon or something, which is illegal, they can also take steps to protect themselves on that. I'm concerned about this general search for contraband which then allows them to select--

Do you have any thoughts about whether the level, in order to provide for less discretion, should be raised to probable cause instead of the sort of less -- the lower bar and less, perhaps, identifiable articulable suspicion?

Let me just give you one indication. I was talking to our staff, and they were saying that things like articulable suspicion could include things like having a single key as opposed to having keys on a key chain. It gave indications, perhaps, that somebody was more likely to have a stolen car or maybe was in a hurry or something, but it is something where I quickly changed my patterns of having a single key, which I tend to use on occasions. Burger King wrappers in a car is, in combination with other things -- reaches a level of an articulable suspicion because it suggests that somebody has to eat on the fly. Some clothes on the backseat suggest that somebody may be running drugs because they don't stop as frequently as others at motels. But

if that's the level where somebody can -- or a trooper wants to engage in consent searches, I'm somewhat troubled by the invasion of privacy but, more importantly, about -- engaging in and asking somebody for a search, which I'm again-- I'm not so sure everyone appreciates the fact that if they say no that there are supposedly no repercussion.

Would you-- Do you have any thoughts about what the level of proof should be with so-called consent searches?

SENATOR BRYANT: I think we tend to agree that there ought to be a higher level, as you've indicated. I think what we found, coming out of our hearings, as well as the level of the search and what it should be, is -- and let me put it -- by putting a face on it. It is what happens at those searches-- And this is what this Committee ought to-- And we say we have to go beyond that. We've had guns to people heads. We've actually had folks who've been thrown to the ground and stepped on -- racial epithets at these searches.

What I'm saying is that in all these incidents that we've heard, not once was a victim ever called at a hearing. They sent a person out to ask them what their report was, but at an actual hearing before that trooper, they were never called to a hearing to testify or anybody who was in the car. And they would get some form letter basically saying, "We found that the trooper did the right thing. I'm sorry that you had an inconvenience." You've got to go beyond that. I think you have to also look-- What we found out was that you have to look at it in terms of, when people are making complaints, is there any interdicted system that says that when a person gets five or six complaints or -- will we not look at that individual as trooper? We have nothing like that in

New Jersey. And what we're saying is that things that the Attorney General -- is a beginning, but if anybody thinks it meets the fruits of the problems--

And it's one of the things that I think, uniformly, the Caucus feels. If there is no justice inside, what's happening with African-American and Latino patrolmen, you're never going justice outside. You can't have it both ways, and there has to be some explanation. We've had folks turned out of the State Trooper that have been second in their class, third in their class, fourth in their class. One of the things we need to look at is Rule, I think it's, 51 where the superintendent, every two years, has without question, an ability to just remove a person from the State Police. It happens twice, and in four years -- then they can end up getting rid of you without having any reason. That is the law today, and we need to examine some of that because what we're finding is that the justice inside -- also injustice inside matches the injustice outside.

SENATOR GORMLEY: Just to the point that was made by Bob Martin--

I think that even before you looked at changing the standard-- The question was, is the original standard being enforced in terms of reasonable suspicion and how it is supposed to be interpreted? One of the things, in reviewing the materials, that you find is that from what I read they were unable to find the individuals or even know the individuals who refused to be searched or refused to give consent. That information-- That data was not available.

I think, if you were to have a system suggested by you and now suggested in the report in which you would be seamless in terms of the review

process -- in terms of the monitoring of the calling in when a stop is made so that there is information available so that the reasonable suspicion is outlined as the process goes on -- you might be able to preserve that standard, which is a tougher standard than is required by the Constitution. However, I do think the problem is that people didn't even-- There is a real question as to whether the reasonable suspicion standard was even maintained. So before we even skip to toughening the standard, I think the first question is as to whether or not reasonable suspicion, as it was intended, which is supposed to have a multiple of factors, not just one element, to be considered before the request, is even made, before the consent is sought. And you're right. The fear level that someone would have on the road-- I think you do have circumstances, and I think it's evident where people were not fully informed as they should have been before that consent was given.

Any other comments or questions from the Committee? (no response)

Senator Bryant, thank you.

SENATOR BRYANT: Thank you, Mr. Chairman.

Thank you, Committee members.

SENATOR GORMLEY: Reverend Reginald T. Jackson, Black Ministers Council of New Jersey.

REVEREND REGINALD T. JACKSON: Mr. Chairman and members of the Committee, I'm here today to speak on behalf of the Black Ministers Council of New Jersey. I assure you, since yesterday was Sunday, I will take very little of your time. Let me further comment that as it relates to

the Council's concerns regarding the report, much of the information, as it relates to the statistics and all of the other, really are not very important.

Let us simply say that April 23, 1998 is a day which ought to be highlighted in the history of New Jersey. The incident which happened on that day triggered an onslaught of activities which have brought us to this point. And what is most interesting to us about April 23, 1998 is that if it had not been for those three young men who were shot 11 times, there would be no investigation, no report, no knowledge of profiling, neither would we be gathered here today. When the Council looks at the report, we say, "There is enough bipartisan blame to go around for everybody." The reality is that we have a troubling question which got answered as a result of the April 23 incident.

For almost two decades, minorities have complained about racial profiling, and all of those complaints have gone unanswered, unbelievably, ignored. They really did not matter because many of those who brought their complaint were not only minorities, but they were poor. They had no one to speak for them and nobody to fight for them.

With the event of April 23, 1998, there was too much to overlook. The *Soto* case-- When the results -- and the judge handed down his decision-- Even those in State leadership, who usually say the Court is right, dismissed the Court's decision. No action was taken. And over the last several years, whenever complaints of profiling were lost, the immediate response was, "New Jersey does not profile," and it was dismissed.

We do commend the Governor and the Attorney General for doing what none of the predecessors have done, but let's also be honest. If it had not

been for the incident of April 23 and the continuing pressure following that incident, nothing would have happened. It would still be said, "New Jersey does not profile." And really, what difference does it make whether you say that it has never been the official position of the New Jersey State Police or the official position of New Jersey? Official or unofficial, minorities complained that it was happening. And now we hear that the judge lessened the burden of proof. That doesn't matter to folk who are stopped on the highway, made to get out of their car, spread eagle, embarrassed and denigrated in front of their children, and then told, "You can get in your car," no apology, no remorse, that's it.

When we look at the report, we hear it said that the problem is a small number of troopers. Someone needs to define for us, "What do you mean by small?" Because we believe that there are entirely too many to have been pulled over to say it's a small number of troopers. We believe that now that racial profiling has been acknowledged, it's time to deal with the problem rather than continuing to spread the blame around. Let's accept the blame and now deal with the problem. We are terribly disturbed that there is this seeming notion -- now in the State we've acknowledged it. Now, let's move on to something else.

Let me suggest to you today that New Jersey will not be a better state and there will not necessarily be peace in New Jersey if we simply seek to move on to something else. The recommendations contained in the Interim Report, we believe, are good recommendations, and we urge them to be implemented.

Also, we really want to commend the Black and Latino Caucus. We think they did an absolutely tremendous service to this state because they did, in fact, put a human face on those who have been the victims of racial profiling. And from that human face, we believe we don't need to deal with symptoms, we need to deal with the culture which causes racial profiling to take place. If you only deal with the symptoms and do not address the culture, this problem will not be solved.

Let us finally conclude that in the report, we find that there is one other thing lacking and glaring. And that is for all that has been said about a small number of troopers -- for all that has been said-- We can see where perhaps some language or some generalities may have caused some troopers to feel however they feel. The fact of the matter is that for whatever has been done, somebody has to be held accountable. And so, therefore, there is nothing in the report that addressed the issue of leadership.

Did all of these troopers do whatever they did on their own, without feeling that there was some security and some blanket of protection for their actions? This report points us no where in terms of leadership. And somewhere the issue of leadership must be addressed. And let me also, while I'm at it, really say the fact of the matter is that we really don't believe there ought to be any scapegoats in this matter. This is a problem for the State Police. This is a problem for this administration. This is a problem for the General Assembly. This is a problem for this state. But somewhere along the line, leadership has to be held accountable.

At this time, I'll entertain any questions you may have.

SENATOR GORMLEY: Questions from members of the Committee?

Senator Lynch.

SENATOR LYNCH: Reverend Jackson, earlier today I started to question the Attorney General with regard to the *Bellaran* case. I'm reading from the *Star-Ledger* -- I'm sorry, the *Philadelphia Inquirer* of February 23, 1999 which quotes you extensively regarding your statements on behalf of the Black Ministers Council of New Jersey and talking about the same thing. You don't want just scapegoats, you want a clear, thorough review of the policies and practices of the State Police, etc. I think you said that you wanted, in the review-- They will recommend that you want it recommended -- a house cleaning of more than Colonel Williams, the current Superintendent. You want to discuss the Federal suit filed by Sergeant Bellaran who accused numerous State Police and supervisors, by name, of performing acts or looking the other way when they occurred. And you cited the opinion by Federal Judge Mary Cooper in favor of Bellaran which, in effect, said that there was racial discrimination in the-- It was a racially hostile workplace environment.

One of those targets of that lawsuit was now Captain Franz, who you are familiar with.

REVEREND JACKSON: Not unless I know him by face.

SENATOR LYNCH: You're quoted as saying the following, "Mr. Jackson noted that many of the individuals named in his suit not only escaped discipline, but were promoted. All the people he named, look at where they are now. Mr. Jackson said, 'I'd be concerned to know why there was no review of the names Bellaran named.'"

And to your knowledge, there has not been a review, has there?

REVEREND JACKSON: To my knowledge, there has not been a review, and in fact, it is very troubling to the Council that is a case won by a trooper and where that trooper named the names of those persons who did these actions -- that, in fact, they have been promoted. One of the things deliberately I did not do in my comments today was deal with the issues of recruitment and promotion only because this hearing today was addressing the issue of profiling, but that is a very troubling and glaring thing. And to be very frank with you, it goes back again to the issue of leadership and the fact that someone had to be held accountable.

SENATOR LYNCH: Those hearings of Bellaran were held in July of 1997 for 10 or 12 days. Subsequent to that hearing but prior to that hearing the then Lieutenant Franz was made Acting Commander of Troop D, which is the entire Turnpike. And subsequent to that, in December, he was promoted to the rank of Captain and assigned as Troop D commander, which is the entire Turnpike.

Is that one of the people you are referring to?

REVEREND JACKSON: If either one of those persons were listed in the *Bellaran* case and he was promoted, he'd very definitely go under people I'd be referring to. In fact, I think the question would be, why would that person be promoted?

SENATOR LYNCH: And this decision in *Bellaran* actually occurred in March of 1998, the month before the shootings on the Turnpike.

REVEREND JACKSON: Again I think that's an issue of accountability, and I think those who review those decisions are very apt to review them and make some important decisions.

SENATOR LYNCH: Thank you very much.

SENATOR GORMLEY: Are there any other questions? (no response)

Thank you, Reverend.

And the final witness before the break is H. Philip Muller, Chief of Police, Sea Isle City, and President, State Association of Chiefs of Police.

C H I E F H. P H I L I P M U L L E R: You see my colleagues are leaving me up here alone.

Good afternoon, Mr. Chairman and members of the Committee. My name is Philip Muller, and I'm the Chief of Police for Sea Isle City. I also have the honor of serving as President of the New Jersey State Association of Chiefs of Police. I am joined in the room by Chief Robert Hernan of the Allendale Police Department, our First Vice President, and our Executive Director Mitchell Scholar (phonetic spelling). I would like to thank you for the opportunity to allow me to testify this afternoon on behalf of the State's Chiefs of Police.

As we all know, the recent focus in New Jersey has been on the State Police. However, the State Chief's Association believes that the entire law enforcement community should take steps to enhance the trust and confidence between law enforcement agencies and their communities.

I am here today to reaffirm the long-standing position of New Jersey's Chiefs of Police against any type of discriminatory practice. We know

that the overwhelming majority of police officers perform their duties in a professional and equitable manner. However, we also realize that concerns over police bias, whether real or perceived, can undermine the fundamental trust between a police department and the community it serves.

As a result, police chiefs cannot be content to wait for problems to erupt. Rather, we must address this issue head-on. If members of our communities have concerns, it is our job to sit down with them, discuss their concerns, and work with them to develop solutions that are acceptable to all parties.

I wish to emphasize that proactive traffic enforcement is an effective strategy to protect the public from the devastation caused by drug abuse, street and highway traffic-related death and injury, illegal trafficking in and possession of weapons, and to otherwise promote and maintain an orderly and law-abiding society.

However, proactive traffic enforcement that is race or ethnic based is neither legal, consistent with democratic ideals, values, and principles of American policing, nor in any way a legitimate and defensible public protection strategy. It is not, cannot, and will not be tolerated by the police profession.

Our Association has, and will continue to, take a strong stand in confronting these issues. In fact, we are currently planning the addition of bias in traffic stops, as well as in other aspects of law enforcement, to our annual Policing Your Town Program. This Program is one of our most important and highly regarded educational activities. It is attended not only by police chiefs and law enforcement officials, but also by dozens of mayors and other municipal officials and community leaders. Additionally, as a member of the

New Jersey Police Training Commission, I will be pressing to have this issue reemphasized in the curriculum followed in this State's police academies.

Likewise, our police departments take seriously any complaints made by citizens, especially those which may involve alleged incidents of bias or improper conduct on the part of any officer. Such complaints are thoroughly investigated by our internal affairs departments and dealt with accordingly.

Our Association has always supported the position of chief of police for leadership at the local level that reduces the opportunity for an officer to practice racial profiling. The strong leadership presented by the chief of police and accountability to an appropriate authority at the local level is a sufficient check and balance which avoids the impression of a racially motivated traffic stop.

Police chiefs are accountable to local authorities, as well as the county prosecutor, to ensure a response to citizen complaints. The State Attorney General has directed the multilevel response to a citizen complaint of bias law enforcement. Not only does the local chief direct the internal investigation into these types of actions, the results are reported to the county prosecutor and subsequently to the Attorney General. The county prosecutor is responsible to provide direction to the police chief -- run an appropriate course of action when an allegation of misconduct involves criminal actions. The county prosecutor has the authority to supersede the investigation conducted by the police chief and determine the scope and level of investigation. While this option is seldom necessary, the mere option's

existence invokes the discipline for the police chief to properly address allegations of misconduct.

The International Association of Chiefs of Police has developed a computer software tracking internal affairs case program in order to provide an early warning system and identify high-risk offenders. Every local elected official and police chief strive to ensure that their police department represents the town's policing concerns.

Officers operating outside the law are not tolerated. The local elected official and police chiefs are always striving to hire officers who are representatives of the community. A basic community-orientated philosophy goal is to identify the police officer with the community. Recruiting local officers will accomplish this goal.

A diverse workforce is a goal for every agency. Local departments have adjusted their educational requirements in order to accomplish this goal. Categorizing our agency's personnel or the citizens we come in contact with by their race is directly contrary to what we teach our officers. Race should not be an issue. So why would we require our officers to ask, "What race are you?" Do you assume the officer is conscious of the individual's race? Do we rate the color of a person's skin? Such flies in the face of logic.

In furtherance of these goals, the International Association of Chiefs of Police has adopted a resolution calling on all police chiefs across the nation to take steps to further the trust of that. That is critical to effective and professional law enforcement. This resolution was adopted following the recent release of the International Association's first report on Professional Traffic Stops. The report itself was the product of an IACP-sponsored forum

where law enforcement and community leaders met to discuss concerns over police bias in traffic enforcement activities.

With the Committee's permission, I would like to read just a short excerpt from the resolution. It makes clear that the chiefs of police "do not endorse, train, teach, support, or condone any type of bias profiling by any law enforcement agency or individual acting under color of law." Further, the resolution acknowledges that "it is the law enforcement executives, in conjunction with their officers, who have the responsibility to open dialog and discussion with community groups to produce guidelines for police policies, operational procedures, and training programs."

Lastly, the resolution puts the International Association of Chiefs of Police on record as "committing it's resources and energies to work at all levels to enhance trust between police and the communities they serve."

The IACP Professional Traffic Stop Report is an important and instructive document. It states, in no uncertain terms, that to stop and search an individual simply because of race, gender, or economic level is unlawful, unconstitutional, and should not be tolerated in any police organization, but the report goes further than simply denouncing bias and improper conduct. It also includes recommendations for action both by individual law enforcement executives as well as for policy makers.

I would specifically note that the report emphasizes accountability of those in position of authority in the law enforcement community. For instance, under the "Policy and Practice" section, the report states, "Field supervisors and their commanders must be held strictly accountable for the quality, outcome, and constitutionality of traffic stops. Leaders at the highest

level of law enforcement agencies must monitor traffic stop patterns and allegations of biased activity. In addition, training for first-line supervisors focusing on encouraging appropriate enforcement tactics of subordinates should be developed.”

The New Jersey State Association of Chiefs of Police completely concurs in this policy. I will be referring the recommended policies and practices from the report to our standards committee for adoption for inclusion in our own police department standards. I will also send the entire report to the New Jersey Police Training Officer’s Association for their review.

For the Committee’s convenience, I have attached copies of both the full IACP resolution and the report on *Professional Traffic Stops* to my written statement.

Mr. Chairman, I would again like to thank you and the other distinguished members of your Committee for having me here today to testify on behalf of New Jersey’s Police Chiefs. I would like to reaffirm our belief that the overwhelming majority of police officers perform their duty in a professional and equitable manner. But we also believe that it is important that this Committee and the public at large are able to have confidence that police departments in every town in New Jersey are dedicated to the effective, professional, and impartial administration of justice in every community throughout our state.

Thank you very much.

Are there any questions?

SENATOR MARTIN: Do you keep data in the local municipalities with respect to identification on the basis of African-Americans,

Latinos, whites? In other words, if I wanted to get data on Sea Isle City or Morristown, New Jersey, about whether there was disparate impact with respect to African-Americans as far as arrests or consent searches-- Is that information collected, as far as municipalities go?

CHIEF MULLER: No.

SENATOR MARTIN: If there was some policy that came down, either through legislation or through the Attorney General by way of regulation, would that be difficult to implement?

CHIEF MULLER: I believe that it will lead to a lot of problems. Asking a motorist, while you're issuing a traffic summons, for their particular race, I think would be offensive, not only to the--

SENATOR MARTIN: I'm not-- I believe the State Police does it by visual inspection which, I guess, would lead to misrepresentations, but so could, I guess, if you ask somebody, they might for one reason or an other -- they might choose to report to be something other than they were. But if it were just a visual inspection, would that be difficult to implement?

CHIEF MULLER: I'm not sure that our officers would be comfortable in relying on their perception of what an individual's race may be.

SENATOR MARTIN: Let's say, forgetting for a moment whether they're comfortable or not. It's a State-- My understanding is that the State Troopers do something like this. Is there some kind of impediment that would make it difficult at the municipal level if it were ordered that they do this, I mean, for purposes of trying to ascertain whether there was violations of civil rights and civil liberties?

CHIEF MULLER: I'm not sure that the data that is compiled would be accurate. I'm not sure if our officers would be comfortable looking at a particular individual on a very short basis and based on their perception of their skin color, their physical features -- whether or not they would be comfortable in ascertaining their racial background. I think that would lead to questions which will lead to problems.

SENATOR MARTIN: One area that has been suggested and is a way in which certain police officers who may, in fact, make biased stops are able to do so -- it is by positioning their vehicles sideways on a roadway with their headlights on so that they can get a full, I guess, side shot of a vehicle as it passes along a roadway. Is there any-- Would there be a problem if that type of positioning for radar or for other types of municipal patrolling -- if that were outlawed?

CHIEF MULLER: I think that (a) I don't think that there is a municipal police department in the State of New Jersey that goes to that extent. We are all "overworked." Perhaps our traffic units, who may be assigned to a specific area to monitor speed or aggressive drivers-- Would they sit like that to monitor the race of the driver? It's not really the race of the driver that we're concerned with. It's the actions of the motor vehicle.

SENATOR MARTIN: Well, my question is that if there was a directive that says that the positioning of the car, instead of being exactly sideways, might be angular or something like that -- that wouldn't create a tremendous problem for a local municipality, would it?

CHIEF MULLER: Those officers that are assigned radar may use -- pull off on a side street, if you will, and aim their radar down a particular

roadway. Yes, then they would be at a right angle to the traffic flowing by it. That would only limit the area in which an officer could conduct a radar.

SENATOR MARTIN: Let me ask you a more general question. You've given every indication that the State Police Chiefs -- and the police officers really want to comply. If we had to have some regulations that might be slightly difficult to impose but would, perhaps, build confidence from the public, as well as eliminate, possibly, individuals who may, in fact, do violence to policy, would you be supportive of those types of regulations?

CHIEF MULLER: It is our feeling that in every municipality, if in fact the local law enforcement agency is conducting biased police work, that that, biased in its nature, is going to work its way back to the municipal elected officials before it ever reaches this chamber.

SENATOR MARTIN: I guess, Chief-- All I'm suggesting to you is that there may have to be some change. And it may not be enough just to assert that everybody is on board and is not going to present problems, but we may have to change some policies as well as increase training. And we're going to have to look to State Police, as well as the Chiefs of Police, to really work cooperatively with that. And it may, in fact, be something of a headache, but the rewards from a public policy point of view may, in fact, outweigh those particular problems. And I would hope that you would be cooperative.

CHIEF MULLER: Well, certainly, anything that comes down in legislation, we will abide by. That is a given. We would just hope that we would have an opportunity to have input to that legislation and to hear our concerns that--

SENATOR MARTIN: That's a given, too.

SENATOR GORMLEY: Senator Cafiero.

SENATOR CAFIERO: One question.

Chief-- Phil, were you here when the hearing started at the beginning when the General spoke?

CHIEF MULLER: Yes.

SENATOR CAFIERO: Did you hear him mention that they may be seeking Federal legislation to have race imposed on driver's licenses?

CHIEF MULLER: I didn't hear that specifically.

SENATOR CAFIERO: Would that go a long way to relieve your concerns about asking a particular driver and having to evaluate what that driver was?

CHIEF MULLER: We in this country have held for so long that we don't base anything on an individual's particular color, and now we want to put their race on a driver's license. I just think that that-- That's not sending the message that we want to the general public -- to identify them by race. I think that's the wrong thing to do whether it comes from Washington or Trenton.

SENATOR CAFIERO: Would you support that as a means of determining, for tracking purposes, when these stops and arrests were made to relieve the police community of any responsibility in trying to guess a particular driver's race if that were imposed at that level -- that you would know without asking?

CHIEF MULLER: Certainly, Senator, there again-- If there is a Federal legislation that mandates that the New Jersey Department of Motor Vehicles must list race on their driver's license and then this group or the

Legislature passes a law that we're supposed to keep our statistics based not only on areas, but also based on an individual's race, we will comply with that, certainly. But I would certainly hope it doesn't come to that.

SENATOR CAFIERO: Thank you, sir.

SENATOR GORMLEY: We're going to take a 20-minute break. We'll be back at 20 minutes of--

The Attorney General and First Assistant Zoubek will then answer the balance of the questions from members of the Committee. And following their answering questions, we'll finish the witness list.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: We'll resume with questions from Senator Girgenti.

SENATOR GIRGENTI: Thank you very much, Mr. Chairman.

General, a couple of questions that I have just as I was sitting here listening to the discussion and some of the information that I needed to get as a result of it. You know, I've read the Interim Report and read the recommendations for the future. What I want to know is, and I'm trying to get the answer to this, what is different today from, let's say, April 20th in terms of this whole situation? As we sit here, what are the changes that have been implemented already? I know this is an interim report, but what is being done presently?

ATTORNEY GENERAL VERNIERO: You mean in the last six days, since the--

SENATOR GIRGENTI: Right.

ATTORNEY GENERAL VERNIERO: Well, the Acting Superintendent has or is about to discuss the recommendations in length -- at length, to the upper management at State Police. We have begun the process of drafting the many documents or the various documents that are cited in the Interim Report. The update to the Attorney General's Statewide Drug Enforcement Strategy is well underway, and we're beginning to put that in final form. So if you go down the list, Senator, to the various points that require either the drafting of an additional document, we are underway in that process.

SENATOR GIRGENTI: All right.

In conjunction with that, you are saying that in-service training has to be done. You need a computerized database or an update in terms of that. Standard operating procedures are going to be changed, I understand, in terms of how to react to a situation and how to act in a situation. What are the budgetary, if any, implications of this whole situation in instituting the computerized system? Is this going to be able to be done right away? Is this something that you're talking about in the future? Or is this something you want to see done very shortly?

ATTORNEY GENERAL VERNIERO: That will be done in phases, and we've actually already begun to phase in that program as part of this fiscal year's budget. Now, we may need to ask for additional

appropriations as we, you know, actually go in and implement and design or redesign the current systems.

I think you have, correctly, though, identified the major budgetary item is the computerization. To the extent that the report notes the initiative of the video cameras in the troop cars, that has already begun, and there are moneys set aside both federally and in this year's budget to further accomplish that initiative.

Paul, do you want to add to the computer issue?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. In addition, as well, we are, with respect to the Turnpike, completing the vetting of a computer-aided dispatch system for the Turnpike. We are also moving towards allocating funding for the computer-aided dispatch on the Parkway, which obviously are two of the most important principal highways we are concerned with, with respect to highway stops, and we are putting together, at the Department, a comprehensive program to get a record management system put in place to match the computer-aided dispatch.

SENATOR GIRGENTI: Just an offshoot of what you said, in my district, our area, Route 80 is a major artery. A lot of my people tell us that there is a lot of activity from Bronx, New York, over the river into Route 80, and goes through our area. Your report sticks solely to the New Jersey Turnpike. Have you seen the problem in other areas? And is this the same across the board in terms of the situation? We have people in our district concerned. You know, I represent Paterson areas. Is this a situation that you see going on in these other arteries as well as the New Jersey Turnpike?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, Route 80 is certainly also known as a drug corridor, and there have been drug seizures on Route 80. We will be looking at, in terms of setting up a reliable benchmark as well, perhaps, for Route 80. Our point in the Interim Report was we had seen enough with respect to Moorestown and Cranbury not to wait, but to put in these comprehensive systems now. And indeed, this week, as the beginning of the in-service training for the State Police -- and we're already putting in place new requirements with respect to this particular training, as well as put out an order, before any State Trooper can attend any interdiction-based training program, frequently sponsored by the Federal government, that they must get approval to do so, so that we can assure that the training they're getting is consistent with this report.

SENATOR GIRGENTI: Has the results of these recommendations gone down to the people in the field, in terms of this, we are not seeing anybody stopped because of color? From here on out, we have not seen-- What has happened of late since this has come out? Has this gotten down to the people in the field?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, we issued the report on Tuesday. I believe it was either on Thursday or Friday there was a meeting that the Acting Superintendent had with majors and also with captains with the notion that this report has to start being implemented immediately as it relates to the policy issues. We are in a good timing phase, as I said, because it's already scheduled that the troopers are coming in on an in-service, daily, in Sea Girt for the next couple of months. And we will be catching them at that time to reinforce this message.

SENATOR GIRGENTI: All right.

Another question is how will you restore the credibility of the State Troopers with the public as a result of this whole situation? What is happening right now in terms of a restoration of the entire morale of the State Trooper force? This has got to have an impact on them. The profiling is wrong. We all know that. And it's obviously there. But what are we doing about that?

ATTORNEY GENERAL VERNIERO: Well, one of the things, Senator, that I think we've already started was by issuing the report itself. Because it is a candid, constructive document, in my view I think that will begin the State Police on the road to restored credibility. And I mentioned that the day we announced the report that I think this report actually will lead to a stronger, not a weaker, State Police.

I met personally with the representatives of the major unions the day we issued the report to essentially say the same thing to them personally, that this report, if well received and properly implemented, will result in a stronger, not a weaker, State Police agency. And that, in turn, will, I think, lift everyone's morale there.

SENATOR GIRGENTI: All right. In the Interim Report, you stated that one of the things that you -- a priority is that the drug highway interdiction system needs changes. It was kind of touched on. What do you see in terms of that? I know that our policy has been one thing over the years, but what changes do you see coming about as a result of what this report found?

ATTORNEY GENERAL VERNIERO: Well, one definite change you will see, and this will be part of the updated Attorney General Directive I spoke of in response to an earlier question-- One thing you will most definitely see is, with absolute clarity, the clear statement that race cannot be used as any part -- in any part of law enforcement discretionary act.

Beyond that, I think it's premature. One of the things we need to do is inventory and evaluate further, from a perspective of efficiency and resources, the use of the consent search doctrine to the extent that it's used on the Turnpike. We have to take a look at that and see whether that's an appropriate resource, appropriate use of time, versus other kinds of drug interdiction activities -- open air drug markets, for example and some of these other things that we want to also put some time and attention to.

So the first thing you will see is absolute clarity on a going-forward basis. The second thing you will see is more of an inventory of the best practices. What's working? What may not be working? How can we improve the overall strategy?

I am convinced that we can have effective law enforcement while still respecting the constitutional rights of all citizens. And I'm absolutely committed to achieving that, but in terms of fine-tuning the actual statewide strategy, that is going to take a little bit of time for us to refine.

SENATOR GIRGENTI: A couple more questions. One thing that struck me as part of our recommendations in this report is cultural sensitivity training. Is that part of it, and could you expound on that a little bit?

ATTORNEY GENERAL VERNIERO: One of the things that we would expect to happen in terms of the advanced training is to make clear that

one of the problems, as it relates to consent searches is, yes, there may be times in which the decision is ratified in terms of doing a consent search and you're finding drugs. But again there is a substantial percentage of time where we're leaving innocent motorists, who don't have any drugs on them, subject to this procedure. What we would hope to put in place through the academy -- and this is an area in which we will seek input from various organizations outside of law enforcement to assist us in getting that message to the troopers as to the very significant impact that just stopping someone, asking them for a consent to search, and then just sending them on their way has a significant impact on somebody. It's not just that easy. It can have a devastating impact on those that you've stopped and made the wrong request on.

And so we hope to include that kind of training at the academy and seek input from outside law enforcement on ways to enhance that.

SENATOR GIRGENTI: I notice from my reading of the background on this that the number of minority recruits in the State Troopers has gone down over the past few years. At one point there was an order that we had to have a greater amount, and then that was dropped. And there's been a diminishing of that. And what do we attribute that to? Is there-- Another side question is how many of the minority community are in supervisory positions? Do we have anything on the percentage of minority on the State Police?

ATTORNEY GENERAL VERNIERO: We do have that data available, Senator. I will have to send it to you, through the Chair. I do not have that with me this afternoon.

On the broader issue of minority recruitment, that was one of the issues that we discussed at the Law Enforcement Summit, which I hosted last December, in which we announced a major initiative improving minority representation at the State Police. We had retained the services of an outside consultant who had done a review and had made a list of recommendations, and we are now in the process of implementing those recommendations.

I'll just give you one example. We are now proceeding on recruiting classes in a time frame that is compressed and in smaller numbers. For example, rather than one class of a hundred, over a year- or a year-and-a-half time or even two year's time, we want to do one class of fifty within a six-month time period, and then do another fifty recruits in another six-month period.

That will help us to attract and retain qualified minority candidates who go through the academy. Right now one of the problems that we're facing is, when you have a long class that waits a year or a year and a half to be funded, and so forth, you actually lose good, quality candidates because they get job offers elsewhere.

So we issued, in December, a series of recommendations, that being one of them, because we do need to turn attention to that issue as well.

SENATOR GIRGENTI: Do we have any idea of minority supervisors? Is there--

ATTORNEY GENERAL VERNIERO: As I say, I have those numbers in terms of the upper ranks. I just don't have them with me, and through the Chair, I'll be glad to furnish that to you, Senator.

SENATOR GIRGENTI: If you would, I'd appreciate it.

Does anyone else know, from the Department?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I don't have specific numbers.

SENATOR GIRGENTI: I mean, is there zero? You know-- We don't have anything in terms of numbers?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I know that the numbers, as it relates to some of the upper ranks, are of concern and a part of the focus in terms of our promotion and recruitment focus in terms of the State Review Team. I don't have the exact numbers, sir.

SENATOR GIRGENTI: All right. Because obviously that's got to be a problem. When you don't have a sensitivity, you have a situation, that's why a system develops the way it does.

Basically -- that's basically all I have, Mr. Chairman. I just want to, in closing, just say that, you know, we all understand the situation here. And the result is an outrageous type of behavior that people have been dehumanized in some cases. And we have an obligation to do something about it, and I hope -- you know, this is an interim report, but I think we have to speed this process up, and things have to be done right away.

And you know, just because a report is filed today-- You know, I've seen too many times in State government where reports are filed in some back table somewhere and never found again. This can't happen with this situation. It's outrageous. You've pointed out the problem, but we have to do something about it, and something has to be done quickly.

You know, we don't have two societies. We're all one. And I've always been an advocate in support of law enforcement, and I continue to be,

but I don't think we can get to the point where we're now setting people aside because of the color of their skin. And it's not right. And I believe you gentlemen agree, and that's why you're here and we're trying to do something about it.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Good afternoon. First, let me say that up in my neck of the woods, up in Passaic County, we take law enforcement very, very seriously, and I, too, along with Senator Girgenti, have long been a supporter of law enforcement. And it's one of the things that makes me concerned about the state of affairs at the moment. And I can say that when dealing with a difficult, difficult issue like this, and this is an issue that exists nationwide, whether it's the California Highway Patrol on the west coast or in the State of Maryland or in the State of Florida, these questions have a tendency to arise. And I think, when history is written as a whole about this subject matter, that this report will be a watershed because it represents a very, very serious attempt to deal with that problem in a systemic fashion. I commend you for that.

Just with respect to questions, whether you also asked-- Before there was a discussion about responsibility and whether or not you, as Attorney General, took responsibility. I assume that you don't take responsibility for the creation of racial profiling as a technique. Is that correct?

ATTORNEY GENERAL VERNIERO: Correct.

SENATOR ROBERTSON: And I also assume that you do take responsibility for anything that's done within your sphere within the Department of Law and Public Safety?

ATTORNEY GENERAL VERNIERO: Ultimate, official responsibility, of course.

SENATOR ROBERTSON: And I would assume also that you are discharging your responsibility, in fact, by commissioning this report and by bringing it forward?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ROBERTSON: I have a couple of different areas of questions. First of all, the thing that I was struck with most, when I tried to compare the data as it respected stops versus searches, was the fact there was a huge difference between the statistical evidence on searches versus stops. For instance, in the 87,000-plus stops that we studied, white motorists were stopped -- white motorists were stopped twice as often than black motorists. But when it came to searches, black motorists were subjected to search several times more often than white motorists.

When a consent search is requested, what sort of paperwork is generated currently?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: As a highlight, that actually shows how New Jersey, even before this report, went further than other jurisdictions. There is a requirement that a written consent to search form be filled out with the reasons for -- the reasonable articulation of suspicion written out on the report. So there had been a written consent to search form. We were able to identify instances, and we highlighted in the report, in excess of a thousand consent to searches that we examined, that we had heard reports of instances in which motorists were asked for consent, and

there wasn't a record of that consent, which is one of the things that concerns us that we have to address in terms of record keeping.

But there was already a practice, and that's how we're able to go back was because there is this written consent form, and that's what we were examining when we looked at those numbers.

SENATOR ROBERTSON: And what would one sound like, in terms of articulable suspicion? We've talked about that several times today, but what would a typical articulated suspicion sound like?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: It may include, and it's highlighted in the report, a range of factors in terms of if there's more than one motorist and they're giving different answers in terms of where they have come from; if there is any indication of a bag in the back of the car; if there is, when they go up to the car, some movement to hide something; that those are race-neutral factors that could be relied upon and can be relied upon, and there are appropriate ways to train with respect to how you can conduct those searches.

But there has to be a recognition that this is an area that is fraught with discretion. And whether it is -- as it relates to any of those reasons, whether it's the single key, whether it's the inability to answer questions in terms of where you're coming from, those are very discretionary and subjective views of the officer. And that's why one of the things we're focusing on, to focus on Senator Girgenti's question, is we're looking at the consent to searches and seeing what the amounts of drugs that have been obtained from that are to determine how efficient that use of discretion is.

SENATOR ROBERTSON: Will you consider looking at the efficiency in terms of the percentage of innocent people who are subjected to search?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: And that's exactly the point of this report, because it turns the focus as opposed to being someone you found drugs on and you have an arrest on, which is part of the concern, but really is the number of motorists that are being asked to consent who are being stopped who are then being sent along their way, who have done nothing wrong, and all they've been doing is traveling in interstate commerce.

SENATOR ROBERTSON: Yes, because the reason I say that is because, when you are trying to gauge it by how much drugs had been confiscated, there will always be a competition of public policy, but when one element of that competition is constitutional in nature, that will prevail, period.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: And you'll see that there are significant sections of the report in which we suggest that we have to address the impact, in particular, that has on the minority communities and the confidence in our efforts to attack the drug problem and making sure that we have the correct balance, and that it's not an overzealous trooper just looking for drugs.

SENATOR ROBERTSON: And what sort of paperwork is required, currently, with respect to consent searches that are requested but denied or declined by the driver involved?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Those are supposed to be kept at the station as well. One of the things we propose to do is to keep track of those as well. Because one of the things that's of concern is the inherent pressure that someone may feel, particularly a person of color, who is being asked questions by a police officer and their volition in terms of giving consent.

SENATOR ROBERTSON: Well, for instance, in the 87,000 stops that were surveyed during that 19-month period, 627 searches were involved. Do you have any idea, at all, as to how many other searches might have been -- consent searches might have been attempted but declined?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We are also currently looking at it-- Not for the Interim Report. I don't know the answer to that question. We are currently trying to tabulate probable cause searches, instances in which a request to search was denied, so we can get a better and accurate picture, keeping in mind that we have some concerns as it relates to the manual tracking of data and our ability to pull that picture together in total.

SENATOR ROBERTSON: Yes, because I do have some concern about that, because one of the problems inherent in the methodology used in the report is that it's difficult to piece everything together when, in fact, a certain methodology was used with respect to stops, a second methodology was used with respect to searches, and a third methodology was used with respect to arrests.

For instance, 87,289 stops were studied over a 19-month period. Now, are those the stops that you had 70 troopers running all around trying to calculate what the racial composition of those stops were?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: No. What we did--

SENATOR ROBERTSON: How did you do that?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: What we did is, with respect to Moorestown and Cranbury, we selected a period of time, prior to the April 23rd shooting, to focus on in a concentrated period of time so that we could examine issues with respect to falsification of data. The listing of the searches in this report and the listing of the stops in this report are of a much broader time period and a much broader search. Keeping in mind that aspects of that audit of Cranbury and Moorestown, although referred to tangentially in the report, are still the subject of an ongoing investigation.

SENATOR ROBERTSON: Well, for instance, in Table 1, which talks about motor vehicle stops by Cranbury and Moorestown stations during that 19-month period -- that's the one that lists that 87,000 stops -- has a breakdown by white, black, Hispanic, Asian, and other. How is that data compiled?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That data was compiled from compilations that were made out at the station and forwarded to the Superintendent's office, which I obtained during the course of this review.

SENATOR ROBERTSON: So you asked them to--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We then received those tabulations and then verified to the extent of which we could with respect to those tabulations. But one of our basic points in here was, with respect to the material we received from the State Police, even those numbers, which we verified to the extent to which we could, were of such concern that we thought it was appropriate to make the conclusions that we have.

SENATOR ROBERTSON: Well, how did they come to the conclusion about the ethnicity of those stops?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Those were based, generally, on observation by the trooper.

SENATOR ROBERTSON: So there were 87,000 instances when observation was, in fact, noted at the time?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: There had been -- as I highlighted before, there have been significant advances after the *Soto* case in terms of requirements that the State Police put in to track race better. Because as I said, in *Soto*, 65 percent of the data they looked at in *Soto* did not have any recordation of race. We're now at a point where even '97 and '98 we've made a significant improvement in terms of keeping track of the race.

SENATOR ROBERTSON: So you're comfortable that this data is accurate?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I am comfortable that we have made the appropriate conclusions off the data that we have received from the State Police at this point in time.

SENATOR ROBERTSON: Okay. Well, then taking a step back, we'll return to my original question, which was, are you comfortable that the

data you receive with respect to these 87,000 stops -- are you comfortable that the technology existed so as to give you an accurate--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: There was no technology. It was pens and hands and paper.

SENATOR ROBERTSON: Well, that's a rudimentary technology.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes. And that methodology was being used on a basis that was not computerized, and what we're suggesting at this point in time is that computerized and a computer-aided dispatch system so that we'll be able to collect that very quickly on a weekly basis, once we have it up and running.

SENATOR ROBERTSON: Okay. Which is good, but looking back to the *Soto* case, for example, one of the great debates was -- or had to do -- or one of the factors had to do with whether or not race had been noted during the course of traffic stops. I take it that what you're saying now is that by 1997 -- by April of '97, it had progressed -- at least with pen and paper, it had progressed to the point where they were, in fact, noted?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That's correct.

SENATOR ROBERTSON: Okay.

You noted that 627 searches had been involved. Now, I take it that the man power was not sufficient in the time allotted to allow you to track what happened with the result of those 627 searches?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, that's one of the specific action plan steps that we have, in terms of remedial measures, is to examine all the 1997 and 1998 consent records that we have.

We will also be collecting those with respect to those in which there was a declination of consent for two reasons: one, we can examine propriety of those consent to search, the extent to which we can examine that, after the fact, based upon those records; and, secondly, to assist us in the process of evaluating the validity and the efficiency of the consent to search method.

SENATOR ROBERTSON: But you were able to tell, the 627 searches had been conducted-- Why weren't you able to tell how many searches, at least from the available paperwork, were not done as a result of the motorist declining to be searched?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We were focusing as it relates to the actual records that we had available because, keeping in mind, one of the things we weren't able to assure in terms of accuracy-- We received a lot of complaints in terms of there were instances in which a motorist said they were stopped and someone asked them for a consent to search and a record was not forthcoming. We felt more comfortable with the data as it relates to those written consent forms that we had available to us.

SENATOR ROBERTSON: And what, in fact, did you find with respect to numbers of the ones that were kept? How many did they keep records of?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We have not reached a final tabulation with respect to declined consent to searches at this point in time. We are working on that.

SENATOR ROBERTSON: Have you received the raw data that would enable you to do that?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: It's my understanding that we have received that, and we are going through that.

SENATOR ROBERTSON: Okay. Because the things that I would be concerned to see is how many of those searches were, in fact, consent searches. How many of the searches were, in fact, declined? What was the percentage that resulted in arrests? One of the problems of dealing with a smaller sample, as you ultimately did with the 38--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: If I may, Senator, as it relates to if there -- if there was a consent to search, and there was a "I'd like to ask you if I could search your vehicle." And the only records that are appropriate to keep-- There could not, there should not be an arrest of someone if there is not a written consent form.

SENATOR ROBERTSON: Well, I'm talking about in the case where the consent resulted in an arrest.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Right, which are -- I think we are perhaps -- perhaps I've confused you a little bit on this. Those are -- that is the number of the searches that we're talking about in the report are those where there is a consent to search form, and there either is an arrest or no arrest. What we're doing with respect to the no arrest is, as part of one of the remedial steps here, we're examining all of those. And we've begun the process of doing that, so we can make conclusions as to any patterns as it relates those in which there were no drugs found.

SENATOR ROBERTSON: Well, for example, the Chairman made note before of the 13 percent arrest rate among those searched, in that case, in

the African-American community, but that was done -- that was taken from a smaller sample, wasn't it?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, the sample -- and that's one of the reasons we weren't able to reach definitive conclusions as to what the ultimate find percentage was because we're dealing with a smaller database there. But it ranged, depending on the period of time we're looking at, from approximately 15 percent to 30 percent in terms of the find ratio.

SENATOR ROBERTSON: Right. And I guess my question is, why didn't you use the larger sample, since it was available to you?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I guess that's where I apologize. I'm getting confused. Because the larger sample we have were all stops because we didn't look at all the searches.

SENATOR ROBERTSON: No, no. You have 627 searches involved--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Right.

SENATOR ROBERTSON: --in the 87,000 stops. Here you have a sample of 627. And yet, unless I misread, it appeared that the conclusions that were drawn as to percentages that resulted in arrest were taken from the smaller sample, not from the 600--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: No, it was a subset of the 627.

SENATOR ROBERTSON: Oh, it was?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR ROBERTSON: But it was a selective subset.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, it was a subset in which there was a find of drugs.

SENATOR ROBERTSON: Oh, so that involved the entire--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Yeah.

SENATOR ROBERTSON: Oh, okay. That's very helpful then. And then, do you have any idea about what percentage among those that were arrested resulted in conviction?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: That is not included in the report. We can provide that.

SENATOR ROBERTSON: And finally, in respect to the *Soto* case. Now, the *Soto* case, as I understand it, focused more on stops than it did on the question of consent searches. It seems to me the data are more compelling.

How many defendants were involved in that?

ATTORNEY GENERAL VERNIERO: Seventeen defendants.

SENATOR ROBERTSON: There were 17? And what were the nature of the charges?

ATTORNEY GENERAL VERNIERO: They were assorted charges. I don't know the exact nature of what was seized.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: There were a variety -- I don't know them specifically, but there were a variety of drug -- either paraphernalia or drug possession or drug distribution offenses.

SENATOR ROBERTSON: One of the-- That wound up turning on the overall statistical analysis of stops. And one of the concerns and one of the specific recommendations made here had to do with the development of an adequate benchmark against which to measure statistical anomalies. The

benchmark -- the only benchmark that was really put forward was the one put forward -- was the one that was put forward by the defendants as a whole, and that this thing was written three years ago. While it was in process, in terms of appeal, why didn't we try to either verify their conclusions as to benchmark or develop a benchmark of our own? When I say "our," I'm talking about the State of New Jersey.

ATTORNEY GENERAL VERNIERO: Well, it's a difficult task to accomplish, and I believe we admit as much in this report. We do need to consult with the Justice Department. We need to borrow from their national expertise. And we still don't have what we feel is a reliable benchmark, and that's one of the things that we definitely need to develop.

I think, of all the recommendations, that's probably the most difficult to accomplish because, to my knowledge, there are not reliable benchmarks available in other jurisdictions.

SENATOR ROBERTSON: Well, was there ever any attempt to conduct statistical reviews of the records of the arresting officers in that case?

ATTORNEY GENERAL VERNIERO: I don't -- not to my knowledge. Before I became Attorney General, I don't know.

SENATOR ROBERTSON: The thought that strikes me is that and one of the things that I'm concerned about, frankly, is that we have a case against 17 defendants, leaving aside, you know, the innocent motorist who is subjected to searches when they shouldn't be. When we ultimately have arrests, from which we expect convictions, I assume, or else we wouldn't arrest them-- And now we are faced with the possibility that those 17 offenders will go free based upon what's happening overall in the system.

If I am a trooper and I want to do my job the right way and I don't engage in the sort of practices that could be called the pretext search or pretext stop; if, in fact, my statistics would bear that out; if, in fact, 13 percent arises instead of 35 percent or whatever in terms of minority stops, how can I possibly do my job? And I'm concerned about the fact that we dismissed our appeal in the *Soto* case, that we withdrew our appeal. It would seem to me that we should conduct some statistical review of the arrest records of the officers involved because, perhaps, those officers are operating in good faith.

ATTORNEY GENERAL VERNIERO: Well, one of the things we did argue on the appeal is that the judge should have engaged in a case-by-case analysis, and that is still our position. If we have future cases or challenges to law enforcement, we will still argue that kind of case-by-case analysis, so I think we're, in essence, agreeing with your concern. And that was, and remains, a concern that we have in this area of the law.

SENATOR ROBERTSON: Well, if, in fact, you have concerns about the shifting of the burden of proof, as you mentioned before, about the case-by-case analysis that you just mentioned again and if you have a concern with the data and the benchmark methodology that was used, why did we dismiss our appeal in the case?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: I think one of the things that we focused on as it relates to the report and the impact on the *Soto* case -- that it's more appropriate for New Jersey, on a long-term basis, to have a reliable benchmark that we can all agree on, that can judge the system so that going forward we are not going to have it based upon a series of

cases from 1988 to 1991 and a study that was done three or four years ago, which was subject to bona fide criticisms.

In this instance, by going forward with this appropriate, reliable benchmark in an appropriate system-- One of the things the Court had some concerns with in *Soto* was aspects of monitoring. And we think we are addressing this in the report, and that New Jersey will be in a better position long term with this particular -- the recommendations in this report and then having the systems that are set in place judged based upon that system, as opposed to the older system that was in place.

SENATOR ROBERTSON: So rather than running the risk at a higher level court of a judgment that might be based upon a record that wasn't as developed as it should have been, it would be better to stage a strategic retreat and get our act together? Is that what--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, I think I would say, before that, it would be appropriate to react to the data, put the appropriate remedial measures in place to address the issue, and then look at the ramifications in terms of that appeal, and I think we took the appropriate steps.

SENATOR ROBERTSON: Okay.

And finally, Mr. Chairman, I just want to take note of a reaction of some of the police officers because I am concerned about the ability of the State Police to do their job on an ongoing basis and that they be given real guidance as to what everybody wants.

When the report came out, the *Star-Ledger* quoted several officers as saying that their former Superintendent's remarks, while bluntly worded,

merely reflected the criminal profiling that has been pushed as a legitimate tool for years by the U.S. Drug Enforcement Agency and other law enforcement groups in the war on drugs, including previous State attorneys general, and I'm quoting from the story.

They said that such official criminal profiles designed to find those with illegal drugs have long-identified specific ethnic groups, including minorities, as well as other factors from clothing to demeanor to the condition of a person's car. And then they quote one trooper who says, "What are you profiling? You are profiling drug offenders. You are not profiling individuals. Is that wrong? If so, tell us." Said one, "They, meaning the public, want criminals apprehended. It's a catch-22."

And I want you to know that even as we take a look at the very serious nature of this that there are Senators here also who believe deeply that we have to be able to give the education that is needed, whether it's during the course of police training or ongoing education, that will, in fact, build into the culture within a very fine professional organization, as the State Police is, a real sensitivity to this issue, not only that to be sensitive to it, but to understand why they're being sensitive to it.

I mean, it happened years ago when they first issued *Miranda* warnings, and I'm waiting for an appellate judge to simply say, when you ask for a consent search, here's what you have to say. But, in fact, we need to be doing that, and I'm glad you're taking the first steps.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Well, if I can, just quickly, we also -- we have started already putting model training programs in, in terms of interdiction programs, have already had presentations

to troopers, and I can tell you that we received very good responses from the troopers because they want to know what they want us to do. And they reacted very well. And when we put in the analogy of the Cosa Nostra, Italian-American analogy in terms of the facts that you can't make decisions based upon the fact that somebody is Italian-American, you think they're in the mob, it likewise applies in terms of drugs. We got a lot of very positive reactions to that.

And so we're trying to get out there, teach them the positive steps to do because we all well know that they will respond to these requests.

SENATOR ROBERTSON: Thank you.

SENATOR GORMLEY: Senator Lynch.

SENATOR LYNCH: Very briefly--

Mr. Chairman, thank you.

--getting back to the line of questioning Mr. Verniero had earlier. On February 10th, 1999, it's indicated in the press that you said you would study how the State Police handle public complaints, including allegations of racial bias, that you would also review what happens when troopers themselves complain about improprieties within the force. Is that correct?

ATTORNEY GENERAL VERNIERO: Correct.

SENATOR LYNCH: And what has happened since that time with regard to reviewing what happens when other troopers complain about improprieties within the force?

ATTORNEY GENERAL VERNIERO: All other aspects of the February 10th review are ongoing, and I would anticipate future reports specifically on those subjects. We expedited that part of the review dealing

with the racial profiling issue so as to satisfy the court deadlines in *State vs. Soto*. Now that that report is done on an interim basis, the Review Team will now continue with these other subjects.

SENATOR LYNCH: In a reading from the Interim Report on Page 43, it says, "The system of organizational rewards, by definition and design, exerts a powerful influence on officer performance in enforcement priorities. The State Police therefore need to carefully examine their system for awarding promotions and favored duty assignments, and we expect that this will be one of the significant issues to be addressed in detail in future reports of the review team." That's part of this report--

ATTORNEY GENERAL VERNIERO: That's what I'm referring to, yes.

SENATOR LYNCH: --and you certainly agree with that?

ATTORNEY GENERAL VERNIERO: Yes, I do.

SENATOR LYNCH: Of course, when it says the State Police therefore need to examine their system for awarding promotions, that also needs to include the Attorney General who has to sign off on all promotions I assume, correct?

ATTORNEY GENERAL VERNIERO: The whole system of promotions will be under review, yes.

SENATOR LYNCH: Now, are you aware of the *Bellaran* case.

ATTORNEY GENERAL VERNIERO: I'm aware of the case, yes.

SENATOR LYNCH: And this was a Federal District Court case, tried on the liability phase of it in July of 1997, for nine days, before Judge -- U.S. District Court Judge Mary Cooper, with a decision having been rendered

in March of 1998, finding that the State was liable on both of the asserted grounds of recovery, that of racial discrimination against Sergeant Bellaran and that of a racially hostile work environment as affecting him. Are you aware of that?

ATTORNEY GENERAL VERNIERO: I am aware of the case. I can't swear to all those various dates and deadlines that you cited, but that is my general understanding of the holding by Judge Cooper.

SENATOR LYNCH: During the testimonial phase of that trial in July of 1997, were you aware of proceedings of testimony? Was somebody keeping you abreast of that, and do you remember who it was from your Office who tried that case?

ATTORNEY GENERAL VERNIERO: I do not remember the deputy who was trying that case. I do remember getting end-of-the-day summaries when possible. Sometimes the Court adjourned quite late, and I would not get a summary until the next morning. Sometimes I referred to newspaper articles.

I would also like to note, for the record, that that case is still pending because we are now in the liability phase, so I am somewhat limited--

SENATOR LYNCH: You're into the damage phase.

ATTORNEY GENERAL VERNIERO: The -- I'm sorry, excuse me. The damage phase.

SENATOR LYNCH: The liability -- the State of New Jersey has been found liable, so now--

ATTORNEY GENERAL VERNIERO: Pardon me, the damages phase. That's correct. So I am somewhat limited in what I can speak to with respect to a pending case.

SENATOR LYNCH: You're quoted in the *Star-Ledger* on March 27, subsequent to the decision by Judge Cooper, saying that we believe the alleged conduct is not reflective of the Division of State Police as a whole, and that the Court's opinion ignores contrary evidence testified to by numerous witnesses. Do you recall that?

ATTORNEY GENERAL VERNIERO: I recall putting out that statement, and what I was referring to was the fact that by the decision's own terms, the conduct complained about in that case occurred, in many instances, several years ago. And as a result of the judge's finding, I did ask and received assurances that that conduct was not reoccurring at the time I issued that statement, Senator.

SENATOR LYNCH: And so you are satisfied that the conduct alleged in that trial was not reoccurring?

ATTORNEY GENERAL VERNIERO: I was, based on the assurances that I received, yes.

SENATOR LYNCH: Are you familiar with Captain Franz, as I mentioned earlier?

ATTORNEY GENERAL VERNIERO: I know you asked me that before the break. I am not personally familiar with that name, sir.

SENATOR LYNCH: And he was one of the targets of the *Bellaran* case in terms of this discrimination. You don't know that?

ATTORNEY GENERAL VERNIERO: I accept your representation. I don't know that per se.

SENATOR LYNCH: Do you know that you promoted him in December of 1997, subsequent to the testimonial trial of July 1997, to captain and assigned as troop commander of Troop D, which is the entire Turnpike?

ATTORNEY GENERAL VERNIERO: Yes, he was contained in a list of promotions. I'll have to accept your recommendation -- your representation. I do not have an independent recollection of that particular promotion.

SENATOR LYNCH: And do you know that subsequent to that, he has been further assigned to be the Acting Section Supervisor of Field Operation, which is a -- in effect, a major's slot, and he is now in charge of every trooper dealing with the motoring public.

ATTORNEY GENERAL VERNIERO: I'll have to accept your representation on that. I do not have independent knowledge of that.

SENATOR LYNCH: Do you remember some of the allegations or actually some of the testimony of the trial with regard to the then Lieutenant Franz's activities?

ATTORNEY GENERAL VERNIERO: I remember, generally, the testimony that was elicited during the course of that trial. I do not know to whom those various allegations attached in terms of a personal, name-by-name basis.

SENATOR LYNCH: Do you know there was testimony at the trial by troopers, plural?

ATTORNEY GENERAL VERNIERO: Yes, I'm familiar with that.

SENATOR LYNCH: That Franz referred to Hispanics as spics, Bloomfield Barracks as coonfield barracks, a white female supervising two African-American men as Gladys White and the Pips?

ATTORNEY GENERAL VERNIERO: I have recollection of that kind of testimony. I cannot sit here and say that I knew at the time that it came from one particular trooper versus another.

SENATOR LYNCH: Don't you think it's -- particularly after the shootings on the Turnpike of April of 1998, with this decision having occurred in March of 1998, that it's somewhat insensitive to, with these allegations having been made and found to be of some merit by a Federal District Court judge that Lieutenant Franz became -- who had become Captain Franz, under your watch, is still the head of the Turnpike -- oversight of the Turnpike -- all troopers on the Turnpike?

ATTORNEY GENERAL VERNIERO: I don't think it's insensitive in terms of anything that I might have done, Senator. As I say, I'll have to accept your representations that that, in fact, is the case. I asked, and got, assurances from the Superintendent that the verdict in the *Bellaran* case was not reflective of the State Police as we know it today. That case is still pending. I'm not at liberty to say what may be done as a result of that case because it is an ongoing case. And one of the reasons why I felt so strongly about having the State Police Review Team look into promotions as the next phase is because there may be problems in the manner in which we promote individual troopers.

SENATOR LYNCH: In fact, when Franz was transferred to the current position as Acting Section Supervisor, that is, in effect, a major's slot, is it not?

ATTORNEY GENERAL VERNIERO: It appears to be a major's slot.

SENATOR LYNCH: And isn't it a fact that his promotion to the rank of major has been sitting on your desk for at least four months?

ATTORNEY GENERAL VERNIERO: I don't know that for a fact. As I say, I don't have specific recall of all the various names and all of the various slots that may be on my desk, Senator.

SENATOR LYNCH: Why have you been sitting on these promotional recommendations for four months or so?

ATTORNEY GENERAL VERNIERO: Well, one reason is I, frankly, wanted to see the result of the Review Team's recommendations with respect to promotions.

SENATOR LYNCH: Oh, this-- They go back before the Review Team was even put into place.

ATTORNEY GENERAL VERNIERO: Oh, but we announced, in December of last year and even perhaps before that, that we were looking at the ways in which troopers would be both promoted and recruited from private ranks. So the promotional aspect of the review did not begin on February 10. It began many months earlier. And I just think it is prudent, since we are, obviously, in a transition phase with respect to a new superintendent -- an acting superintendent in a new superintendent search, plus the pendency of the

further parts of this review, that it would be appropriate for me not to act on the promotions at this time.

SENATOR LYNCH: Getting back to the organizational rewards. If you-- If leading by example is a military creed in a quasi military organization such as the State Police, then what would anyone expect from troopers who observe the rewards and promotions of individuals like Captain Franz?

ATTORNEY GENERAL VERNIERO: I can't speculate as to that, Senator. I've ordered the appropriate review of the promotional system. I would expect that that review would be candid, like all other aspects of this review, and I haven't signed off on promotions these many months while the review is pending. I believe that that demonstrates that I'm discharging my responsibilities faithfully and prudently as it relates to promotions. And I'm sorry if I can't identify one name in a large batch of promotions, but there are many names on the list, and this particular name just does not come the fore of my mind.

SENATOR LYNCH: How many people get promoted to major a year?

ATTORNEY GENERAL VERNIERO: This year, none to my knowledge.

SENATOR LYNCH: But because you have no promotions-- They've been sitting on your desk since December. But how many in a typical year would get promoted to major?

ATTORNEY GENERAL VERNIERO: My recollection is we have signed off on-- I think it's three sets of promotions, maybe two, in my two and

one-half years. I would have to verify that and send it to you, through the Chairman.

SENATOR LYNCH: Sets of promotions. How many majors have you made?

ATTORNEY GENERAL VERNIERO: I don't know the answer as I sit here, Senator.

SENATOR LYNCH: Do you know Major Tow? (phonetic spelling)

ATTORNEY GENERAL VERNIERO: I know the name.

SENATOR LYNCH: Do you know him now to be retired?

ATTORNEY GENERAL VERNIERO: He put in his retirement papers. He may have, actually, effected retirement. I don't know for sure.

SENATOR LYNCH: He'd been formerly the Captain of Internal Affairs.

ATTORNEY GENERAL VERNIERO: That is my recollection.

SENATOR LYNCH: Are you aware of that?

ATTORNEY GENERAL VERNIERO: That is my recollection.

SENATOR LYNCH: Do you know of any information that you've received that he had reported to the Superintendent previous to the Kenna-Hogan shootings about the activities of Kenna and Hogan?

ATTORNEY GENERAL VERNIERO: I don't have any recollection of that. I would have to look into that.

SENATOR LYNCH: You say you never heard about that?

ATTORNEY GENERAL VERNIERO: Excuse me. I really don't understand the question, Senator. What are you asking?

SENATOR LYNCH: I'm asking if you were made aware of Major Tow having reported -- when he was Captain Tow as head of Internal Affairs, having reported to the Superintendent about previous activities of Kenna and Hogan having to do with profiling prior to the April shooting?

ATTORNEY GENERAL VERNIERO: I would have to say that's a subject of a pending investigation.

SENATOR LYNCH: No further questions.

ATTORNEY GENERAL VERNIERO: If I understand the question--

SENATOR LYNCH: No further questions.

SENATOR ZANE: Following what Senator Lynch just asked you, promotions within the State Police are not subject to a test. They are subjective as opposed being objective. Isn't that correct? There is no testing, am I correct?

ATTORNEY GENERAL VERNIERO: That's one of the things under review. I don't think there is a written exam.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Senator, we're only -- at least in terms of my knowledge, in only the preliminary phases of that portion of the review. We are looking at issues in terms of the need for a test. I do not believe that there is a written Civil Service-like test for promotions of the New Jersey State Police at this time for the upper ranks.

SENATOR ZANE: Someone such as a major, how would they, in fact, then be promoted? Wouldn't that be something-- I mean, what is there beyond major? Superintendent?

ATTORNEY GENERAL VERNIERO: The two lieutenant colonels and then the colonel, so there are three positions.

SENATOR ZANE: Lieutenant colonels are above the majors?

ATTORNEY GENERAL VERNIERO: Yes.

SENATOR ZANE: So who would recommend a major?

ATTORNEY GENERAL VERNIERO: Yes, that-- I'm sorry, Senator, we may have to ask someone from the State Police to go into the intricacies of that process because, when I get the list, the list is already done. There are no names attached, who recommended whom to the list. It is presented to me as essentially -- it's a bit of a generalization, but it's essentially an all or nothing list. There is not an individual submission of individual names with recommendations assigned to it. So if there is a specific name recommended for major, I would not know, other than the colonel, of course, who, ultimately, must sign off on any promotions that are submitted to my Office. So I couldn't answer that question precisely.

SENATOR ZANE: I mean, obviously it wouldn't be coming from beneath. It would be coming from above, and I guess that really limits it to only three or four people with the promotion of a major, am I correct? One possibly being yourself, as head of the State Police.

ATTORNEY GENERAL VERNIERO: Yes, ultimately, if I signed off on the list, yes. But in terms of the colonel and lieutenant colonels, I would have to consult with State Police and respond after the hearing.

SENATOR ZANE: Just for my own edification, how many lieutenant colonels are there?

ATTORNEY GENERAL VERNIERO: Two lieutenant colonels.

SENATOR ZANE: And a colonel?

ATTORNEY GENERAL VERNIERO: And one colonel, yes.

SENATOR ZANE: So there would only be three people -- four, including yourself, above major.

ATTORNEY GENERAL VERNIERO: That is correct.

SENATOR ZANE: So the recommendation would have to come from either a superintendent, which we have now, two lieutenant colonels, or yourself.

ATTORNEY GENERAL VERNIERO: Presumably.

SENATOR ZANE: And you're recommending that that be changed?

ATTORNEY GENERAL VERNIERO: No, I'm not suggesting that be changed. I said that I'd ask the Review Team to look at the whole manner in which the promotions are made not only from the organizational sense that I think is the premise of your question, but from the perspective of enhancing minorities -- qualified minority candidates in the upper ranks of the State Police.

One of my goals is to enhance the level of diversity throughout law enforcement not only at the trooper level in terms of the initial recruitment, but also within the upper ranks of the State Police. So what I hope to see in the next report would be a discussion of both of those issues. How do we enhance minority representation, and should there be a different, a better, or enhanced methodology of actual selection? And those are two open questions right now.

SENATOR ZANE: Just as a matter of curiosity again. Is there any black or minority above the rank of sergeant in the State Police?

ATTORNEY GENERAL VERNIERO: Major Juan Matos is a Hispanic officer. He is a major. And again beyond that, in response to what I think was Senator Girgenti's question, I would have to consult with State Police and give you an actual breakdown, which I would be pleased to do.

SENATOR ZANE: With the vacancy that currently exists, would you likely be inclined to recommend-- I recognize that appointment belongs to the Governor, but would you likely be inclined to recommend a ranking officer from the New Jersey State Police as the next superintendent?

ATTORNEY GENERAL VERNIERO: The Governor has asked us, those of us on the Committee, to look both within and outside of the State Police. There have been no final recommendations. She gave us a pretty broad mandate. We have no artificial deadline or any constraints other than to find the person that we think is best under all the circumstances.

SENATOR ZANE: That includes them going out of the State of New Jersey?

ATTORNEY GENERAL VERNIERO: It includes both individuals from within the State Police and from outside of the State Police, both in New Jersey and outside of New Jersey.

SENATOR ZANE: That's probably never happened before, going outside of the state, am I correct?

ATTORNEY GENERAL VERNIERO: That is my understanding.

SENATOR ZANE: Speculation has it that there is an individual from Indiana. Several troopers have called me. I don't expect you to answer,

but I told them that I would ask this question. Is there, currently, a ranking trooper from Indiana that is being considered as superintendent of the New Jersey State Police?

ATTORNEY GENERAL VERNIERO: I'm really not at liberty to be specific other than to say we are looking at a number of highly qualified individuals, both within the State Police and outside of the State Police.

SENATOR ZANE: I think we all know how to read that one.

One question that -- or thought when I read the 18 points in the Interim Report, and a lot of it-- And I don't mean this in a critical way. I understand what you were doing. A lot of it comes across like slogans, and I mean that. I don't mean that critically. But when you have the comment, "ambiguities and misunderstandings about the law" -- and I guess Mr. Zoubek would probably better prepared -- what are you talking about?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: One of--

SENATOR ZANE: What is the law that is being, I guess, implied in an ambiguous way or being misunderstood that you're referring to?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: One of the problems that occur, and I think perhaps I bring a unique perspective to this from 10 years in the U.S. Attorney's Office sitting on most executive boards of all Federal drug task forces that existed in Philadelphia and southern New Jersey, is that Federal law is different than State law on some of these issues, and we've highlighted that in the report. There are much less stringent requirements on the Federal level as it relates to using race.

SENATOR ZANE: Can I interrupt you for just one second?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Sure.

SENATOR ZANE: To me, as I read this, I thought to myself, "Well, this has to be something that between February and April, when this report came out, that they came across and found out. And this is the way they expressed it." So there had to be something that's specific that you found that was not being understood. I'm referring to No. 1 of your 18 points.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: Yes.

SENATOR ZANE: And I want to also, essentially, ask, I guess, the same kind of question regarding No. 3. You can answer all at once if you want to -- "conflicting or subtle messages"?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: If I could, and I was in the process of answering that question--

If you turn to Page 50, it refers to the 1990 standard operating procedure in which there is a phrase that is included in that, and it says, "Unless the--" It says, "No racial profiling," and then it says, "unless a State Police member can identify and describe the manner in which a characteristic is directly and specifically related to a particular criminal activity." And what I was highlighting was the extent to which State Police -- State Troopers have attended Federal programs in which there are messages with respect to drug courier profiling at airports and the rest, which does occur federally, that they might have been getting a subtle message that it was okay to be doing that. We have to send a much clearer message here that as it relates to drug traffic interdiction on the highway that race cannot be used as a factor. We wanted to make sure that that exception that was referred to didn't swallow the whole because we were concerned that -- if someone is sitting there and going, "They say I can't use race, but if it's tied to drug trafficking, I can use it with other

factors.” And that’s what we were concerned about, and that’s what we’ve tried to focus on here, and that’s what we suggest drives our training -- should drive our training.

SENATOR ZANE: Also, No. 5-- It says, “Formal and informal reward systems that encourage troopers to be aggressive in searching for illicit drugs, thereby, providing practical incentives to act upon these stereotypes.”

What was it that you found that caused you to write that? What was the experience you had?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: The experience-- It relates to reports that we were receiving as it relates to troopers who may have been attempting to get the Trooper of the Year out on the Turnpike by the number of arrests they had -- were particularly driven by drug arrests. And we wanted to focus -- also the issue in terms of whether or not promotions that were occurring to those who had the highest arrests out on the Turnpike-- Keeping in mind that there is a--

The mission of the New Jersey State Police, on the highway, is multifaceted. We have asked them to interdict drugs, but they are also out there to serve motorists and ensure that they’re serving motorists. So one of the things we’re looking at is seeing if we can put something in performance and evaluation that puts a -- perhaps a higher rating, if you will, on those who are focusing on that part of the mission with just not looking at the numbers at the end of the day.

SENATOR ZANE: Lastly, on the same exact point, so maybe I understand it a little better-- What were the-- I mean, other than Trooper of the Year, are you saying that you found that, for example, being Trooper of the

Year or whatever the other rewards are that they were causing troopers to be overly aggressive--

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We have--

SENATOR ZANE: --or is this just a slogan?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: No, it's not a slogan. It is a good slogan, but is not just a slogan. And it--

SENATOR ZANE: But then, what backs it up? That's what I want to know.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: What backs it up is that we've received information from a number of troopers, some of which were on a confidential basis, that referred to a process by where there was a rewarding of those who were seeking drugs aggressively. Keeping in mind--

SENATOR ZANE: What were the rewards?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: The rewards were -- some of them were Trooper of the Year, the other was identification of the person who had the most significant criminal program within a particular barracks as looking at the person who was delivering the best numbers at the end of the year with respect to drugs. And that was based upon our experience and then specifically trying to look at that experience vis à vis identification of the racial-profiling problem.

SENATOR ZANE: And the reward would be what if they did all that?

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: The reward would be a recognition in terms of promotions, in terms of recognition that would occur after a period of time. We have not gone back and looked at the history in terms of promotion of every particular individual. This was just a recurring theme that we were hearing from individuals as it relates to this particular issue. And I can also tell you it's based upon my years of experience in terms of dealing with law enforcement executives in which they focus on the issues in terms of reward mechanisms within the law enforcement agency.

SENATOR ZANE: Okay, thanks.

SENATOR GORMLEY: Thank you very much for your testimony.

ATTORNEY GENERAL VERNIERO: Thank you.

SENATOR GORMLEY: Thank you for your testimony.

We'll now call the balance of the witnesses.

ATTORNEY GENERAL VERNIERO: Thank you, Mr. Chairman.
Thank you, members of the Committee.

SENATOR GORMLEY: Two witnesses together will be Emmanuel ben Avaraham and Shirley Graham.

E M M A N U E L b E N A V R A H A M: First, allow me-- Is this on? First, allow me to thank you, Mr. Chairman, Senator Bill Gormley, for allowing me to speak at this hearing, a hearing that's decades overdue on an important issue in our society. I wish to also thank all the members of this notable Committee and Senate President Donald DiFrancesco, a friend to the voices.

My name is Emmanuel ben Avaraham, formerly known as Shaid Watson, and I live here in the city of Trenton, New Jersey. I am the Chairman

of a spiritual organization called SUPER, which means spiritual, unified, political, economic, revival, Inc. -- is a group of African-American men and women of different faiths who are concerned about the spiritual development of our community.

We are well aware of the spiritual and moral decay in our community and political structure. Therefore, we are in support of good, grass-roots, community, and governmental initiative that aid in bringing about change for our children, families, and communities.

For many years, I have been asked by numerous families to aid them in questionable situations, where their loved ones appeared to have been -- were abused or died in encounters with law enforcement agencies. In those instances, I have sought the truth so that the situations could be dealt with appropriately and fairly.

This problem has been around long before I was born, and the present Attorney General-- I am 38 years old -- I know I look much younger -- and he's 39 today and will be 40 in a few days. The majority of law enforcement officers are good officers. It is truly sad that a minority who are not so good have gotten us to this point. I personally love 911 and am a believer of positive, strong law enforcement.

Allow me to say that the present tension in the black community is not just about profiling. Racial profiling is just one component of a broader, complex social issue. There are additional components that have led to this tension within our community: law enforcement's view of African-Americans, the use of questionable excessive force against African-Americans and minorities, and what is perceived as the rush to judgment against minorities on

a State and local level. We cannot allow the rage that you have read about, and will continue to hear, in the black community to be manipulated into believing that the rage that resonates in our community is only about profiling. To allow this would be a tragedy of justice.

Within our community, abuse and sometimes -- and in some situations death of African-American citizens have been the result of one of the components or a combination of them, including racial profiling. The ACLU released a report on Thursday, April the 22nd, 1999, and the findings are reflective of these observations. Let's be mindful that studies at the national level have suggested that the problem may be even greater at the local level.

We the community have heard in the press over the past week or so, and months, about a political term under the watch of-- We are asking this body to please seek the truth and not allow politics to interfere with sound and conscious judgment.

For decades there have been cases of questionable encounters with law enforcement agencies within the black and minority communities. Senators, I have led many protests and marches for families who came to me for help crying for some measure of justice.

In 1991, Senators, a young, black, teenaged girl, pregnant, Tasha Mays, and others were shot by Newark and Hillside police. Seventy rounds were fired at the alleged stolen car the children were driving. Black and white police officers were involved. No gun shots were reported to be fired from the vehicle. No indictments or suspension of the officers.

Again, in 1991, Senators, a young, black male, Shawn Cox, was shot in New Brunswick by a white police officer who stated his gun

accidentally discharged. Shawn Cox was shot in the back and died. No indictment or suspension of the officer.

In 1993, Howard Sleezer was shot in Newark by police officers who used a nonpolice-issued gun and failed to report that they had shot the suspect. At first the police denied that they had anything to do with the shooting, until we protested and marched for justice. Finally, a black and white officer were indicted.

Then there's the case of three young Trenton boys, ages 10 to 16, who were chased by police. Two of these children ended up deceased in the river. No indictment, no suspension.

In 1993, a black police officer, Earl Hill, was videotaped beating a black man while his white partner stood off on the side watching as James Downing was being beaten. The officer was found not guilty.

One year ago today, this month, April the 12th, 1998, Senators, behind this very building, three blocks from where we are sitting today, a young, black, teenage girl, Jenny Hightower, was killed by police. Both white and black officers were present. No indictment, no suspensions.

Senators, the list goes on for decades of questionable encounters with law enforcement in the black and minority communities. Understand, however, this is not a black and a white issue. Nor is it a partisan issue. It is an issue that involves how law enforcement views the African-American community. Believe it or not, it even involved black officers as well.

The issue within the African-American community in New Jersey goes to the heart and soul of what Dr. Martin Luther King died for. Let me cite a bit of history as we come to the close of this century. It was Dr. King

and civil rights leaders who took a proactive stand of nonviolence towards injustice. It was Dr. King who brought the injustices to the attention of President John F. Kennedy. Both President Kennedy, as well as President Lyndon B. Johnson, recognized the wrongs and did something to address them with civil rights laws and legislation. Dr. King knew the importance of working within the system, and he accomplished his goals.

This falls under the watch of all of us who failed to do the right thing in correcting injustice, wherever it shows its ugly face.

Senators, the tensions are high. There is nothing wrong with identifying the problem. The wrong comes when once the problem is identified and we don't do anything to correct it. We not only support the Governor, the Attorney General, and the Senate President in addressing the problem, but I have faith that this Committee will have the recommendations of the same.

We all recognize it as a national and local problem that needs our immediate attention. Dr. King knew that America had the responsibility to address the problem and change it. We in New Jersey now have the responsibility to change the problem that is so deeply rooted in our community and become an example for this great country of ours.

While this report does not represent closure, it does provide the framework for healing and cooperation. Finger-pointing must now come to a stop. This report represents a nonpartisan presentation. For those of us who have been on the front lines for many years, fighting against profiling, police brutality, and other issues relating to minorities and law enforcement, there is a sigh of relief. From the grass-root level, the feeling is we have been heard.

This is, by far, the most far-reaching report that we have seen come out of the institution of any governmental system. It advocates systemic change and provides opportunity for future investigation. We unite in the acceptance of our responsibility to participate in the continuation of this investigation. We not only support the Governor, the Attorney General, and the Senate President in a solution-based approach, but we, SUPER, strongly encourage you and of our brothers and sisters throughout our community to join us in our support.

As Dr. King once said, we have some difficult days ahead. We must show strong and courageous leadership to successfully tackle these issues. Senators, this deep-rooted problem cannot only be changed through just passing laws. We must search deep in ideas and systems to change people's lack of understanding, thoughts of other cultures and beliefs. In other words, in order to change the condition of a people, we must first change the condition of their parts towards mankind.

And in my conclusion, yes, Senators, the pressure is on. And that pressure is on all of us to address this problem. Yes, Senators, the community is calling for the investigation into the depth of this problem, immediate implementation of the 18 steps to eradicate the practice, review local police, county jails, and prisons, and its practices against minorities, the eradication of DWB, driving while black, and the assurance that New Jersey will not tolerate nor condone this kind of behavior.

Senators, we must bring closure to the Turnpike investigation. Again Dr. King said we have some difficult days ahead. These are the actions,

in my opinion, that will show the African-American community true apology and redress. It is my belief and confidence that you will all do the right thing.

Senators, it would be a tragedy of justice -- an opportunity to allow these issues that have been around for decades to hinder or interfere with the Attorney General's nomination to the New Jersey Supreme Court. It will, in fact, say to young people who desire to one day become justices like Thurgood Marshall or Benjamin Cardozo that you can't reach that high because of our previous generation's failure to eradicate decades old practices, so now you must suffer.

If the Attorney General had failed to report these findings, my position would be different. The proposed solutions and corrective actions outlined in this report do not solve or end the problem. It's only the beginning -- only the beginning. Allow this to be a wake-up call to all of us.

And now, it is time to work on the problem together. It is our responsibility as community voices to begin the healing process. We must be proactive and willing to work within the process to accomplish these goals. A reactive response will only circumvent the process and limit the potential benefits that have only just begun.

Let us all, Senators, approach the new millennium in that spirit. Let New Jersey lead the nation in correcting this problem, and the Founding Fathers of this great State and nation will be able to look back on all of us and say, "Well done."

I thank you, Mr. Chairman, and all the members of this noble Committee, for this opportunity.

SENATOR GORMLEY: Thank you.

The next witness will be Dora Thomas of Trenton. (no response)

The next witness will be Richard Rivera of West New York.

Oh, I'm sorry.

SHIRLEY GRAHAM: Mr. Chairman, Senators, and members of the Committee, I sincerely thank you for this opportunity to address this assembly. As introduced, I'm Shirley Graham, and I bring you greetings from Holy Temple Church in South Toms River, where my husband is pastor, and there I assist him.

The Bible admonishes us that it is good and acceptable to pray to those who are in authority over us if we are to reap the benefits of good government so that we may lead a quiet and peaceable life. Let me affirm that based on my belief system, I know that the law is good if one uses it lawfully. However, when incidents or situations evolve to such proportions that it inhibits one or more persons, including a state or a nation, to successfully neutralize or solve a situation, we have a problem. Regrettably, the issue of race profiling, racism, race relations is no new controversy.

Having endured a childhood myself through the early 1950s, I am no stranger to this monstrosity. During my lifetime, I have known, seen, and have had firsthand experience of the effects of racial turmoil. Hence, I can aptly speak knowledgeably to this Committee on this matter, not just from the office of an evangelist or minister of the gospel, but also and, even as importantly, from the heart of a mother and as the voice of a grandmother and on behalf of all my sisters, all of us who are aunts, godmothers, friends, daughters, and all women of color.

As a woman, we understand that essentially -- that essential to personal growth and relational development comes the responsibility of a mother to nurture and care for her children. A woman, whether she has children or not, is representative of a mother. The mother, hence, toils to fulfill her role by working diligently with her offspring, teaching them their intrinsic worth and instilling values, directions, and guidance, while sowing wisdom and truth into their lives and providing a right attitude and foundation.

Senators, when we as mothers send our children out and into the world only to have them find out that they will be met with suspicion, polarizing antagonism, and hostility simply because of their physical difference, external appearance, or racial membership, it is to a mother, to say the least, painful and grievous. It would take me too long and be too painful for me to speak of all the suffering we have endured as a race of people for suffering assumes a multiplicity of forms. However, I am not here to debate the matter, but rather to facilitate the disappearance and complete eradication of such detestable, humiliating, immoral, and inhuman and undesirable atrocities.

What has been happening on the New Jersey Turnpike is wrong, and we must not sit by idly and do nothing about it. Governor Whitman's report -- Governor Whitman--

I'm nervous. Don't worry about it, I'm nervous, okay. I got to chase this butterfly. (laughter)

Governor Whitman's report confirms the existence of disparate treatment of minority motorists by State Police. This report sheds a beaming light on a dark pervasive issue that not only permeates at the State level, but

at the local community level as well. Senators, we would be remiss if we do not address the broader scope of what racial profiling is. There must be a broader understanding of racial profiling for this is no new animal, but rather an age-old method tied into the stigma of stereotypes, which trigger the targeting of minority subjects, subjecting them to injustice and even crimes of hate.

I do not find it at all inconceivable that a preponderance of the evidence reveals and concludes that the problem of racial profiling is real and that minority motorists have been treated differently by State Police. But yet, it is still alarming and frightening.

The first phone number a mother will teach their children in their home is their home phone number. The second number is 911. We must ensure that our law enforcement agency does not compromise the belief and trust that we instill in our children that these men and women in uniform are sworn to protect, uphold, and enforce our nation and local governmental laws and are there to aid and assist our children and not to cause them any harm.

Again, Senators, I am here because we must turn our energies to aid in the solution to stop these attacks and inequalities. This is a crucial time within our state. We encourage our people to obey the law in this society, yet it raises suspicion in the eyes of the Afro-American community if one is arrested healthy and then later dies.

Enabled by God, who has counted me faithful to promote a healing process, I and the members of SUPER are here to help. We want to assist our law enforcement agencies in overcoming stereotypes and other factors which have impressed them to carry out such elicited deeds and actions. We want to ignite their understanding -- we want to ignite in their

understanding and diversity and take an active role in their recovery towards renewed relationships as we step into the next millennium.

Regardless of ethnicity, our children should not be haunted species. The New Jersey Turnpike and our local community should take -- should be a place of neutrality and a haven of peace. There must be an unending quest to break the cycle of pain and hate allowing room for healing. I state, for the record, let the healing begin.

In the Book of Jeremiah, in the Eighth Chapter and the twenty-second verse, there is a biblical question posed by Jeremiah the Prophet. He asks, "Is there no balm in Gilead? Is there no physician there?" Gilead was a place in Palestine, east of Jordan, in a mountainous area, a land whose people were greatly troubled socially and greatly troubled spiritually.

The prophet Jeremiah, in essence, was saying, there seems to be nothing that was tried that was addressing the healing of the people. The word balm is definitive -- defined as any salve, lotion, or oil that soothes and heals. Balm can be psychological therapy as well as nurturing collective consciousness.

If a cure is to be procured, then a good place to begin is with the 18 steps recommended by the Governor and the Attorney General's report, coupled with community action. The success of this campaign must be composed by the energies of all people of this state and the many professional and clergy who portray an interest.

Like Gilead, Senators, in the State of New Jersey is in need of a balm. The balm will part the veil of misconception and plain old error. The balm will correct injustice. The balm will teach us how to coexist together. The balm will enlighten us and cause us to be sensitive to each other's cultures.

The balm, ultimately, should eradicate racial profiling, police brutality, and harassment at both the State and local levels. The balm will uplift us and cause us to evolve into a better nation. The balm, Senators, is you and I.

Senators, the olive branch, which is an embodiment of peace, is extended this day, and the invitation is open. Let us heal our land.

Thank you for your attention and this space of time.

SENATOR GORMLEY: Richard Rivera.

RICHARD RIVERA: Good afternoon. Thank you, Senators, for your indulgence and your patience. I've learned quite a bit this morning. You've been very attentive, and you've asked some very, very difficult questions but haven't heard too many answers. I hope that I can help you. If not, I'm sure Mr. Buckman, an attorney who worked on the *Soto* case, can help you at my conclusion.

I hope that the members of this Committee prepare to meet the challenges of addressing the pressing issues of policemen's conduct in New Jersey. I'd like--

SENATOR MARTIN: Mr. Rivera, I might have missed something. Could you just explain a little bit who you are.

MR. RIVERA: Yes, I'm opening right now.

SENATOR MARTIN: Oh, thank you.

MR. RIVERA: My name is Richard Rivera, and I'm a former West New York police officer, and due to my involvement over the past five years in several corruption investigations, I've become somewhat of an expert in the area of police misconduct. I'm currently working with the New York Civil

Liberties Union in their campaign against police abuses and also assisting the New Jersey ACLU with their study on police misconduct.

Today, I wish to share with you an incident that took place in 1996 when I was applying to become a member of the New Jersey State Police. Afterwards, I would like to recommend solutions to some of the problems of what occurred and that we all face together in dealing with racial profiling and police misconduct.

Back in 1996, I was selected to participate in the physical fitness aspect of the New Jersey State Police selection process. I drove to Sea Girt on a hot, humid afternoon to take that test. At the beginning of the day, candidates had to register a sign-in sheet, and they were given instructions for the day's activities. Listed next to our names were the letters *W*, *B*, *H*, and *A*. Obviously, these designations referred to the racial and ethnic makeup of the recruits present that day.

Less obvious was the fact that a member of the State Police who was sitting in as a proctor of a class seemed to be picking on some of the minority candidates, possibly in an attempt to discourage us from becoming State Troopers. The last portion of the physical exam that I took following the sign in was a 1.5-mile run. By that time the temperature was over 90 degrees and the humidity was unbearable.

There were no prizes for top runners, but after completing the run, we were handed a stick with our times printed on the stick. I was the top finisher in a field of about 40 or 50 persons; although, some did not finish the test, and others didn't even participate due to the intense heat. As I waited for others to finish, I watched a minivan pull towards the finish line from a

roadway that was nearby. In that minivan there were three or four troopers that were dressed in P.T. gear, T-shirts and shorts. One of them had helped a candidate get out of the side of the van. And while I was sitting at the finish line, waiting for the others, I thought that this gentleman may have been a casualty of the grueling heat and couldn't finish the run. But then he casually trotted over to the finish line and picked up a time stick, the same time stick that I had earned, but he did not.

Following this incident, I became discouraged, and I discontinued my pursuit to become a State Trooper. When addressing this and other issues regarding New Jersey State Police, keep in mind that the majority of its members, similar to other law enforcement personnel across the United States, including my two younger brothers, are hardworking, law-abiding individuals. To condemn all police for the misconduct of 1 percent to 5 percent of bad officers is nothing short of stereotyping and profiling in itself, and to engage in the same conduct that we're accusing officers of would be hypocritical.

The problem here lies in the blue wall of silence and the police administrator's resistance to positive change and for them to be held personally accountable.

After reviewing the Attorney General's Interim Report on Racial Profiling and after personally listening to two days of victims' accounts at the legislative Black and Latino Caucus's hearing and after five years of investigating policemen's conduct, there are obvious conclusions that can be drawn.

Many of my observations are highlighted in a statewide Crisis in Policing Report, which you all have in front of you, that I was privileged to assist the hardworking individuals at the New Jersey ACLU.

In closing, I can attest to being at actual car stops with State Troopers on the New Jersey Turnpike and the Garden State Parkway, and if you also have any questions, I was taught profiling by the DEA.

If you'd like, I have some suggestions that you can address as a body and, also, the Attorney General can address related to the State Police. Quickly, they are, what Senator Bryant had alluded to this morning, legislation regarding Title 53 in the New Jersey Statutes, which seems to give too much discretion and leeway to the superintendent and the higher-ups when re-enlisting troopers.

From what I find, as a whistle-blower, it's very difficult to come forward and bring accusations up against supervisors that are higher up people in a police department. And what this does is actually hinder the process because individuals are afraid to come forward.

Also, accountability of all members, including midlevel and top management within the State Police because oftentimes, scandals like this, scapegoats are sacrificed while the real culprits advance within the agency. One of you had mentioned earlier, a particular gentleman who seemed to be promoted in the wake of civil litigation that he was personally named in.

Also, after reading the Attorney General's Interim Report, I notice the same ambiguity that you had mentioned earlier. And I also noticed the fact that there is a lack of accountability as far as management is concerned. If you look at the report, it particularly targets the trooper at the trooper level,

the bottom line, rank and file, the guys who are out there trying to do the job. Everything is usually clear cut to this individual because he has standard operating procedures that he has to work under, and everything he gets comes in orders and through supervision. Apparently there is a lack of supervision here, and if you read the report closely, there are several instances where it is mentioned, and it seems like a cop out for management and supervisors in the report.

Also, I'd like to see, as far as the State Police are concerned -- I'd like to see clear markings on the patrol vehicles. They're marked vehicles. It should have some nice big, bright numbers on all of those, so when you are pulled over and look in your rearview mirror, you know some identity of this person that's pulling you over, and you can refer to it if you have any suggestions or complaints following the incident.

In the same context, I'd like to see badges be worn by the State Police. It's one of the few agencies that don't wear badges. They have the shield on their hats, and if the officer gets out of the car and he's not wearing that hat, then it's pretty difficult to identify this individual except for a very, very small nameplate that's on his breast.

These are some of the issues that you can address when you're investigating this. And if you'd like anything else from me, as far as I can help you with, please feel free to reach out for me.

The one area -- as far as training is concerned, in the academy and in-service training, the area of ethnic diversity and sensitivity training needs to be addressed. As far as I recall, from me and my two brothers, we received

probably five hours of ethnic training in the academy, and that's to last you throughout your 25-year career, if you can imagine.

SENATOR GIRGENTI: How many?

MR. RIVERA: Five hours. So that definitely needs to be addressed, and it should be incorporated in, in-service training. Currently, I don't know what the State Police have as far as in-service training, but municipalities have to go through semiannual training, which oftentimes is reflective through firearms qualification and vehicle pursuits and domestic violence.

Now, I can assure you that I'm almost positive, without even any hard data in front of me, that officers are involved more so in misconduct than they are in actual vehicle pursuits. And that could just be surveyed through your local newspapers, which we did for that State Police report.

So, in closing, I hope that you not only address the State Police issues, but I hope that this sends a ripple effect throughout law enforcement in New Jersey because I can see us all sitting here a few years from now going over the same stuff, and instead of targeting and asking for a reform of the State Police, we're looking for it statewide.

I'm going to also submit, along with our report -- I only have one copy -- is a 37-city compilation of police misconduct. It was addressed by the FBI, and I wanted you to pay particular attention to a table that's in the back that lists different statistics of major cities across the United States -- Newark, one of them. And Newark has the distinction of being the highest in the United States as far as officers involved in thefts, second highest in officers personally involved in domestic violence, and the highest number of arrests, in

1997, of 30 officers being arrested. So please address police misconduct statewide.

If there are any questions?

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: You indicated you took the physical training part of the test -- the physical test for the State Police.

MR. RIVERA: Yes.

SENATOR ZANE: What was the date you took that?

MR. RIVERA: It was a hot day in the summer of '96.

SENATOR ZANE: Did it have a number of the month? When was it?

MR. RIVERA: I have, probably, some paperwork here with me that I'd refer to.

SENATOR ZANE: You indicated that you ran the mile and a half, and you finished first. Is that correct?

MR. RIVERA: I was the top five.

SENATOR ZANE: Top five. And you're saying that someone else was brought up, close to the finish line, and let out of a van, finished the last leg of the race, and apparently the time stick that you had, they took from you and gave to him?

MR. RIVERA: No. Actually, he probably finished in the top 10, and he got a free lift to the finish line in a van.

SENATOR ZANE: Did you take a written test for the State Police?

MR. RIVERA: I took the entrance written exam, and the physical followed. So there was another stage, and I was moving on to other stages when I decided to drop out from the selection process.

SENATOR ZANE: So you were there for one day, is that correct, with the State Police?

MR. RIVERA: One day for written, and that was held, I believe, in the William Paterson College, up in Paterson.

SENATOR ZANE: And one day of physical.

MR. RIVERA: Yes.

SENATOR ZANE: That's your total experience with the State Police?

MR. RIVERA: As far as selection process, but I've had -- also I mentioned that I've been on stops with State Police officers. I've been stopped by a State Police officer.

SENATOR ZANE: What you're saying is-- One last question. You were -- you took the test sometime during the summer months of what year, 1996?

MR. RIVERA: Yes, sir.

SENATOR ZANE: And this test was administered where?

MR. RIVERA: Sea Girt. The physical test was Sea Girt.

SENATOR ZANE: How many people participated on that day?

MR. RIVERA: I'd say there was more than 50 -- close to 50.

SENATOR ZANE: And one of those 50 was given a free ride?

MR. RIVERA: That's correct.

SENATOR ZANE: You're saying--

MR. RIVERA: As far as my observations were concerned at that time -- I wasn't really paying attention. I was more engaged in the physical activity, but this stood out because I was already at the finish line for that agility test.

SENATOR ZANE: Let me ask you just one last question. I've just got to get a picture of that. Somebody pulls up in a van, troopers help him out, and he runs the last -- how far?

MR. RIVERA: Ten yards.

SENATOR ZANE: He runs--

MR. RIVERA: In the opposite direction of where we were running.

SENATOR ZANE: Mr. Zoubek, you're here. 1996, Sea Girt, you ought to be able to find out who that is, if, in fact, this happened. I'd love to know.

FIRST ASSISTANT ATTORNEY GENERAL ZOUBEK: We will follow up.

SENATOR ZANE: Thank you.

MR. RIVERA: And between that and the other fact was also that I had mentioned that the proctor was picking on individuals. He was going around the room selectively trying to discourage people.

SENATOR GORMLEY: This will be the last -- these will be the last two questions.

You were not a member of a class. You were trying to be qualified to get into a class. Is that correct?

MR. RIVERA: Yes. I believe it was the 117th, if I'm not mistaken.

SENATOR GORMLEY: Okay. But you weren't in that class. You were trying to qualify for the class. Okay.

Was this cross-country, or were you running on a track?

MR. RIVERA: It's a paved road that leads from one of the warehouse-type buildings toward the beach, and then we turn around at the end and come back.

SENATOR GORMLEY: But you were not in heavy duty combat boots, for example. You were wearing track shoes?

MR. RIVERA: Yes.

SENATOR GORMLEY: Okay, thank you.

The next -- the final witness will be William Buckman.

WILLIAM BUCKMAN, ESQ.: Good afternoon. My name is William Buckman. I was one of the attorneys in the *State vs. Soto* case. In addition to perhaps answering any questions about *Soto* that the Committee may have, as I've been informed that there were a number today, I've also reviewed the Interim Report, published by the Attorney General, on the issue of racial profiling in New Jersey.

I would start by saying that I think the overriding problem of dealing with the problem of profiling in this state would be to determine who polices those who are supposedly policing the police. I have read this report, and although it is a -- it is an interesting baby step forward in terms of dealing with the problem, I am struck by how the problem assigns responsibility to the trooper, when it is clear from *Soto* -- from the evidence adduced in *Soto*, that

the State Police work completely without the guidance of the Attorney General's Office and that the State Police were encouraged by the Attorney General's Office in most, if not much, of their profiling activities.

We have -- this report refers to, in a number of instances, the Attorney General's Narcotics Enforcement Action Plans for 1987 and 1993. Those action plans, prepared by the Attorney General's Office in those years and then -- which became the center point of New Jersey State Police drug interdiction activity, specifically spoke of profiling.

The action plan directed the New Jersey State Police to develop profiles. And then, after directing the New Jersey State Police to develop profiles, the New Jersey Attorney General's Office actively trained the New Jersey State Police in the nuances of search and seizure law in such a way as to avoid auditing the New Jersey State Police in how they were dealing with that search and seizure law, how they were dealing with the spirit of search and seizure law, and whether or not they were actually complying with it.

SENATOR MARTIN: Can I ask, for a point of information?

MR. BUCKMAN: Yes, sir.

SENATOR MARTIN: What you just said is -- are you suggesting that that last part was so that they could, if they had identified somebody on the basis of race or ethnicity, then this process would provide some protection? I didn't get what that last part was, and I assume that it's important.

MR. BUCKMAN: I assume that you're referring to the last part, my statement that the New Jersey Attorney General's Office provided training to the State Police in search and seizure law. The New Jersey Attorney

General's Office trained the New Jersey State Police in search and seizure law. They participated in, in-service training at Sea Girt.

A New Jersey Attorney General's representative testified at *State vs. Soto*. That representative, on cross-examination, stated that although he trained the New Jersey State Police in search and seizure law, he never stayed around to see how it was being used. He never audited the State Police to see whether or not the spirit of it was being maintained. In his words, he went to these seminars, he did his shtick, and he left.

So when we talk about the problem that we have with profiling today, we're talking about having had the Attorney General's Office, in many respects, sadly deal with this problem for years and years, having heard the complaints, having provided much of the training and maintaining a studied refusal to look into the problem and to look into how the training and the resources of the State of New Jersey were being used out on the roadways.

For instance, I am troubled to hear Mr. Zoubek refer to Federal training programs. The New Jersey State Police actively prepared their own training program on drug interdiction and, in particular, on aspects of drug interdiction, which clearly were found in *State vs. Soto* to be part and partial of the scheme of profiling. The report that I have in front of me, the Interim Report, lends credence to the fact that profiling is a nationwide problem. Fair enough. What this report omits is that the New Jersey State Police were sent around the country in the late '80s and the early '90s to teach drug interdiction training techniques.

During the course of *Soto*, we obtained a training film that was supposedly geared to the southwest United States, a training film entitled

Operation Pipeline, a training film which Judge Francis ultimately found was racially oriented, a training film, which in its opening credits, credits the New Jersey State Police with the “techniques” employed there.

Later on in the litigation we found the Jamaican posse training film, which stressed blackness of suspects. There are other written documents.

In sum, the New Jersey State Police themselves constructed much of the training. And, if anything, they trained directly in Federal programs.

I would agree that mixed signals were sent to State Policemen for many years about the propriety of profiling. Unfortunately, the report does not highlight the fact that many of these mixed signals emanated from the Attorney General’s Office.

A case in point. I heard here today addressed the issue of rewards and promotions. One of the things that came out in *State vs. Soto* was that officers were rewarded -- that upon making a drug arrest, no matter how minor, he or she received a letter of commendation. And it was a letter of commendation based only on the arrest, not the quality of the arrest, not the legality of the arrest. This report refers to that. What the report leaves out is that these letters of commendation were often signed jointly by the Superintendent and the Attorney General.

To his credit, Superintendent Dentino, when he took office, recognized the counterproductive, shall we say, nature of this program. He ended it. It appears to have resurfaced again under Colonel Williams. So when we talk about the incentives, we talk about an issue that profiling thrives mechanically in an atmosphere when officers were sent out--

SENATOR GORMLEY: Excuse me. What came back under Williams?

MR. BUCKMAN: The issue of -- the issue of sending out letters of commendation upon arrests.

SENATOR GORMLEY: Okay, thank you.

MR. BUCKMAN: Officers, accordingly, were out on the Turnpike and other major arteries in an atmosphere of extreme competition to obtain recognition, to obtain promotions, to obtain other rewards, like the coveted Officer of the Year Award, without any objective guidelines. Promotions, rewards, such as Officer of the Year, came about subjectively by pleasing those in authority.

And to think that in this day and age we have what has been touted as a major, one of the most important law enforcement agencies in this country that has rewarded and promoted people not on merit, but on subjective criteria which were often secret. And yet that is a fact.

When we talk about *Soto* and what was not presented-- As an overview, I would indicate to you that the State, having withdrawn its appeal, and I would suggest for good cause because *Soto* would have prevailed on appeal-- It is one of the best records nationwide of any such trial. It was a record developed over six months and, prior to that, five years of discovery proceedings. But what we can't forget is that in his opinion, which now remains as the law, Judge Francis says and Judge Francis found that profiling survives and thrives with the encouragement of the hierarchy, not the trooper. It was allowed to survive and thrive by being condoned, tolerated, and nurtured

by the hierarchy, a hierarchy, of course, which is directly responsible to the Attorney General's Office.

I would point to a number of items in my brief presence here today that I've heard which I might take some issue. I do not think coming up with the appropriate benchmarks are difficult tasks, particularly if I had the resources of the State. In *Soto*, we came up with the appropriate benchmarks. We presented them to the Superior Court of New Jersey, and he accepted -- that Judge accepted them as reliable. The benchmarks are there.

I think that this report confuses two particular benchmarks: number one, what is the population of minorities on the Turnpike at any given time; and, number two, what is the population of minorities -- or persons who are eligible to be stopped. We met both of those hurdles.

Benchmarks can be developed quickly. I am at a loss to explain why we would be told that benchmarks are not that easy to develop. The benchmarks are perfectly accessible in *Soto*, and literally world renown -- at least one world-renown statistician said that the benchmarks that we presented were overwhelming -- excuse me, extremely reliable.

In particular, the violator survey that we did is the most telling. It came as no surprise, but we had to prove it in court, that almost everyone on the New Jersey Turnpike was violating the law. Ninety-eight percent of persons were at least speeding if not committing other infractions.

Unsurprisingly, black people were in that violation group in a percentage not much larger than their -- not any different, statistically, than their percentages in the population at large. Nevertheless, on the Turnpike,

black people were being stopped -- on the Turnpike, black people were being stopped five times more often than their population would suggest.

A stop on the New Jersey Turnpike, as we've heard, is a very rare event; 523,000 cars a day travel on it. Why then were black people stopped so much more often than whites?

The issues involved in *Soto* are a matter of record. Our brief, at least the factual portion, is 80 pages long. This Committee could avail itself of it, and I would commend you to. In particular, many of the documents that we presented in evidence were documents that the State Police first denied the existence of. For instance, incredibly, when we asked for copies of the Attorney General's action plan, with its references to profiles, we were told that they no longer existed, and we couldn't get them. When we independently proved their existence, we received it.

When we asked for training materials and the Court asked -- ordered the training materials be provided, like the *Operation Pipeline* video, we were told that they no longer existed. When, through a colleague in the southwestern United States, I came up with a separate copy of it, then it was admitted that it existed.

There was a unit of the New Jersey State Police entitled the Drug Interdiction Training Unit, which trained many of the profiling techniques. When we asked for their records, many of them had supposedly disappeared.

Throughout the course of *Soto*, a number of documents that are key to understanding profiling were not presented or were not offered in response to court orders, were only presented once we proved their existence independently. One can only imagine how we can deal with this problem fairly

and efficiently if we were to get prompt and spirited compliance with the needed documentation.

Such statements that we've heard such as criminal program and criminal -- or traffic program were phrases that we heard in the *Soto* case. Troopers were told to keep up, on the Turnpike, their criminal program. And once again, these things were not defined to them. Troopers were sent out to make as many arrests as possible, make as many searches as possible. And over and over again, everywhere we turned in *Soto*, the evidence was palpable that troopers were encouraged as much as possible, through these skewed training programs, to make as many stops and searches, which unfortunately fell on the backs of the minorities.

What strikes me most -- or what also strikes me about this Verniero report is that when there was finally at least some commitment to delve into the problem, much of the statistics that were ordered to be provided to us in *Soto* were immediately available and were able to be generated -- arrest data, more importantly stop data, consent to search data. In particular in *Soto*, we uncovered the fact that every trooper must fill out a consent to search data form, which is a computer form, upon every consent to search, but in *Soto*, when we asked for that material, we were told it doesn't exist and we can't tabulate it.

I could go on, perhaps, for six months, because that's how long it tried. I won't. I'm prepared to answer any questions. I'm certainly prepared to commend to you our factual -- our brief, the facts of which now on the light. The State's withdrawal of its appeal are the proven facts and, in many ways, an appropriate benchmark for your factual determination in these proceedings.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Thank you.

Testimony is-- Let's, since the appeal has been dropped, I understand -- we'll accept the facts as is in the case. Is there any indication that you would know of that would suggest that since the time of the *Soto* case, which -- at least since the decision was rendered, which I believe was March of 1996, that there's been some aggressive improvement, especially since last spring, because that's-- There's been a suggestion that there's been an ongoing improvement, up to this date, where there's going to be these new procedures put in place. But are you -- you seem to imply that there hasn't been. Do you have any knowledge that would suggest that things have not really changed, at least up to this time?

MR. BUCKMAN: Well, sir, I couldn't say that things have changed up until this time. Certainly the Interim Report is a good first step, but a lot more needs to be done, and certainly a lot more needs to be done in terms of setting the responsibility for change where it appropriately lies, and that is, those who supervise the State Police.

But clearly, when we hear about the tragic incident on the Turnpike last year, where three persons were shot -- I hate to sound callous, but having sat in *Soto* and seen the evidence -- that was palpably predictable. Ultimately these things were going to spin out of control, and ultimately they did.

When we see, after great resistance, that the New Jersey State Police at least released their arrest statistics in the early part of this year, and we heard about a 75 arrest rate, that has remained constant for over a decade.

When we hear the comments of the Attorney General's Office only up until a month ago saying there is no profiling, we don't condone profiling, there are no problems, then we are hearing a leader report to his troops, "Stay the course, there's no problem. We're not investigating." It has only been within the last month or two that we've heard any kind of conciliatory statements about dealing with this.

SENATOR MARTIN: I've got a couple of issues that we're struggling with -- at least I am, as far as how to make things better. I'm bothered by consent searches. I've read the Interim Report, which makes some recommendations. My sense is that a consent search is less than voluntary, even though it's -- even if a trooper fills out a process form that can be tabulated, and so forth-- I mean, I'm struggling to figure out why anyone would want to give up their privacy and agree to a consent search, unless there's some feeling that by not doing so -- let's assume whether guilty or innocent, but still, there's nothing good to be gained, that I can see, from a consent search.

Are you bothered by consent searches which can be achieved by less than probable cause even if they met the heightened degree, which we have has been suggested that New Jersey reaches in light of the U.S. Supreme Court's lesser burden of proof?

MR. BUCKMAN: Sure, I'm bothered by it, and I'm bothered by it particularly in the culture we're dealing with on the New Jersey Turnpike. One, a citizen could be on the side of the road of a very frightening highway, with cars traveling by at 70 miles an hour, particularly at night. I could go into my own personal knowledge and anecdotes of these problems, but I'll cite to

you some of the recent evidence only that you heard by the -- that was brought out by the Black and Latino Caucus. There are many reasons why people sign consent to search warrants, and one of the overwhelming ones often is fear.

To be told, you know, essentially, you're in the face of authority, and you might be a family person with spouse and children in that car, and we can do it the easy way or the hard way, it's palpable why people, other than through pure consent and voluntarily, would-- It's hard to believe that any one of us that are middle-class professionals, if we were packed in our station wagon, ready to go on a vacation, if we were pulled along the side of the road, even though it's presented as a sort of voluntary thing, wouldn't feel uncomfortable and pressured.

Magnify that at night. Magnify that by being alone. It is a real problem, and the recent testimony highlighted it. Other than that, additionally, I would stress the testimony of Dr. Elmo Randolph, the dentist who testified recently, who also testified for us in *Soto*. A dentist -- an African-American dentist who was stopped over a hundred times, often asked for consent, and ultimately realized that if he didn't consent, he was going to sit by the side of that road for a half an hour, maybe longer, until the officer returned his documents to him.

The Ohio Supreme Court tried to deal with the issue in *State vs. Robbinet*. Unfortunately, they didn't deal with it under their constitution. The Ohio Supreme Court in *Robbinet* said, for a "consent search" to be -- to pass muster, the officer should be required to give back the credentials and say, "Listen, you're absolutely free to go. I'm going to stand away. If you want to go, go ahead," before you even ask for consent. Certainly New Jersey can do

that legislatively and can do it through -- hopefully through our own case law and Constitution.

But it is a real problem, the consent to search issue.

SENATOR MARTIN: The other area that I was concerned about, which is also very, technically, legal -- there was some concern about the shift of the burden of proof. It strikes me, and I don't understand *Soto*, obviously, like you do, but it seems like it's analogous to using Title 7, in which it's difficult to establish intent or bias, so what you use is some statistical analysis that would show effect. So if you could show that there's a significant disparate impact on an identifiable group, such as a minority, then the burden shifts. So that's not some novel way of dealing with something.

Are you satisfied, since the case stands, and there was precedent -- I gather that the judge has more or less gone with on that -- did that shifting of the burden -- is appropriate in cases where you have a -- what otherwise be -- I can't say this -- statistical anomaly?

MR. BUCKMAN: Well, let me back up a little bit. I heard the tail end of that discussion on the shifting burden of proof, and I will absolutely, vociferously disagree with that. There was no shifting of proof in *Soto*.

When we won the decision in *Soto*, we fought. We won it uphill. There was no shifting of the burden. As a matter of fact, the Attorney General, in their reply brief in their case, insisted that there was a shifting of the burden, and there was a very powerful argument on both sides of the case. And quite frankly, I'm troubled that they would say it was a shifting of the burden because, by withdrawing the appeal, they have essentially withdrawn their legal

argument on that point because Judge Francis did not rule there was a shifting of the burden.

What--

SENATOR MARTIN: So you're saying actually, reading the law of the case.

MR. BUCKMAN: Yes. What Judge Francis ruled was that we, like any plaintiff with the burden of proof, had overwhelmingly shown the evidence and overwhelmingly made out a prima facie case, if not much more and that the State's evidence clearly, utterly failed to rebut our case. What Judge Francis said that what the State thought was evidence was simply parading witnesses into the hearing to deny profiling without any substance. And he said that wasn't sufficient to meet the powerful case that we had shown.

There was no shifting of the burden of proof, and I take great exception that the Attorney General's Office is still advancing that very inaccurate argument.

SENATOR MARTIN: There were -- there were 19 individuals who were affected by *Soto*, who, I guess, under motions to suppress their -- I assume their criminal charges will be dropped on those individuals.

MR. BUCKMAN: By the end of *Soto*, there were 17. There's only 17 remaining cases. Unless the State thinks it has any other independent evidence which would not be tainted by those illegal stops, those cases, I expect, will be dismissed. They haven't been formally dismissed yet.

I would stress that a number of those persons had strong factual defenses to their cases above and beyond the suppression issue. Some of these were very strong cases.

SENATOR MARTIN: And since that case was decided in March of 1996, there have been -- well, it's three years later. Do you have any idea how many other cases could conceivably be impacted by the results of this decision as it stands?

MR. BUCKMAN: I have thought about that, and from a conservative standpoint, I don't think it is going to be an opening of the floodgates.

The criminal law is such that, unfortunately, on these issues, warrantless searches, the defendant has the burden -- the initial burden in many ways -- although not technically under the law, the defendant has to come forward with some substantial convincing evidence. *Soto* was a -- by the time it was tried, was a six-year effort. We're not going to mount a lot of those, which is why, now that this issue has come to the forefront, it's in your authority to enter the problem because we could easily slip back.

We're not going to be able to mount many selective prosecution cases with six-month trial or months and months of statistics even if we can get, like we did in *Soto*, many of the experts to provide their work pro bono or at greatly reduced rates. That's not going to be an easy job. There's going to be some effect of the Interim Report because of the concessions that some profiling exists. But there's not enough of -- I don't think there are enough direct concessions in this report to directly, immediately impact a veritable tidal wave of criminal cases.

And for those defendants who have been convicted, it's going to be even tougher still -- to claw your way up to the postconviction relief process is going to be difficult still. Now, defense attorneys and civil rights attorneys are still trying to evaluate that, but I take a very conservative approach. I don't see a floodgate.

SENATOR MARTIN: Although, you're also suggesting that maybe the number is small, but there could be, based upon this case, miscarriages of justice, but because it's difficult on appeal, especially after conviction, ever to be able to right that wrong.

MR. BUCKMAN: Yes. And I would agree with that. And I would suggest that we are sitting -- in an era where, unlike so many other times, when we hear of miscarriages of justice, in light of the Interim Report, in light of *Soto* remaining as the law of that case, we're obviously sitting on some, if not a substantial, portion of this miscarriage of justice.

SENATOR MARTIN: And just a final question. If I understand you correctly, this is going to take more than getting the best person we can as superintendent for the police -- for the State Police. This is really an effort that's got to be generated from the highest level, which is the Attorney General and the Governor?

MR. BUCKMAN: Absolutely. We're going to need, if any institutional reform must be carried out, in addition to infusing new blood -- impartial blood into the State Police, we obviously have to end the culture in the Attorney General's Office of a studied refusal to deal with these problems and not exercising any real supervision over an institution like the New Jersey State Police.

SENATOR GORMLEY: Senator Zane, last question.

SENATOR ZANE: Bill, are there any statistics as to the number of people that may have been asked to submit to a warrantless search and refused and that were not ultimately searched? I think that's what I'm looking for. In other words, was there a phone call then made? Did someone go to a judge in all these cases? Or are there statistics that say they asked for it, the guy said no, the lady said no, whatever, and that was the end of it?

MR. BUCKMAN: I'm not sure I completely understand. The simple answer, there's very few statistics that survive on persons who successfully resisted a "consent search."

SENATOR GORMLEY: In the report, they specifically cited that they didn't keep that record.

MR. BUCKMAN: Yes.

SENATOR GORMLEY: If you--

SENATOR ZANE: But I'm not persuaded by the fact that someone says they didn't keep a record because I think what we're really seeing is a lot of records that aren't kept.

SENATOR GORMLEY: No, I'm agreeing with you. That's the point. They didn't keep records or say they didn't keep records as it pertains to individuals who refused to be searched. There's no -- you have no data.

MR. BUCKMAN: With one exception, Senator, and that is that the New Jersey State Police standard operating procedure, I believe it's, F-3 required troopers to radio in all of their stop activities and all their activities. They were supposed to radio in when they stopped a car, and you've seen it in the report--

SENATOR GORMLEY: Yeah, but also to agree with you again, they had the standard operating procedure, and then when you look for the data, there's no data that goes with the standard operating procedure.

MR. BUCKMAN: That's correct. But quite frankly, in the *Soto* case, even though we were -- didn't have the luxury of computerized data, had we been given even radio logs that had complied with their own standard operating procedures, our task would have been much more expeditious than it was.

If anything comes out of these proceedings, clearly stop data must be maintained, and it's got to be available to the public. So that, like in South Carolina, the public can access that and see what these statistics are.

SENATOR ZANE: Just two last questions. Were any of the defendants, at the time, in jail?

MR. BUCKMAN: No.

SENATOR ZANE: Any of the 17?

MR. BUCKMAN: No.

SENATOR ZANE: Okay. Were any of the cases of those 17, as the result of this decision by Judge Francis -- were any of those cases dismissed?

MR. BUCKMAN: None have been dismissed yet. I'm waiting for the formal dismissal, which I expect will follow.

SENATOR ZANE: Are they still being prosecuted vigorously, if they haven't been dismissed?

MR. BUCKMAN: No. The motion to suppress put on hold the traditional prosecution, but this is a cloud over their lives for the years that this has been pending. I know that my clients have been living in a holding

pattern. Some of them have wanted to speak out about their experiences, and of course, I prudently couldn't let them speak out. They have had to stay in close contact with me. They've had limitations on their liberty that anybody on bail would have.

SENATOR ZANE: So then the motion to suppress is a decision by Judge Francis, which actually did suppress. Isn't that essentially correct?

MR. BUCKMAN: Yes.

SENATOR ZANE: Then the appeal, which continues from 1996 or whatever the time period is after -- 45 days later -- until a week ago. Am I right?

MR. BUCKMAN: Yes.

SENATOR ZANE: And it's during that period of time that nothing happens, another three years where these people are virtually in limbo?

MR. BUCKMAN: Yes.

SENATOR ZANE: Now, what's your posture regarding those clients, and what is the posture of the Prosecutor's Office regarding those clients, if you can tell us? And that's my last question.

MR. BUCKMAN: I don't know. Like I said, I must assume, unless they have independent evidence, and quite frankly, I don't think that they do, that these cases are going to be dismissed, and it's going to finally be over.

SENATOR ZANE: Do you see those cases, and this may have been what Senator Martin asked -- do you see those cases resulting in civil actions against-- No. He's shaking no.

MR. BUCKMAN: No. The statute of limitations of the civil rights cases is pretty stringent. You're talking about a two-year statute of limitations.

So the *Soto* defendants are -- at best, we can say thanks for your time, we'll see you later. You know, maybe other people have civil recourse, but the *Soto* defendants, I'd have to say that from my looking at the problem from a number of different angles, the best they can hope for is to go about their lives.

SENATOR ZANE: Thank you.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Just a couple of questions. Going back to earlier in your testimony, you talked about, if I recall correctly, representatives from the Attorney General's Office which encouraged troopers to profile, who spoke of profiling. Is it your testimony that representatives -- fairly recently, of course, that representatives from the Attorney General's Office encouraged State Troopers to improperly, illegally, and unconstitutionally use racial profiling in the conduct of their duty?

MR. BUCKMAN: Well, your question has a number of parts which I have to address. You ask me recently. No, I don't have any evidence that recently the Attorney General's Office, let's say within the last six months or year or two, have told people, our troopers, to illegally profile.

In terms of--

SENATOR ROBERTSON: How about in the last three years?

MR. BUCKMAN: In the last three years I don't have any evidence that they have. However, the profile didn't work like that. Of course

-- I forget the name of the case which said the days of (indiscernible) Conner are gone. Nobody is going to go out and say go out and discriminate against race.

The evidence -- the overwhelming circumstantial evidence in *Soto* was that the profile was taught through the culture and through the rewards system and through, to many extents, sometimes a wink in a knot and or through what officers were told would not happen. Officers were essentially told that the standard operating procedure requiring radioing in of race would not be enforced. Officers were--

SENATOR ROBERTSON: Were they representatives of the Attorney General's Office?

MR. BUCKMAN: Clearly it was not enforced by the Attorney General's Office.

SENATOR ROBERTSON: That's not my question. I said, "Were they told that by representatives of the Attorney General's Office?"

MR. BUCKMAN: That I don't know.

SENATOR ROBERTSON: Okay, because that was the implication of the statement that you had made, which is very serious charges.

MR. BUCKMAN: I think that the implication of the statement that I made was simply that Attorney General's Office did not supervise and clearly did not audit their training to see if it was being used appropriately.

SENATOR ROBERTSON: Well, with all due respect, through the Chair, this hearing has to do with impermissible racial profiling.

MR. BUCKMAN: Yes, sir.

SENATOR ROBERTSON: So to sit there and say that representatives of the Attorney General's Office encouraged profiling--

MR. BUCKMAN: Yes.

SENATOR ROBERTSON: --that they spoke of profiling leads to the assumption that what you're talking about is impermissible, unconstitutional, and profiling. That despite what appeared to be the clear policy, at least written policy, of the State Police Department that representatives of the Attorney General's Office were in fact encouraging that. I take it that's not your testimony.

MR. BUCKMAN: My testimony is that the culture and the tenor of the training was that profiling was not going to be investigated and that whatever troopers did with the training and their knowledge of search and seizure tenets would not be clearly examined.

SENATOR ROBERTSON: Based upon your observation of what went on within the State Police--

MR. BUCKMAN: Based on also our cross-examination of at least one representative from the Attorney General's Office who admitted that he went there and he trained and that he did nothing to audit to see how that training was being used even after widespread allegations of racial profiling erupted in the early '90s.

SENATOR ROBERTSON: I was going to say, "And I take it that that goes back to the period of the--"

MR. BUCKMAN: Yes, sir.

SENATOR ROBERTSON: You also mentioned that a representative from the Attorney General's Office provided -- maybe I heard it incorrectly -- provided training in how to avoid auditing.

MR. BUCKMAN: No, I think that my testimony was that the representative of the Attorney General's Office said that they never audited or supervised how that training was being used. The Attorney General's Office did direct in the action plan for the State Police to come up with profiles. The testimony in *Soto* was that they really weren't quite sure what profiles were developed. There was an admission by the representative of the Attorney General's Office that they were aware that the State Police were nevertheless developing profiles, and in particular, persons in the Drug Interdiction Training Unit were developing their own profiles. But there was a -- should we say, a study refusal to find out what was emanating from these profiles.

SENATOR ROBERTSON: And I understand the difficult questions that arise from that sort of testimony, but it's important to understand what time frame you're talking about. Again you are talking about 1989 and 1990 because that drug interdiction unit was disbanded by Colonel Dintino.

MR. BUCKMAN: I can't conceive that. The testimony in *Soto* ended in 1995, and as of the date of the last witness on behalf of the State Police and the Attorney General's Office in 1995, they were saying, "We've done nothing wrong. We are still doing the same stuff. We are going to continue doing the same stuff. We see no reason to change." So I think it's a very reasonable inference on my part to at least say that it was going on until 1995.

SENATOR ROBERTSON: And do you see with all that you have observed that gives you cause, with respect to turning a blind eye, and so forth -- do you see this report today as consistent or inconsistent with those past practices?

MR. BUCKMAN: It's probably on the fence.

SENATOR ROBERTSON: Really.

SENATOR GORMLEY: I'm going to conclude with a comment, but the samples that were taken, used in the *Soto* case, were taken in 1993.

MR. BUCKMAN: Yes, sir.

SENATOR GORMLEY: So they were taken in 1993. Two years after Dintino came in, two years after he issued that order the patterns that you used as proof came in from two 1993 surveys.

MR. BUCKMAN: The statistical--

SENATOR GORMLEY: Yes, that was the basis of the case.

MR. BUCKMAN: The statistical--

SENATOR GORMLEY: Yes.

MR. BUCKMAN: They were the statistical bench press.

SENATOR GORMLEY: Yes, they were.

Okay, thank you very much.

MR. BUCKMAN: Thank you.

(HEARING CONCLUDED)

APPENDIX



***INTERIM REPORT
OF THE STATE POLICE REVIEW TEAM
REGARDING ALLEGATIONS
OF RACIAL PROFILING***

**Peter Verniero
Attorney General**

**Paul H. Zoubek
First Assistant Attorney General**

April 20, 1999

New Jersey State Library

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PART I. INTRODUCTION AND OVERVIEW.

After the April 23, 1998 shooting incident on the New Jersey Turnpike, the Attorney General commenced an intensive investigation into the incident, which is currently ongoing. The Attorney General decided to transfer the matter from a county to state grand jury and to appoint a special prosecutor to ensure the most comprehensive review possible.

During the course of the investigation of the April 23, 1998 incident, an additional inquiry into the practices of state troopers assigned to the Moorestown and Cranbury barracks of the New Jersey State Police was initiated. That investigation is examining stops made by troopers assigned to those barracks for the first four months of 1998 and is still pending. However, some of the data collected as part of that investigation are used in this Interim Report.

On February 10, 1999, based upon growing concerns regarding State Police practices, policies, and procedures, the Attorney General initiated an unprecedented and comprehensive review of the State Police to examine issues such as "racial profiling" and shooting protocols. The Attorney General directed that this comprehensive review be completed in approximately four months.

The Review Team, headed by First Assistant Attorney General Paul H. Zoubek, includes representatives of the Divisions of Criminal Justice, Law, Civil Rights, and the Office of the Attorney General. The Attorney General further directed the Review Team to focus on the State Police procedures for processing complaints from members of the public and internal complaints from troopers,

training programs for supervisors, and the current system of internal discipline. The review encompasses an ongoing study of promotional policies and practices and follows up on a recently-completed review of the agency's recruitment practices. The overriding purpose of this comprehensive review is to ensure that all State Police policies, procedures, and practices promote fairness in enforcement of the laws by all State Police members.

The scope of this Interim Report is generally limited to a discussion of the practice commonly referred to as "racial profiling." This Interim Report specifically focuses on the activities of state troopers assigned to patrol the New Jersey Turnpike. This is appropriate in light of the Soto litigation and because the Turnpike is widely believed to be a major drug corridor, thereby providing the State Police with both the impetus and the opportunity to engage in drug interdiction tactics that appear to be inextricably linked to the "racial profiling" controversy. While the issues related to racial profiling and the disparate treatment of minorities are not unrelated to the other issues that are being examined by the Review Team, given the preliminary findings of the Review Team and the pendency of the appeal in State v. Soto, definitive action on the racial profiling issue should not wait for the completion of the more comprehensive review of State Police policies and practices. The purpose of this Interim Report is to spell out preliminarily the nature and scope of the racial profiling problem and — as importantly — to recommend a series of detailed, specific remedial steps to address this problem.

This Interim Report is just that — an initial statement of the problem; it is not meant to be the final word on the subject. Nor are we naive enough to think that the issuance of a report will be sufficient to solve a complex, multi-faceted problem that is not of recent vintage. Although the racial profiling issue has gained state and national attention recently, the underlying conditions that foster disparate treatment of minorities have existed for decades in New Jersey and throughout the nation and will not be changed overnight. Even so, we firmly believe that this Interim Report represents a major step, indeed a watershed event, signaling significant change. We thus expect and intend that this Report, once fully implemented through the issuance of new and comprehensive Standard Operating Procedures, a monitoring system, training, and other reforms will ensure that New Jersey is a national leader in addressing the issue of racial profiling.

We note at the outset that the great majority of state troopers are honest, dedicated professionals who are committed to enforcing the laws fairly and impartially. No information that we have reviewed contradicts this conclusion, and nothing in this Interim Report should be read as suggesting otherwise. It is regrettable and ironic that a national problem linked to stereotypes and inappropriate inferences drawn from group associations has led the State Police and its members to be typecast as racists. Any such broad-brushed attacks upon this organization or its members would be unfair and unhelpful, perpetuating an

atmosphere of mistrust and impeding the frank dialogue that must occur to restore the full confidence of minority citizens in the integrity of this agency.

Our review, which relied upon multiple sources and statistical as well as anecdotal information, has determined that the State Police has not issued or embraced an official policy to engage in racial profiling or any other discriminatory enforcement practices. To the contrary, the State Police has undertaken a number of steps to prohibit “racial profiling” and other forms of discrimination, including issuing Standard Operating Procedures banning such practices; providing in-service training programs and bulletins; requiring troopers to have a reasonable suspicion before requesting permission to search (thereby imposing a prerequisite to consent searches not required by either state or federal caselaw); issuing stern warnings concerning the falsification of records and data concerning the race of detained motorists, and explaining that such allegations would be thoroughly investigated and referred to the Division of Criminal Justice for review and prosecution; and prohibiting the patrol tactic of “spotlighting” the occupants of motor vehicles at night before deciding whether to initiate a stop.

Despite these efforts and official policies to address the issue of racial profiling, based upon the information that we reviewed, minority motorists have been treated differently than non-minority motorists during the course of traffic stops on the New Jersey Turnpike. For the reasons set out fully in this Report, we conclude that the problem of disparate treatment is real — not imagined. This

problem, as we define it, is more complex and subtle than has generally been reported.

To a great extent, conclusions concerning the nature and scope of the problem will depend upon the definitions we use. We choose to define "racial profiling" broadly to encompass any action taken by a state trooper during a traffic stop that is based upon racial or ethnic stereotypes and that has the effect of treating minority motorists differently than non-minority motorists. We have thus elected not to limit our review to a trooper's initial decision to order a vehicle to pull over. Rather, we also consider a host of other actions that may be taken by State Police members throughout the course of a traffic stop, such as ordering the driver or passengers to step out, subjecting the occupants to questions that are not directly related to the motor vehicle violation that gave rise to the stop, summoning a drug-detection canine to the scene, or requesting permission to conduct a consent search of the vehicle and its contents.

Having embraced this broad definition, we are constrained to note that there is no statistical analysis of aggregate data that can be used reliably to prove that any particular stop, frisk, arrest, or search was based in part upon a consideration of racial or ethnic characteristics, and we do not attempt in this Interim Report to adjudicate specific instances of State Police conduct. (We note, however, that certain consent-to-search data provided to us are sufficient cause for concern as to warrant a careful case-by-case review to be undertaken by the Superintendent. See Part V, Action Step. No. 7.) It is simply not possible from a

review of raw data to determine on how many occasions state troopers may have conducted "profile stops," much less to determine how often troopers may have considered a motorist's race, ethnicity, or national origin in conjunction with other factors in exercising police discretion. That is why we have interpreted the data provided to us in the context of other sources of information about State Police practices, and it is in light of this other information that we conclude that decisive steps should be taken to prevent any form of discrimination. While we look to the past to understand the nature and scope of the problem, our recommendations look to the future and are designed to establish a comprehensive, multi-faceted system to ensure that public confidence in the impartial enforcement of the laws by the State Police is restored.

While some of the statistics we reviewed are cause for concern and action, we think it necessary and fair to cite another statistic that may help to put the scope of the problem in proper perspective. Our review shows that searches are rare. In the time periods we examined, far less than 1% of all motor vehicle stops on the New Jersey Turnpike resulted in a search. To the extent that the racial profiling problem may be tied to the goal of interdicting drugs, one would logically expect that a profile-minded trooper would be strongly inclined to conduct searches, since a search is the means by which the trooper would ultimately accomplish his or her drug interdiction objective.

We are thus presented with data that suggest that minority motorists are disproportionately subject to searches (eight out of every ten consent searches

conducted by troopers assigned to the Moorestown and Cranbury stations involved minority motorists). At the same time, the overall number of searches is small when compared to the total number of stops that are made by troopers on the Turnpike.

Our review has revealed two interrelated problems that may be influenced by the goal of interdicting illicit drugs: (1) willful misconduct by a small number of State Police members, and (2) more common instances of possible de facto discrimination by officers who may be influenced by stereotypes and may thus tend to treat minority motorists differently during the course of routine traffic stops, subjecting them more routinely to investigative tactics and techniques that are designed to ferret out illicit drugs and weapons.

The effect of any form of disparate treatment, whether obvious or subtle or intentional or not, is to engender feelings of fear, resentment, hostility, and mistrust by minority citizens. (The negative effects of race-based stereotyping are more fully described in Part IV, § A, infra.) This situation is both unacceptable and preventable, and we spell out in Part V of this Report a series of remedial steps that should be taken to address the problem.

The obvious and necessary remedy to deal with those officers who intentionally violate the civil rights of minority motorists is to ensure swift discipline and criminal prosecutions, taking full advantage of New Jersey's official misconduct laws. (As noted below, we further propose remedial legislation to provide prosecutors with additional statutory tools to deal with oppressive police

misconduct. See Part V, Action Step No. 17.) To make this threat real, it is necessary to establish systems to ensure that officers who engage in purposeful misconduct are swiftly detected and brought to justice. These systems, as described more fully below, are designed to make it difficult if not impossible for an officer bent on purposely violating the law to fabricate or tamper with records, forcing any such officer to weave a tangled web of deceit that would easily be unraveled through diligent investigation and prosecution.

As to the problem occasioned by the disparate treatment of minorities based on subtle or even subconscious stereotypes, the solution lies not only in clearly and precisely explaining once and for all what conduct is prohibited, but also, as importantly, in clearly explaining in positive terms how stops are to be conducted. It is also necessary to establish and clearly announce the enforcement priorities of troopers who are assigned to highway patrol, whose overriding mission must be to protect the motoring public.

The sophisticated "early warning system" described in detail in this Interim Report bridges the gap between the two problems and can be used, where necessary, as an investigative tool to ferret out officers engaged in misconduct. This same system can also be used to remedy the problem of racial, ethnic, and national origin stereotypes and the baseless suspicions of criminal activity they may engender by allowing supervisors to quickly identify and address potential problems.

The issues and problems we address in this Report are not limited to the New Jersey State Police. This is an important fact that must not be overlooked. Allegations of racial profiling and disparate treatment have been made in a number of other jurisdictions throughout the United States. (See Part IV, § F, infra.) While we have no control over the investigations and remedial efforts undertaken in these other states, we offer the specific action steps described in this Interim Report as a guide for other state and local jurisdictions throughout the country. Certainly, we are proposing to go further than any other jurisdiction to date in facing up to this problem and in establishing systems to ensure that the laws are enforced impartially by State Police members assigned to patrol duties.

We note that some of the problems described more fully in this Interim Report will require the State Police to supervise the activities of officers on patrol more closely. Police officers necessarily exercise considerable discretion in performing their sworn duties. This is especially true in the context of highway patrol. It is beyond dispute that more vehicles are operated in violation of New Jersey's traffic laws than can possibly be stopped by police. State troopers assigned to highway patrol must therefore exercise reasoned judgment in deciding which vehicles to stop from among the universe of vehicles that are being operated in violation of the law and that are thus subject to lawful detention.

As it turns out, the legitimate criteria for selecting vehicles in these circumstances have never been clearly spelled out in written standard operating procedures or formal training curricula. Rather, the criteria used by troopers in

exercising their discretion have developed in an ad hoc fashion over the years, passed on through informal “coaching,” tempered by each trooper’s own experiences and enforcement priorities, and strongly influenced by an official policy to reward troopers who find major drug shipments. This situation may invite both intentional and unintentional abuse and provides a management environment that allows the use of stereotypes to go undetected.

We recognize, of course, that no written standard operating procedure can be expected to anticipate every conceivable situation that might develop in the unfolding sequence of events of a traffic stop, even a “routine” one. We certainly do not want State Police members to follow written procedures so mechanistically that they are chilled from reacting and using independent judgment as the circumstances warrant. But certainly, rules and regulations can and should prescribe in greater detail and with greater precision the steps and criteria that ought to be followed by troopers throughout the course of a routine traffic stop. While there will always be room for the exercise of reasoned discretion, troopers should be expected, required, and prepared to explain their actions during a stop.

We recognize that patrol officers, given the nature of their duties, are essentially on their own and, thus, free to pursue their own approach to law enforcement. Some troopers choose to focus more attention on enforcing motor vehicle laws, while others choose to be more aggressive in investigating suspected drug and weapons offenses.

One obvious problem with this approach is that mistakes (both tactical and legal) may not be detected and remedied, and thus can be repeated and eventually institutionalized. A trooper who conducts a motor vehicle stop in a certain way is likely to continue to do so if no one constructively criticizes that approach or provides an example of a better way to accomplish the officer's legitimate objectives. By enhancing training and by providing for closer supervision, we hope and expect to do a better job in sharing the positive experiences of State Police members throughout the Division, ensuring that "best practices" are widely institutionalized, while at the same time ensuring that inappropriate, unwise, or unsafe practices are discouraged and eliminated.

Our review has shown that over the years, conflicting messages have been sent regarding the official policy to prohibit any form of race-based profiling. This situation should be rectified by developing a clear and consistent message. We propose that as a matter of policy for the New Jersey State Police, race, ethnicity, and national origin should not be used at all by troopers in selecting vehicles to be stopped or in exercising discretion during the course of a stop (other than in determining whether a person matches the general description of one or more known suspects). In making this recommendation, we propose going beyond the minimum requirements of federal precedent because, simply, it is the right thing to do and because the Executive Branch, no less than its judicial counterpart, has an independent duty to ensure that our laws are enforced in a constitutional, efficient, and even-handed fashion. Indeed, it is the Attorney General's responsi-

bility "to ensure the uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State." N.J.S.A. 52:17B-98. See also Eleuteri v. Richmond, 26 N.J. 506, 514-16 (1958) ("The judiciary, of course, is not the sole guardian of the Constitution. The executive branch is equally sworn to uphold it.").

In light of our independent responsibility to set sound law enforcement policy, we need not wait for a court order before we propose those steps that we deem to be necessary and appropriate to ensure strict compliance with all constitutional rights, to enhance the professionalism of the New Jersey State Police, to restore full confidence of New Jersey's minority communities in the integrity of the State Police, and to announce in no uncertain terms that disparate enforcement of the law is intolerable and unacceptable.

PART II.

ANATOMY OF A TYPICAL TRAFFIC STOP.

In order to put our findings and recommendations in context, it is appropriate at the outset to describe some of the steps that may occur during a typical traffic stop. Every stop entails a sequence of steps that require a state trooper to make a series of split-second decisions. The exact sequence of events will, of course, vary depending on the circumstances. A stop based upon an observed speeding violation, for example, is handled differently than one that is based upon an initial suspicion that the driver is under the influence of alcohol or drugs, since drunk and drugged drivers are more likely to be combative and will invariably be required to step out of their vehicles to perform certain sobriety tests. A stop that is initially based on a suspicion that a driver or a passenger has committed a crime (sometimes referred to as a "felony" or "high risk" stop) is handled very differently than a so-called "routine" traffic stop that is based upon an observed motor vehicle violation. In addition, different tactics may be used when the officer is alone, isolated, or outnumbered.

The following description by no means represents a comprehensive review of police tactics much less the law of arrest, search, and seizure, and we do not attempt in this portion of the Report to explain in detail all of the legal standards and criteria that officers must comply with. Nor do we cite to the controlling caselaw. Our purpose at this point is simply to demonstrate some of the many

decision points that can arise during a traffic stop where an officer must exercise reasoned discretion.

Under the Fourth Amendment and its state constitutional counterpart, a police officer may not order a person to halt or remain in a particular place (conduct often referred to as a "Terry" stop or an "investigative detention") unless the officer has reasonable, articulable suspicion to believe that an offense has been or is being committed. This legal standard applies to stops of pedestrians as well as to motor vehicles.

The investigative detention serves a limited purpose: it is a brief, on-the-scene investigation that allows the officer to confirm or dispel the original suspicion of unlawful activity that justified the stop. If a police officer takes too long in conducting this investigation, the encounter escalates into an "arrest," which would require that the officer be aware of facts constituting full "probable cause" to believe that a crime, a non-motor vehicle offense, or a drunk driving offense has been or is being committed.

The "reasonable, articulable suspicion" standard used to justify a "Terry" stop is lower than the "probable cause" standard used to justify a custodial arrest, but still is more than a mere hunch or supposition. Rather, "reasonable, articulable suspicion" means, quite literally, a suspicion of unlawful activity that is based on objective reasons that the officer can articulate. In determining the existence of reasonable suspicion and/or full probable cause, an officer may rely on all of his senses and all of the relevant information known to him — the so-

called “totality of the circumstances” — including reasonable inferences and deductions that can be drawn based upon the officer’s training and experience.

Troopers assigned to patrol duties may travel along with traffic (usually at a rate of speed greater than most travelers so that the troopers are not limited to observing the same motorists for an extended period of time), or may set up a stationary observation post to view vehicles as they pass by. Not all troop cars are equipped with radar, so that a trooper may have to follow behind or “pace” a vehicle to reliably ascertain its speed.

By far the most common reason for initiating a stop is an observed motor vehicle violation, such as speeding or weaving between lanes. Once the officer has observed a motor vehicle violation (either a moving violation or an equipment violation), and the officer decides to make a stop, he or she will activate the police vehicle’s overhead and “takedown” lights to attract the motorist’s attention and to order the driver to pull over. Once the detained vehicle has come to a complete halt, the trooper will position his or her vehicle behind it in a manner to protect the detained vehicle from being struck by other traffic.

Before exiting the troop car, the State Police member is required by Standard Operating Procedures to “call in” the stop, providing the communications center (the dispatcher) with a description of the detained vehicle and its occupants. A State Police member at this initial stage of the encounter will not allow a motorist to exit his vehicle and approach the troop car. If the driver attempts to do so, the trooper will order the driver to return to his vehicle.

Once the stop has been "called in," the trooper will approach the detained vehicle, usually on the driver's side, but occasionally from the passenger's side depending upon traffic conditions. (If the trooper is riding with a partner, which typically only occurs during nighttime patrols, the partner will position himself on the passenger side of the detained vehicle to provide support and monitor closely the activities of any vehicle occupant(s).)

Troopers are trained always to approach detained vehicles with caution. The trooper will often ask the motorist to shut off the ignition and may ask the driver and other occupants to keep their hands in view (i.e., e.g., on the steering wheel) for the officer's safety.

The trooper will request the driver to provide credentials: a driver's license, vehicle registration, and (with respect to New Jersey-registered vehicle) proof that the vehicle is insured. Information is then provided by radio to the communications center to run a motor vehicle "lookup" to determine whether the driver's license has been revoked or suspended, whether the vehicle is properly registered, and whether the vehicle has been reported stolen.

State Police members, as with all law enforcement officers, are trained to be alert and vigilant at all times during the encounter, looking into the passenger cabin, watching for suspicious movements, and being alert to whether the driver or any occupants demonstrate extreme, unusual nervousness. The trooper will be watchful for any weapons or contraband that are exposed and out in "plain view" and will smell for any attempt to mask the odor of illicit drugs.

The officer may ask a series of polite questions of the driver and/or the occupant(s), inquiring as to where they are traveling from and as to their final destination. The officer in asking these "routine" questions will be looking for discrepancies or anomalies that suggest that the occupants are lying, which might, in turn, suggest ongoing criminal activity. More importantly, the officer will be trying to determine whether the driver is incoherent, which might suggest that he is under the influence of alcohol or some other intoxicating substance.

The trooper may order the driver to step out of the vehicle. (This will always be done if there is reason to believe that the driver is intoxicated.) This may also be done for the officer's safety, so that the officer may closely monitor the movements of the driver. In addition, the officer may wish to separate the driver from any other occupant(s) so that when he asks questions about their identity or travel itinerary, he can identify anomalies or discrepancies. (It should be noted that under New Jersey law, a police officer is not permitted to order the passengers of a vehicle to step out unless he is aware of "articulable facts warranting heightened caution.")

A police officer during a routine traffic stop is not permitted to conduct a "frisk" or "protective patdown" automatically or routinely as a matter of course; rather, the officer must first have reasonable, articulable suspicion to believe that the person to be frisked may be carrying a weapon. This standard requires more than an inarticulate "hunch" or supposition. Rather, a trooper must be prepared to point to specific facts and the reasonable inferences that can be drawn from

those known facts to support the suspicion that this particular individual may be carrying a concealed weapon.

The frisk constitutes a limited manual patdown of the person's outer clothing solely for weapons. If this patting down reveals the presence of an object that reasonably could be a weapon, the officer would then be authorized to reach into the garment to remove the object. If, in contrast, the patdown of the outer clothing does not reveal an object that reasonably could be a weapon, the frisk is concluded, and the officer would not be authorized to reach into the person's clothing. (To do so at this point would constitute a full-blown "search" and would invoke the higher "probable cause" standard.) If the officer has reasonable suspicion to conduct a frisk of a person, he would also be allowed to order all occupants out and conduct a limited "frisk" of the passenger compartment. This cursory inspection must be limited to looking for weapons.

If at any point during the course of the stop the officer observes (or smells) an item that he immediately recognizes to be contraband or evidence of a crime, this item would be said to be in "plain view," and the officer would at that point have probable cause to make an arrest. If a trooper suspects that a vehicle may be concealing drugs but does not yet have full probable cause, and the driver or other person(s) refuses to give consent, the trooper may summon a drug-detection canine to the scene to attempt to confirm or dispel the suspicion of drug trafficking. The act of "sniffing" the exterior of a vehicle has been held by state and federal courts to be "minimally intrusive" and thus not a "search" under

Fourth Amendment, since the dog can only react to illicit drugs and cannot reveal anything private about the vehicle or its contents. Any such canine unit must be dispatched quickly, however. If the traffic stop takes too long, the courts will deem the encounter to be an arrest and, at that moment, the lawfulness of the continued detention will depend on whether the officer has full probable cause. The positive alert by a drug-detection canine after this point in time cannot be used to justify the protracted detention; rather, the dog's alert and any resultant discovery of drugs would be subject to the exclusionary rule as a so-called "fruit" of the unlawfully protracted "Terry" stop.

A "search," which involves a peeking, poking, or prying, represents a greater intrusion on Fourth Amendment privacy rights. As a general proposition, the police officer is not permitted to conduct a full search (as opposed to the above-described limited "frisk" for weapons) without first obtaining a warrant. There are, however, several recognized exceptions to the warrant requirement.

For example, once an officer has made a lawful arrest, he is entitled to conduct a contemporaneous search of the person who was arrested and the area within that person's "wingspan." Where the arrestee was the driver or passenger in an automobile, this wingspan is generally defined to include the entire passenger compartment of the vehicle (but not the trunk), including any closed containers in the passenger cabin that can be opened without causing damage to them. (Under New Jersey law, if the arrest is based solely on a mere motor vehicle violation rather than a criminal offense, this bright-line rule does not automati-

cally apply, and the scope of the “search incident to the arrest” would be limited to the person’s actual wingspan at the time of the arrest.)

A separate and distinct exception to the warrant requirement arises where the officer has probable cause to believe that the vehicle contains evidence of a crime, and there was no prior opportunity to have obtained a warrant. These probable cause searches under the so-called “automobile exception” are not limited to the passenger compartment, and can extend throughout the vehicle to any place or container where there is probable cause to believe that the sought-after evidence might be concealed.

A police officer is also authorized to request permission to search from any person who has the “apparent authority” over the vehicle or any container in the vehicle. A “consent search” entails a waiver of Fourth Amendment rights, which must be done knowingly and voluntarily. Under New Jersey law, this means that the person giving consent to search must be expressly aware of the right to refuse to give permission.

Under state and federal law, police officers are always authorized to ask for permission to search, and they need not have probable cause or even a mere reasonable suspicion to believe that the search would reveal evidence of a crime. (Note that if the officer has full probable cause to believe that a search would reveal evidence, he need not rely on the consent doctrine at all and could proceed to conduct the search, even over a motorist’s objection, pursuant to the “automobile exception” to the warrant requirement.) However, state troopers are

subject to a State Police Standard Operating Procedure that precludes an officer from requesting permission to search unless the trooper has reasonable suspicion to believe that the search would reveal evidence of a crime.

Standard Operating Procedures for the State Police further require that troopers use an approved Request to Search form, which must be read and signed by the person granting consent before the consent search is conducted. This form clearly spells out the person's right to refuse to give permission to search.

The scope of a consent search is limited to the scope of the permission that was given. Furthermore, the person giving consent has the right to be present during the execution of the search and has the absolute right to withdraw consent without giving any reason. If permission to search is withdrawn, the officer must immediately stop searching, unless he has already discovered evidence of a crime that would provide probable cause to believe that additional evidence is concealed in the vehicle. In that event, the officer may continue to search, although the justification would no longer be under the consent doctrine, but rather under the "automobile exception."

Ordinarily, the driver of a vehicle is deemed to have the "apparent authority" to consent to search the entire vehicle, including all of its contents. If, however, a passenger asserts ownership over a given object (or the driver or other person granting consent denies ownership of a given object), then the officer would not be authorized to open and inspect that object unless its owner gives a separate, written consent.

As it turns out, searches are only rarely conducted. Most traffic stops are concluded by the officer issuing an oral or written warning or a traffic summons. If the trooper develops probable cause to arrest, the arrested person will be taken into custody, will be handcuffed and transported to the nearest State Police station.

When a person is arrested or any evidence is seized, the trooper will prepare an investigation report. In all other cases, the trooper will keep a copy of any written warning or summons that was issued and will record the nature and results of the stop on his patrol log.

PART III.
FINDINGS AND INTERPRETATIONS.

A. Sources of Information.

As part of our review of allegations of racial profiling, the Review Team sought production of records from the State Police concerning traffic stops on the New Jersey Turnpike, including analyses, compilations, and internal audits of the racial characteristics of stopped motorists. In mid-March, the Review Team began to receive documents from the State Police pertaining to audits, compilations of data, and analyses of data about the racial characteristics of detained motorists, some of which had not previously been provided to the Office of the Attorney General or the Division of Criminal Justice.

In particular, as outlined more fully below in § B, we received compilations of statistics from the Moorestown and Cranbury stations that track the racial breakdown of stops from April 1997 through November 1998. The State Police also produced compilations describing the racial breakdown of consent searches conducted by troopers assigned to the Moorestown and Cranbury barracks at various times between 1994 through 1998. The consent search information shows that minority motorists were much more likely to be searched than non-minority motorists. (Eight out of every ten consent searches conducted by troopers assigned to these stations involved minority motorists.)

We note that data are only currently available concerning stops, arrests, and searches (both "consent" searches and "probable cause" searches). As noted

throughout this Report, there are a number of other actions or steps that may occur during the course of a motor vehicle stop that involve the exercise of police discretion, such as ordering drivers or passengers out of detained vehicles and conducting routine questioning concerning the motorists' itinerary. The sophisticated "early warning system" established pursuant to our recommendations will in the future allow the State Police hierarchy and the Office of the Attorney General to monitor these kinds of discretionary actions.

Our review does not take place in a historical vacuum. We have examined the information developed during the course of the Soto litigation, as well as allegations of racial profiling and selective enforcement made by members of the public; complaints by state troopers who claim that they were "coached" on the road to use racial profiles; information developed in conjunction with internal affairs and criminal investigations, including the investigation of the shooting incident near Exit 7A of the Turnpike in April 1998; anecdotal information gleaned from interviews of State Police members; and a variety of statistical information obtained by the Review Team from the State Police, as well as data extracted from the Computerized Criminal History (CCH) System.

Certain circumstances that have been reported to us may shed some additional light on the raw numbers. We have, for example, considered complaints received from the public alleging racial profiling and complaining of instances where State Police members subjected minority motorists to the humiliation of criminal suspicion. We also considered reports that some troopers

positioned their vehicles perpendicular to the roadway at night to “spotlight” the occupants of moving vehicles. We cannot in this Report adjudicate specific, individual cases. Suffice it to say that this latter practice (which renders radar guns less effective or useless) would seem to support the suspicion that these officers had taken race and ethnicity into account. We note that the State Police have already issued a policy prohibiting this practice, and this policy must be reaffirmed and strictly enforced.

We are especially disturbed by the fact that some troopers falsified data concerning the race of the occupants of stopped vehicles. While we expect that these incidents are rare, such conduct can only serve to fuel the argument by some that the data are flawed. For this reason, we propose a system that could cross-check multiple sources of information as part of a comprehensive program to restore full public confidence in the integrity of the State Police.

B. Stop, Arrest, and Search Data.

Stops. We have received and compiled information regarding stops by troopers assigned to the Moorestown and Cranbury stations from the monthly stop data collected and forwarded by the Division of State Police. The data reported in Table 1 include 19 of the 20 months from April 1997 through November 1998. Information pertaining to stops made in February 1998 is not available.

Table 1.

*Motor Vehicle Stops by Cranbury and Moorestown Stations
April 1997 through November 1998¹*

Station	Percent					Total Number
	White	Black	Hispanic	Asian	Other	
Cranbury	60.3	24.6	8.2	3.9	3.0	36,645
Moorestown	58.8	28.7	5.9	3.9	2.7	50,844
Total	59.4	27.0	6.9	3.9	2.8	87,489

As is evident from Table 1, there is little difference between Cranbury and Moorestown in terms of the racial composition of individuals stopped on the Turnpike. Four of every ten stops (40.6%) made during the period for which data are available involved black, Hispanic, Asian or other non-white people. More specifically, 59.4% of these stops involved whites, slightly more than one of every four (27.0%) stops involved a black person, 6.9% involved a Hispanic individual, 3.9% involved Asians, and 2.8% were identified as other.

Searches. It is obvious from the data provided that very few stops result in the search of a motor vehicle. For example, in those instances for which we have data permitting comparisons between stops and searches, only 627 (0.7%) of 87,489 stops involved a search.

Table 2 aggregates all the information compiled about searches and includes selected months in 1994, all months in 1996 except February, and every month from April 1997 to February 1999.

¹ Data for February 1998 are missing.

Table 2.

*Searches Conducted by Cranbury and Moorestown Stations
Various Time Periods²*

Station	Percent					Total Number
	White	Black	Hispanic	Asian	Other/ Unknown	
Cranbury	24.8	52.4	21.4	0.6	0.8	500
Moorestown	18.9	53.7	26.1	0.7	0.6	693
Total	21.4	53.1	24.1	0.7	0.7	1,193

As is evident from this table, the available data indicate that the overwhelming majority of searches (77.2%) involved black or Hispanic persons.³ Specifically, of the 1,193 searches for which data are available, 21.4% involved a white person, more than half (53.1%) involved a black person, and almost one of every four (24.1%) involved a Hispanic person.

In addition, general information about searches conducted on 30 randomly-selected sample dates were analyzed. According to this internal State Police audit, a total of 38 searches were conducted by the Cranbury and Moorestown stations during these 30 dates, 15 in 1995 and 15 in 1996. Of these, 31 (81.6%) involved minority persons. More specifically, 20 (52.6%) of these 38 searches involved black persons.

² Includes Cranbury searches from January 1994 through March 1994, January 1996, March 1996 through December 1996, April 1997 through February 1999 and Moorestown searches from January 1994 through April 1994, December 1994, January 1996, March 1996 through December 1996 and April 1997 through February 1999.

³We have recently received from State Police preliminary tabulations from a more complete data set of Turnpike consent searches for the years 1997 and 1998. Analysis to date is incomplete with respect to the identification of Hispanic ethnicity among those in the data set. The analyses completed to date are, however, generally consistent with those reported in this section.

Not surprisingly, most consent searches do not result in a "positive" finding. (Recall that the standard required of state troopers to request permission to search is "reasonable, articulable suspicion," which is a lower threshold than the "probable cause" standard required to conduct a nonconsensual search under the so-called "automobile exception" to the warrant requirement. It bears repeating that the reasonable suspicion threshold was imposed by State Police Standard Operating Procedures. Under state and federal caselaw, a police officer need not have any suspicion at all before asking a motorist to waive Fourth Amendment rights.)

Specifically, 19.2% of the searches we considered⁴ resulted in an arrest or seizure of contraband. Accounting for race and ethnicity, 10.5% of the searches that involved white motorists resulted in an arrest or seizure of contraband, 13.5% of the searches that involved black motorists resulted in an arrest or seizure, and 38.1% of the searches of Hispanic motorists resulted in an arrest or seizure.

Arrests. We have in this report relied upon arrest information extracted from the Computerized Criminal History (CCH) database for the period of

⁴We note that the sample size relied upon in determining this proportion of "positive" finds is too small to permit general conclusions to be drawn. Specifically, our analysis was limited to information gleaned from an internal State Police audit of 39 searches conducted by troopers assigned to the Moorestown and Cranbury barracks in May 1997 and 39 searches conducted by troopers assigned to these stations in various dates in 1995 and 1996.

We have recently received from the State Police preliminary tabulations from a more complete set of Turnpike consent searches in 1997 and 1998. Analysis to date is incomplete with respect to the identification of Hispanic ethnicity among those in the data set. The analyses completed to date by the State Police nonetheless suggest that a higher proportion of all consent searches resulted in an arrest than is reflected in the information previously provided to us. According to this latest information, of a total of 463 consent searches conducted by troopers assigned to the Turnpike in 1997, 150 (32%) resulted in an arrest. In 1998, this data set shows that 530 consent searches were conducted on the Turnpike of which 155 (29%) resulted in an arrest. We note, finally, that this "find" rate does not account for the seriousness of the charge that resulted from the search or the type, quantity, or value of drugs or other contraband or evidence seized as a result of these "positive" consent searches. Further analysis of the effectiveness of the use of consent searches on the Turnpike will be conducted as part of the development and implementation of a revised statewide drug enforcement strategy as recommended in Part V, Action Step No. 1.

January 1, 1996 through December 31, 1998 for arrests made by State Police officers assigned to the three stations that comprise Troop "D" (Turnpike), that is, Newark, Cranbury and Moorestown stations. We note that the CCH system only includes arrests that are verified by fingerprints, and these tend to involve more serious offenses. The CCH database thus generally excludes arrests for drunk driving, but would include all drug-related arrests. Table 3 contains information about arrests made during this three-year time period by each of the three State Police stations responsible for patrolling the New Jersey Turnpike.

Table 3.

*Arrests by Cranbury, Moorestown and Newark Stations
1996 through 1998*

Station	Percent			Total Number
	White	Black	Other	
Cranbury	29.4	67.0	3.6	779
Moorestown	34.1	61.4	4.5	883
Newark	33.3	58.6	8.2	1,209
Total	32.5	61.7	5.8	2,871

Our review finds that during the three-year period we examined, there were a total of 2,871 arrests. Of these, 932 (32.5%) involved white persons, 1,772 (61.7%) involved black persons, and 167 (5.8%) involved persons of other races.

C. Interpretations of the Data and Areas of Special Concern.

1. Disproportionate Use of the Consent-to-Search Doctrine.

The data presented to us show that minority motorists were disproportionately subject to consent searches. Information concerning consent searches is particularly instructive in an examination of possible discriminatory practices since, by definition, the decision to request permission to conduct a search is a discretionary one. The only information available to us relates to consent searches that were actually executed, that is, instances where permission to search was granted. No data is available with respect to requests for permission to search that were denied. (The “early warning system” and recordkeeping protocols recommended in Part V of this Interim Report would require that this kind of information be documented for future analysis.)

While the Soto litigation and media attention has focused most intently on the initial decision by state troopers to stop vehicles, as noted throughout this Report, we embrace the notion that police officers may not rely upon inappropriate criteria in making any discretionary decision during the course of a “Terry” stop, including the decision to ask a motorist to knowingly and voluntarily waive Fourth Amendment rights by consenting to a search.

We have concluded, based upon our preliminary review of the allegations and information developed in a number of internal affairs investigations, as well as anecdotal accounts from interviews with state troopers, that race and ethnicity

may have influenced the exercise of discretion by some officers during the course of some traffic stops.

Given the concerns engendered by this data, and because these aggregate data cannot show whether these searches were conducted properly or were based upon racial or ethnic criteria, we propose that a case-by-case review be conducted of every consent search conducted on the Turnpike in 1997 and 1998 to determine whether these searches were predicated upon a reasonable, articulable suspicion that the search would reveal evidence of a crime (as required by State Police Standard Operating Procedures) and that all required procedures were complied with. See Part V, Action Step No. 7. This exhaustive review is necessary to restore public confidence in the manner in which consent searches are conducted.

2. *Missing Data About Racial Characteristics of Detained Motorists.*

In past years, information concerning the racial characteristics of detained motorists was sometimes not provided to dispatchers or recorded in accordance with State Police Operating Procedure F-3. To a large extent, this problem has already been rectified. In March 1996, the Superintendent issued a teletype ordering compliance with Standard Operating Procedure F-3, and in April 1996, State Police members were required to read and initial a memorandum concerning the enforcement of this Standard Operating Procedure. Although decisive steps have already been taken to address the missing data problem, and it appears that these steps have caused the situation to improve markedly, we note that in an era

characterized by mistrust, the State Police must be certain to hold troopers, supervisors, and dispatchers accountable for compiling all information that will become part of the database for the proposed "early warning system."

3. Lack of Automation.

The existing manual system for recording information about stops not only allowed some officers to fail to record all required bits of information, but also made it possible for some troopers to deliberately falsify information. This situation not only affects the validity of the data but, more importantly, undermines the credibility of the entire organization. (We note that deliberate falsification of records is a criminal offense that will be investigated and prosecuted to the full extent of the law.)

The manual system for keeping records and compiling statistics is cumbersome and inefficient, making it difficult for supervisors throughout the chain-of-command to monitor the activities of officers assigned to patrol. This lack of automation must be rectified through the establishment of a computerized system that will become the cornerstone of the "early warning system" described in Part V of this Report. We note that the State Police has already begun to implement a Computer-Aided Dispatch/Records Management System (CAD/RMS) that will eventually be able to capture much of the information necessary to implement the "early warning system."

4. *Correlation of Discretion and Likelihood of Stopping Minority Motorists*

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 the duty assignment, stopped and ticketed minority motorists more often. Specifically, the Public Defender's statistical expert compared the tickets issued on 6 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.

We are concerned by what may be a pattern that when state troopers are permitted more discretion by virtue of their duty assignment, they tended during the time periods examined to ticket African-Americans more often. This analysis

is consistent with the notion that officers who had more time to devote to drug interdiction may have been more likely to rely upon racial or ethnic stereotypes than officers whose principal or overriding concern was to enforce specific motor vehicle violations or to respond to calls for service. This phenomenon highlights the need to find appropriate means to channel officer discretion to ensure that minority and non-minority motorists are treated in an even-handed fashion.

5. *Significance of Stop Statistics.*

The data we reviewed concerning the proportion of minority motorists who were stopped on the Turnpike are consistent with the data developed during the course of the Soto litigation. There is no way to interpret the significance of this data, however, in the absence of a reliable study of the racial and ethnic characteristics of the persons who travel on the Turnpike to serve as a “benchmark.” Any such survey must account for the time of day, day of week, and exact portion of the Turnpike at issue. For this reason, we propose in Part V to undertake a Turnpike population survey in consultation with the Civil Rights Division of the United States Department of Justice. This survey and the resultant benchmark it provides will become a key component of the automated “early warning system” that will be used to quickly identify potential problems that warrant the attention of supervisors throughout the State Police chain of command.

6. *Significance of Arrest Statistics.*

There has been much confusion concerning the implications of the arrest data, which appears to be comparable to the highway arrest statistics compiled by other states along the I-95 corridor. Viewed in artificial isolation, arrest rates cannot provide conclusive proof of racial profiling or discriminatory practices. Nor are they evidence, as has been suggested by some, that minority citizens are more likely than whites to be engaged in criminal activity.

Specifically, it has been argued that the fact that the vast majority of stops that produced arrests also led to convictions somehow demonstrates that State Police did not engage in selective enforcement on the theory that these arrest figures are not “disproportionate,” but rather accurately reflect the extent to which these motorists were engaged in criminal activity. This argument is untenable for many of the reasons spelled out more fully in Part IV, § G (demonstrating the circular, tautological nature of using proactive arrest numbers to determine crime trends).

For one thing, it is a well-settled principle of law that an unlawful search is not made good by what it fortuitously turns up. Thus, a defendant’s factual guilt (as evidenced by his subsequent conviction on the charges stemming from the arrest) is legally irrelevant to the question whether the arresting officer had inappropriately relied upon race, ethnicity, or national origin in initiating the stop or in conducting the investigation that resulted in the arrest (unless, of course,

this specific issue was raised in the case, and a court found after a fact-sensitive hearing that the officer had not engaged in such practices).

More fundamentally, arrest and conviction rates do not address the critical issue at hand, that is, whether State Police members targeted minorities, using more aggressive investigative tactics that could be expected to lead to a higher percentage of “hits.” Needless to say, if an officer is not looking for drugs, he or she is less likely to find them. The fact that the arrest rates for whites was comparatively low does not mean that white motorists are less likely to be transporting drugs, but rather that they were less likely to be suspected of being drug traffickers in the first place and, thus, less likely to be subjected to probing investigative tactics designed to confirm suspicions of criminal activity such as, notably, being asked to consent to a search.

7. *Significance of the Proportion of Searches That Result in an Arrest or Seizure.*

As noted above, most of the consent searches that we considered did not result in a “positive” finding, meaning that they failed to reveal evidence of a crime. (See footnote 4 and accompanying text, supra.) Furthermore, the positive find rate revealed in the data provided to us is somewhat misleading, since a positive result is recorded if the search led to any arrest or seizure of contraband without considering the seriousness of the charge or the type, quantity, or value of contraband that was discovered. Based upon anecdotal reports, most arrests

are for less serious offenses, and “major” seizures of significant drug shipments are correspondingly rare.

In the circumstances, we propose that as part of an updated statewide drug enforcement strategy, a study be undertaken to determine the effectiveness of this Turnpike drug-interdiction tactic to determine whether and to what extent the use of the consent-to-search doctrine during the course of routine traffic stops on the Turnpike represents an appropriate and efficient allocation of State Police patrol resources.

D. Conditions That Foster Disparate Treatment.

One need not be a racist to violate the Equal Protection Clause. See State v. Patterson, 270 N.J. Super. 550, 559 (Law Div. 1993) (where the court found that the police officer who devised an unconstitutional racial profile was “clearly not a racist”). In his keynote address at the Law Enforcement Summit convened by Attorney General Verniero in December 1998, Charles H. Ramsey, Chief of the Washington D.C. Metropolitan Police Department, noted:

I do not think that bald-faced bigotry and discrimination are the primary problems we face. The issues affecting police-community race relations today are more subtle, more complex and, in some ways, more difficult to address. Weeding out blatant racism in policing was relatively easy, compared with the more elusive and intricate issues we face today.

[“*Overcoming Fear, Building Partnerships: Toward a New Paradigm in Police-Community Race Relations*,” presentation by Washington D.C. Metropolitan Police Chief Charles H. Ramsey, Law Enforcement Summit, East Rutherford, New Jersey, December 11, 1998.]

Harvard Law School Professor Randall Kennedy makes a similar point and coined the phrase “good faith discrimination” to describe the use of racial characteristics in crime trend analysis that is geared toward identifying the “risk factors” of criminality. *“Race, the Police, and ‘Reasonable Suspicion’,”* presentation by Randall Kennedy, Harvard Law School, February 3, 1998. We think this is an insightful characterization. Many if not most of the problems and concerns we address in this Report will require that the State Police take a new look at the issue of racial profiling precisely because honest, non-bigoted officers throughout the ranks of the State Police could scarcely believe that they were engaged in or tolerated any form of discrimination.

The potential for the disparate treatment of minorities during routine traffic stops may be the product of an accumulation of circumstances that can contribute to the use of race or ethnicity-based criteria by creating the unintended message that the best way to catch drug traffickers is to focus on minorities. To some extent, the State Police as an organization may have been caught up in the martial rhetoric of the “war on drugs,” responding to the call to arms urged by the public, the Legislature, and the Attorney General’s Statewide Narcotics Action Plans of 1987 and 1993.

We are satisfied that the State Police does not embrace an official policy to engage in racial profiling or any other form of intentional disparate treatment of minority motorists. To the contrary, the officially-stated policy has always been to condemn reliance upon constitutionally-impermissible factors. The message in

these official policies, however, was not always clear and may have been undermined by other messages in both official and unofficial policies. What really matters, ultimately, is how official policies are interpreted and translated into actual practices in the barracks across the state and out on the road.

As noted throughout this Report, the major problem we have found (putting aside the intentional misconduct of some troopers) is that some State Police members may have relied on stereotypes in exercising their discretion. These de facto discriminatory practices may have been unwittingly reinforced by a series of circumstances and messages that acted cumulatively and synergistically to bolster the notion that African-Americans and Hispanics are more likely than Caucasians to be transporting illicit drugs or weapons. These circumstances include:

- (1) ambiguities and misunderstandings about the law (see Part IV, § B, supra);
- (2) ambiguities, imprecision, and omissions in Standard Operating Procedures;
- (3) conflicting, subtle messages in otherwise bona fide drug interdiction and gang-recognition training programs;
- (4) the tautological use of statistics to tacitly validate pre-existing stereotypes (see Part IV, § G, supra);
- (5) formal and informal reward systems that encouraged troopers to be aggressive in searching for illicit drugs, thereby providing practical incentives to act upon these stereotypes;
- (6) the inherent difficulties in supervising the day-to-day activities of troopers assigned to highway patrol; and,

- (7) the procedures used to identify and remediate problems and to investigate allegations of disparate treatment.

The State Police official policy prohibiting racial profiling was announced in a 1990 Standard Operating Procedure. Ironically, the problem of the reliance upon stereotypes may have unwittingly been exacerbated by the issuance of this State Police Standard Operating Procedure, even though the policy statement was actually designed to prohibit racial profiling by explaining to State Police members the limitations imposed on them by the Fourth Amendment and its state constitutional counterpart.

Specifically, the 1990 Standard Operating Procedure included a discussion of the “sufficiency of objective facts to establish reasonable suspicion or probable cause,” explaining that:

Physical and personal characteristics such as race, age, sex, length of hair, style of dress, type of vehicle, and number of occupants of a vehicle may not be utilized as facts relevant to establish reasonable suspicion or probable cause unless the [State Police] member can identify and describe the manner in which a characteristic is directly and specifically related to particular criminal activity.
(Emphasis supplied.)

It seems curious to address the sensitive issue of race in the same breath and under the same legal standard as decidedly less suspect factors such as the “number of occupants of a vehicle.” (The latter factor would seem always to be a legitimate criterion to be considered in the exercise of police discretion on the theory that more people would be at risk of injury by virtue of the dangers inherent in a given motor vehicle violation. This factor would also be relevant

during the course of the stop in terms of appropriate tactics and self-protective steps that troopers should employ when they are outnumbered.)

More importantly, the above-quoted portion of the Standard Operating Procedure, read literally, suggests that a person's race may be relied upon by a State Police member if he or she is able to identify and describe the manner in which race is directly and specifically related to a particular criminal activity. This exception has the very real capacity to swallow the rule, and opens the door (or at least fails to shut the door) to the use of stereotypes, especially those that have been "validated" by tautological and self-serving intelligence reports and profiles. (See discussion in Part IV, § G, supra.)

With respect to training programs, no one can seriously question the right, indeed the obligation, of the State Police to alert troopers to the existence and activities of criminal organizations that they might encounter. It is both necessary and appropriate for troopers to be exposed to training videos, seminars, and bulletins that describe the methods of operation of these criminal organizations, and these programs properly discussed certain objective indicia of criminal activity, such as, for example, the typical locations of hidden compartments used to transport drugs and drug-related cash, as well as certain facially innocent (and race-neutral) circumstances that were determined to be correlated to criminal activity. Such factors include the common use by drug couriers of a single key in the ignition and the presence of certain kinds of debris in the passenger cabin

suggesting that the occupants had spent several days in the vehicle and were unwilling to leave it unattended for fear that a cache of drugs would be stolen.

The problem, however, is that in providing this kind of training, inadequate attention may have been paid to the possibility that subtle messages in these lectures and videos would reinforce preexisting stereotypes by, for example, focusing mostly on criminal groups that happen to be comprised of minority citizens or foreign nationals. These kinds of messages may have been further reinforced by statistics compiled by State Police and disseminated to troopers in seminars and bulletins. The very fact that information concerning the racial characteristics of drug traffickers was provided to troopers assigned to patrol duties could have suggested that such characteristics are a legitimate, relevant factor to be taken into account or "kept in mind" in exercising police discretion during a traffic stop.

The State Police reward system, meanwhile, gave practical impetus to the use of these inappropriate stereotypes about drug dealers. As noted throughout this Report, a police officer need not be a racist to violate the Fourteenth Amendment right to equal protection of the laws. Indeed, evidence has surfaced that minority troopers may also have been caught up in a system that rewards officers based on the quantity of drugs that they have discovered during routine traffic stops. (An internal audit of State Police motor vehicle stops recorded on the Moorestown Station radio logs between May 1, 1996 and July 31, 1996 shows that 34.3% of the 3,524 stops that were conducted by non-minority troopers involved

minority motorists. An essentially identical proportion (33.3%) of the 1,751 total stops that were conducted by minority troopers involved minority motorists.)

The typical trooper is an intelligent, rational, ambitious, and career-oriented professional who responds to the prospect of rewards and promotions as much as to the threat of discipline and punishment. The system of organizational rewards, by definition and design, exerts a powerful influence on officer performance and enforcement priorities. The State Police therefore need to carefully examine their system for awarding promotions and favored duty assignments, and we expect that this will be one of the significant issues to be addressed in detail in future reports of the Review Team.

It is nonetheless important for us to note in this Report that the perception persisted throughout the ranks of the State Police members assigned to the Turnpike that one of the best ways to gain distinction is to be aggressive in interdicting drugs. This point is best illustrated by the "Trooper of the Year" Award. It was widely believed that this singular honor was reserved for the trooper who made the most drug arrests and the largest drug seizures. This award sent a clear and strong message to the rank and file, reinforcing the notion that more common rewards and promotions would be provided to troopers who proved to be particularly adept at ferreting out illicit drugs. We submit that an equally forceful message could be sent by bestowing the "Trooper of the Year" Award on an officer who distinguishes him or herself by performing beyond the call of duty in the service of private citizens or a fellow officers in need.

The State Police system for imposing discipline also exerts substantial influence on officer performance by ensuring that rules, regulations, and Standard Operating Procedures are adhered to. We only note in this Interim Report that the entire internal affairs system is being carefully examined by the Review Team and that our findings and recommendations for improving the manner in which the State Police conducts internal affairs investigations will be the subject of a forthcoming report.

PART IV.

**LAW AND POLICY ON "RACIAL PROFILING" AND
THE DISPARATE TREATMENT OF MINORITIES.**

A. The Negative Effects of Stereotyping on Minority Communities.

We conclude that racial or ethnic stereotypes are in every meaningful sense a form of prejudice — literally, prejudging criminal behavior not based on an objective assessment of a suspect's observed conduct (the known methods of operation or "modus operandi" of drug traffickers or other criminals), but rather on physical traits and characteristics that a person cannot change or control. In a society where the instructions of law enforcement officers must be followed, we must in turn require the highest degree of professionalism and absence of de facto as well as de jure prejudice in the men and women who wield the police power.

In State v. Kennedy, 247 N.J. Super. 21 (App. Div. 1991), the court observed that "[w]e live with the legacy of a racist past Perhaps today that discrimination takes a form more subtle than before, but it is not less real or pernicious." 247 N.J. Super. at 30. At the recent Law Enforcement Summit convened by Attorney General Verniero to discuss race relations between police and the communities they serve, keynote speaker Charles H. Ramsey, Chief of the

Washington D.C. Metropolitan Police Department, summarized the historical significance of race relations in America, observing:

It is an issue that, in many ways, has defined us, divided us, and perplexed us since the very beginning of our nation. The influence of race has been particularly acute in policing — indeed, in the entire criminal justice system... . Despite tremendous gains throughout this century in civil rights, voting rights, fair employment and housing, sizeable percentages of Americans today — especially Americans of color — still view policing in the United States to be discriminatory, if not by policy and definition, certainly in its day-to-day application. And despite tremendous reforms in policing itself — with more women and minorities in our ranks and more attention paid to cultural awareness and sensitivity — race continues to loom large over much of what we do — from everyday traffic stops, to drug enforcement and interdiction efforts, to long-term criminal investigations. And the importance of race relations will only grow in significance, as our society continues to grow and become more diverse.

[*“Overcoming Fear, Building Partnerships: Toward a New Paradigm in Police-Community Race Relations,”* presentation by Charles H. Ramsey, Attorney General’s Law Enforcement Summit, East Rutherford, New Jersey, December 11, 1998.]

Racial profiling and other forms of disparate treatment of minorities at the hands of government actors has had a devastating effect on African-Americans and other persons of color because such treatment reminds them of the continuing discrimination that they face by virtue of their race or ethnicity. Racial profiling leads African-Americans and other persons of color to live with the threat of detention simply because of their heritage. Over the long term, the situation leaves persons of color with a sense of powerlessness, hostility, and anger.

As Harvard Law School Professor Randall Kennedy recently noted, “nothing contributes more to these poisonous feelings than a knowledge that, as a matter

of policy in many circumstances, the police view black or brown skin as a mark or signal that someone is suspicious." *"Race, the Police, and 'Reasonable Suspicion,'"* presentation by Randall Kennedy, Harvard Law School, February 3, 1998. Notably, disparate treatment of minorities at the hands of our criminal justice system reinforces a sense of mistrust. It leaves minority citizens less willing to serve as jurors, less likely to report crime, and less appreciative of the efforts of the vast majority of law enforcement officers who serve the public with honesty and integrity.

It is especially instructive that a nationwide organization of African-American police officers, N.O.B.L.E. (National Organization of Black Law Enforcement Executives), has deemed it necessary to develop and disseminate training materials for young men of color, explaining how minority citizens should act during the course of routine traffic stops as a means of assuaging potentially volatile situations that could lead to an escalation of violence. In essence, these officers are warning young citizens of color that they should expect to be singled-out and subjected to greater scrutiny by police. While these public awareness and education efforts have gained widespread attention only recently as part of the national debate on racial profiling, the dangers to young men of color that N.O.B.L.E. refers to are not new. In 1987, journalist Don Wycliff explained that "a dangerous, humiliating, sometimes-fatal encounter with the police is almost a rite of passage for a black man in the United States." Wycliff, D., *"Blacks and Blue Power,"* New York Times, Feb. 8, 1987.

We restate these concerns because the law enforcement community must be sensitive to the many problems that are related to the country's history of racial discrimination. Aside from the legal issues involved, Professor Kennedy notes correctly that routinely and casually using race and ethnicity as risk factors in exercising law enforcement discretion is profoundly unwise, not only because these factors can be used as a means of racial harassment, but also because this practice increases minority fear and mistrust of the police and reduces the potential for cooperation between minority communities and the police. According to Washington D.C. Metropolitan Police Chief Charles H. Ramsey,

Tragically, in many of the communities where residents are the most fearful of crime, they are also more likely to be fearful of the people who are supposed to protect them — that is, the police. These are fears not so much about getting into physical confrontations with the police, but fears of being treated with suspicion, disrespect and derision.

* * *

Those communities most in need of police services — primarily lower-income and/or minority communities — are also those communities in the best position to help us [the police] be more effective in fighting crime. Residents live in these communities, they have information and intelligence about the communities, and they have a vested interest in making their communities better and safe.

[Keynote presentation at Attorney General's Law Enforcement Summit, East Rutherford, New Jersey, December 11, 1998.]

This phenomenon is described more fully in § J, infra, where we discuss how the disparate treatment of minorities undermines — not advances — the legitimate interests of the law enforcement community in waging the war on drugs.

B. *The Critical Distinction Between Legitimate Crime Trend Analysis and Impermissible Racial Profiling.*

Today we propose to make clear, as a matter of policy if not settled law, that race, ethnicity, and national origin are inappropriate factors that State Police members should not rely upon at all in selecting vehicles to be stopped or in exercising discretion during the course of a stop (other than in determining whether a person matches the general description of one or more known suspects). Regrettably, there has been much misunderstanding and misinformation concerning the present state of the law. Law enforcement officials, the media, and concerned citizens have used technical terms of art, such as the term “profile,” imprecisely and usually in a pejorative context. Such imprecision impedes a rational discussion of the problem and makes it that much more difficult to establish and implement sound law enforcement policy that distinguishes legitimate law enforcement practices from impermissible ones.

In setting the matter straight, we start with a discussion of the legitimate use of law enforcement’s “collective knowledge and experience.” Sophisticated crime analysis is sorely needed if police agencies are to remain responsive to emerging new threats and enforcement opportunities. The law is thus well-settled that in appropriate factual circumstances, police may piece together a series of acts, which by themselves seem innocent, but to a trained officer would reasonably indicate that criminal activity is afoot. State v. Patterson, 270 N.J. Super. 550, 557 (Law Div. 1993). As the court in Patterson correctly noted, “it is

appropriate and legitimate police work to develop a so-called 'profile' based upon observations made in investigating the distribution or transportation of illicit drugs." Id. at 558. Using these and other means, the police can develop a pattern of criminal wrongdoing that justifies their suspicions when they observe features that are in accord with the principal aspects of that pattern. Id.

In developing any such "profile," police may rely upon intelligence that they have gathered in past circumstances. Id. This point was tacitly acknowledged by the New Jersey Supreme Court in State v. Demeter, 124 N.J. 374 (1991) (per curiam), where the Court "recognize[d] that in some situations a police officer may have particular training or experience that would enable him to infer criminal activity in circumstances where an ordinary observer would not." The Court in that case found that the police officer had failed to adequately explain the basis for his opinion that 35mm film canisters are commonly used to conceal illicit drugs. The Court in reaching this result made clear that it did "not mean to discourage investigation by police on suspicion of criminal activity. Had there been proof here ... of regularized police experience that objects such as the film canister are the probable containers of drugs, we would have a different case." 124 N.J. at 385. (Emphasis supplied.)

This "regularized" police experience reflects the collection of historical and intelligence information, careful crime trend analysis, and an examination of the methods of operations, the so-called "modus operandi," of drug traffickers and others engaged in various types of criminal activity.

In United States v. Sokolow, 109 S.Ct. 1581 (1989), the United States Supreme Court refused to condemn the use of a so-called “drug courier profile.” While holding that police are responsible for articulating the factors leading to their reasonable suspicions, the Court noted that, “the fact that these factors may be set forth in a ‘profile’ does not somehow detract from their evidentiary significance as seen by a trained agent.” 109 S.Ct. at 1587.

While police agencies are permitted, indeed are expected, to conduct crime trend analysis and to train officers as to those facts and circumstances that, while innocent on their face, provide a reasonable basis for suspecting criminal activity, the law also provides that certain factors may not be considered by law enforcement. In State v. Kuhn, 213 N.J. Super. 275 (App. Div. 1986), the court held that police are not permitted to draw any inferences of criminal activity from a suspect’s race. 213 N.J. Super. at 281. The court in State v. Patterson, supra, expounded on this point, noting that, “[c]ertainly the police cannot conclude that all young, male African-Americans are suspected of involvement in the illicit drug trade. Therefore, an individual’s race cannot be considered at all when conclusions are reached or assumed as to a ‘profile’ suggesting criminal activity.” 270 N.J. Super. at 559. See also State v. Letts, 254 N.J. Super. 390 (Law Div. 1992).

In developing our response to the racial profiling and disparate treatment problem, our goal must be to preclude the inappropriate use of race, ethnicity, and national origin by state troopers, not to chill vigilant police work or to discourage the State Police or any other police agency from collecting, analyzing,

and making appropriate use of race-neutral information that reasonably bears on the likelihood that an individual is engaged in criminal activity. As noted more fully in § J, *infra*, this Interim Report should not be construed in any way as an abdication of the ongoing duty of the New Jersey State Police to use all lawful means to enforce New Jersey's criminal drug laws.

C. *Emphasizing That Race Should Not Be Considered At All by a Trooper in Exercising Discretion to Stop a Motor Vehicle.*

One need not be a constitutional scholar to understand that race, ethnicity, or national origin cannot be the sole basis for initiating a motor vehicle stop. On this point, everyone seems to agree. The law is far less clear, and opinions within and outside the criminal justice system become far more diverse, with respect to the question whether there are any circumstances when police may legitimately consider these kinds of personal traits and characteristics in drawing rational inferences about criminal activity. No one disputes, of course, that police can take a person's race into account in deciding whether the person is the individual who is described in a "wanted" bulletin; in this instance, race or ethnicity is used only as an "identifier." The issue, rather, and one that has not yet been definitely or at least uniformly resolved by the courts, is whether race, ethnicity, or national origin may be considered as one among an array of factors to infer that a particular individual is more likely than others to be engaged in criminal activity.

We believe that when finally confronted with this issue, the New Jersey Supreme Court would likely embrace the rule set forth in lower court decisions

such as State v. Kuhn, supra, and State v. Patterson, supra, and would hold, based upon independent state constitutional grounds if necessary, that race may play no part in an officer's determination of whether a particular person is reasonably likely to be engaged in criminal activity. In any event, and for the reasons announced in Part I of this Report, we need not wait for the courts to reach this conclusion before we propose a clear rule to be followed by state troopers assigned to patrol duties.

D. State Police Should Not Take Race, Ethnicity, or National Origin Into Account in Taking Any Step During a Motor Vehicle Stop.

Although the "racial profiling" problem that has garnered national attention in recent months and years necessarily begins with the decision to stop a vehicle, it does not end there. Rather, the problem as we choose to define it extends to discretionary steps taken by state troopers after a vehicle has been stopped. To some extent, divergent opinions about "racial profiling" within and outside the law enforcement community depend on definitions. We choose to define racial profiling broadly to encompass any action taken by a state trooper during a traffic stop that is based upon racial or ethnic stereotypes and that has the effect of treating minority motorists differently than non-minority motorists.

Certain steps or actions taken by police during a traffic stop are not deemed under the Fourth Amendment to constitute a separate and distinct privacy or liberty intrusion. Thus, for example, a police officer is automatically permitted under both state and federal caselaw to order the driver of a lawfully-detained

automobile to exit the vehicle. (With respect to ordering passengers to alight from a vehicle, the New Jersey Supreme Court, apparently relying upon independent state constitutional grounds, requires that a police officer be aware of “articulable facts warranting heightened caution” before ordering passengers out of a vehicle. See State v. Smith, 134 N.J. 599 (1994). Compare Maryland v. Wilson, 117 S.Ct. 882 (1997), where the United States Supreme Court held that the rule governing the removal of passengers from a vehicle is no different from the rule governing the removal of a driver.)

However, just because the act of ordering a driver out of an automobile has no Fourth Amendment significance does *not* mean that State Police members should be permitted to treat minority and non-minority motorists differently in exercising the discretion to take advantage of this option and actually order a driver to exit a vehicle. Simply stated, while the Fourth Amendment caselaw says that an officer need not articulate the reasons for ordering a driver to step out of a vehicle, the policy we propose today would expressly preclude a state trooper from using what we deem to be an inappropriate reason for ordering the driver out.

Similarly, police officers during the initial stages of a routine “Terry” stop are permitted to ask questions of the driver and passengers without having to administer the so-called “Miranda warnings.” See Berkemer v. McCarty, 468 U.S. 420 (1984). It is not uncommon for State Police members engaged in a drug investigation, for example, to separate the driver from the passenger(s) and to ask

questions concerning their itinerary, such as where they are traveling to, the reason for their travel, and where they were coming from. By separating the persons, the officer seeks to discover inconsistencies and discrepancies in their stories, thereby providing objective reasons to support a suspicion of criminal activity.

This practice is sometimes referred to as "routine questioning." We believe that state troopers must not consider race, ethnicity, or national origin in deciding whether to initiate these kinds of conversations. Rather, to the extent that officers must necessarily exercise reasoned discretion, they should look to objective facts that, while facially innocent, might be consistent with criminal activity and thus warrant some cursory follow-up investigation (e.g., that a vehicle is registered to a person who is neither present nor closely related to the driver or passengers).

The same principle applies to the deployment of drug-scent dogs. In United States v. Place, 462 U.S. 696, 104 S.Ct. 2637 (1983), the United States Supreme Court held that because the use of a law enforcement drug-detector canine to sniff the exterior surface of a container is, at most, a "minimally intrusive" act, this police conduct technically does not constitute a "search" under the Fourth Amendment. *Accord*, State v. Cancel, 256 N.J. Super. 430 (App. Div. 1992). These cases should not be read to mean, however, that a state trooper should rely to any degree on a suspect's race, ethnicity, or national origin in deciding whether to summon a drug-detection canine. No motorist on the New Jersey Turnpike

should be subject to this kind of law enforcement scrutiny on the basis of such criteria.

Finally, and of special importance to our inquiry, the caselaw makes clear that police officers do not need to articulate a reasonable suspicion before they are allowed to ask a person to consent to a search. See State v. Abreu, 257 N.J. Super. 549 (App. Div. 1992) and State v. Allen, 254 N.J. Super. 62 (App. Div. 1992). Police, in other words, may ask and obtain consent to search without probable cause or even mere reasonable suspicion. (As noted throughout this Report, New Jersey State Police rules and procedures, which are affirmed and amplified in this Interim Report, already go well beyond the minimum requirements of the State and Federal Constitutions by requiring state troopers to have a reasonable, articulable suspicion to believe that the consent search would reveal evidence of a crime before State Police members are authorized to request permission to search.) We propose to make clear that a state trooper should not rely to any degree on a person's race, ethnicity, or national origin in deciding whether to request permission to search.

E. The Importance of Perceptions.

Our findings and our proposed remedial steps are based in part on statistics compiled and provided by the New Jersey State Police that document actual practices and procedures. We think it important to add, however, that law enforcement policy cannot be divorced from public opinion and public perceptions. The New Jersey State Police, no less than any other law enforcement agency, must

remain responsive to public needs and expectations if it is to achieve its ultimate mission to protect and to serve.

The phenomena of racial profiling and other forms of disparate treatment of minorities that we describe in this Report are not just a matter of perception; the evidence we have compiled clearly shows that the problem is real. Even so, perceptions concerning the magnitude and impact of the problem vary widely, and these opinions matter, especially to the extent that the success of law enforcement efforts to reduce and respond to crime depend to a large extent on each agency's ability to maintain the trust and confidence of the community it serves, and to enlist public support for its anti-crime efforts.

To help to explain the nature of these issues we now confront and to put the problem and the proposed remedial steps in perspective, we find it useful to cite to a *Star Ledger/Eagleton* poll that was conducted in early May 1998. The poll showed that while the overall job performance rating of the State Police is quite positive in New Jersey, there is a major racial divide among Garden State residents. Black and white New Jerseyans have markedly different views of troopers' fairness in the enforcement of the laws, even-handed treatment of all drivers, judgment in deciding whom to pull over, and courteousness in dealing with stopped motorists. The poll revealed that the vast majority of African-Americans in New Jersey feel that State Police members treat minorities worse than others, and that troopers target cars to pull over based on the race and age of the people in the cars. In stark contrast, the majority of white New Jerseyans

feel that troopers treat all motorists the same and seem highly satisfied with all aspects of their job performance.

Consider the following specific poll results:

- ▶ White New Jerseyans give the State Police high marks for treating “all drivers the same regardless of race, sex, or age” (60% positive to 25% negative). Black New Jerseyans offer a severe mirror-image assessment (20% positive to 72% negative).
- ▶ Positive assessments of the State Police for “using good judgment in deciding who to pull over and ticket” outnumber negative ones by 66 to 27% among white New Jersey residents (a positive difference of 39 percentage points). The vast majority of black Garden State residents feel the reverse is the case by 66 to 28% (a negative difference of 38 percentage points).
- ▶ Whereas the vast majority of white New Jerseyans give positive ratings to the State Police for “treating all drivers with courtesy” by a margin of 70 to 18%, a clear majority of black New Jerseyans give negative ratings to troopers on this score (54 to 34%).
- ▶ Three-quarters of white residents give state troopers high marks for “enforcing the rules of the road in a fair manner” (77%) compared to less than half of black residents (46%). Almost two-thirds of blacks (64%) feel that state police engage in “profiling,” while just one-quarter feel that everyone who commits a traffic violation has an equal chance to be pulled over. In contrast, 62% of white New Jerseyans feel all violators have the same chance of being pulled over regardless of other factors. Just 29% of whites believe that the State Police use characteristics of car occupants in deciding whom to stop.
- ▶ A clear majority of state residents feel that “profiling” is an unacceptable law enforcement technique, although a far greater number of blacks object to the practice than do whites. Specifically, three-quarters of African-American New Jerseyans believe that profiling is a bad law enforcement tool, while 18% think it is a good idea, and the remaining 7% express no opinion. While still in

opposition, white residents of New Jersey are more closely divided: 40% think this practice is a good idea; 52%, a bad idea, and the remaining 8% express no opinion.

According to Cliff Zukin, director of the poll and professor of public policy at Rutgers University, "these results are remarkable. In my 20 years of conducting public opinion polls in New Jersey, I have never seen a schism as wide as this between any two groups in the electorate. It is as though black and white New Jerseyans are living in different worlds in terms of their perceptions of the State Police."

This sharp divide in opinions drawn along racial lines was recently confirmed by a poll conducted by the Quinnipiac College Polling Institute. This survey, which was announced on April 1, 1999, found that whites approve of the way the State Police are doing their job 72 to 16%, while black approval is a negative 22 to 66%. Forty-five percent of all respondents believe that the State Police target minority drivers for car stops rather than treating everyone the same, while 41% think otherwise. Black respondents believe 84 to 12% that racial profiling occurs, while only 39% of white respondents believe that profiling is used. According to Maurice Carroll, Director of the Quinnipiac College Polling Institute, "white and black perceptions of the troopers are a mirror image... . While 76 percent of all voters say racial profiling is a bad idea, white voters aren't convinced it occurs, while black voters feel overwhelmingly that they are targets."

F. Racial Profiling as a National Problem.

The vexing issues that we address in this Interim Report are by no means limited to the New Jersey State Police. Other states along the I-95 corridor report similar arrest statistics for minorities. This is hardly surprising, since training and information-sharing programs administered by the DEA and other federal agencies (e.g., "Operation Pipeline," EPIC, the Regional Information Sharing System [RISS] and its local affiliate, the Mid-Atlantic Great Lakes Organized Crime Law Enforcement Network [MAGLOCLLEN]) establish and reinforce practical incentives and opportunities for police agencies to use proactive methods to interdict drugs in transport from so-called "source" cities to major metropolitan areas along I-95 and other major interstate highways.

The truly national scope of the problem is perhaps best evidenced by the spate of remedial legislation that has been proposed in other jurisdictions. Since December 1998, several states (including Florida, North Carolina, Maryland, Virginia, Rhode Island, Massachusetts, Arkansas, Illinois and California) have introduced legislation that would require law enforcement to maintain comprehensive data on traffic stops. Most of the bills are similar to one that had been introduced last session by Congressman John Conyers entitled the "*Traffic Stops Statistics Act of 1997*." (That bill, H.R.118, expired in the last session, but was reintroduced on April 15, 1999 by Congressman Conyers and co-sponsored by

New Jersey Congressman Robert Menendez. The bill is now known as H.R. 1443, the "Traffic Stops Statistics Act of 1999.") The legislation provides as follows:

The Attorney General shall, through appropriate means, acquire data about all stops for routine traffic violations by law enforcement officers. Included in this data shall be information pertaining to:

- (1) The number of individuals stopped for routine traffic violations;
- (2) Identifying characteristics of the individual stopped, including the race and or [sic] ethnicity as well as the approximate age of that individual;
- (3) The traffic infraction alleged to have been committed that led to the stop;
- (4) Whether a search was instituted as a result of the stop;
- (5) How the search was instituted;
- (6) The rationale for the search;
- (7) Whether any contraband was discovered in the course of the search;
- (8) The nature of such contraband;
- (9) Whether any warning or citation was issued as a result of the stop; and,
- (10) Whether an arrest was made as a result of either the stop or the search.

If enacted, the bill would limit use of the data "for research or statistical purposes" and prohibit disclosure of any information that may reveal the identity of any individual who is stopped or any law enforcement officer. The Attorney General would also be required to publish an annual summary of the data acquired under the Act.

A bill similar to H.R.118 (now H.R.1443) was introduced on June 6, 1999 in the Massachusetts Senate (S.B.1180). Unlike the legislation in other states, however, the Massachusetts bill would expressly prohibit the use of collected data for "any legal or administrative proceeding to establish an inference of discrimination on the basis of particular identifying characteristics (such as race)."

Rhode Island (H.B.4943 and S.B.131), Arkansas (HB.1261), and Illinois (H.B.1503) all have legislation pending that mirrors the federal bill. As to the use of the data, the Rhode Island and Arkansas legislation provides that "[e]xcept pursuant to court order, data acquired under this section shall be used only for research or statistical purposes. Notwithstanding the foregoing, information collected pursuant to this chapter shall be public for those stops where a citation was issued or an arrest made."

Florida legislation (H.B.0769 and S.B.1456) would require analysis of "the benefit of traffic stops with regard to the interdiction of drugs and the proceeds of drug trafficking, including the approximate quantity of drugs and value of drugs proceeds seized" and a list of items seized.

Pending Connecticut joint house legislation (Bill No.1282) would require every organized police department to "adopt written policies prohibiting the stopping, detention or search of any person when such action is motivated by the law enforcement officer's perception of the person's race, color, sex or national origin and when the action would constitute a violation of the person's civil rights." The stated purpose of the Connecticut legislation is not only to provide

directives to law enforcement officers, but also to establish a process for investigating civilian complaints of such stops and imposing disciplinary actions against offending officers.

In North Carolina, pending legislation would require the establishment of the Division of Criminal Statistics in the Department of Justice that would collect data on motor vehicle stops. In addition to adopting the substantive provisions of the federal bill, North Carolina S.B.76 would require the collection of data on whether motorists exercised physical resistance, whether the officer used force against the driver or passengers for any reason, and whether any physical injuries resulted from police/motorist confrontations.

On January 21, 1999, two resolutions were introduced in the Virginia Assembly (House Joint Resolution No.687 and House Joint Resolution No.736) calling for the establishment of a joint subcommittee to study traffic stops and pretextual traffic stops of minority drivers and certain police practices. The joint subcommittee would be composed of 11 members, including six members of the House of Delegates to be appointed by the Speaker of the House and five members of the Senate to be appointed by the Senate Committee on Privileges and Elections. The Virginia bill requires not only a comprehensive analysis of traffic stops, but also an examination of the impact such stops have on constitutional rights of persons of color.

A motor vehicle stop bill was recently reintroduced in the California Legislature (S.B.78). A similar bill had previously passed both houses of the State

Legislature, but was vetoed by the Governor. The ACLU responded by establishing a toll-free number for minority motorists to report suspected discriminatory stops.

In Maryland, the ACLU in 1998 filed a class action lawsuit on behalf of the Maryland NAACP and 11 individual minority motorists alleging that the Maryland State Police had engaged in race-based discrimination with its drug interdiction activities along Interstate 95. The data used to support the lawsuit were based on statistics that were maintained by the Maryland State Police as part a 1995 settlement decree that arose out of a lawsuit filed against the State Police by Robert L. Wilkins, an African-American lawyer from Washington, D.C. The state police denied using race as a factor to stop motorists, but agreed to conduct training and to maintain records so that the plaintiffs could monitor compliance.

As part of the 1995 settlement, the State of Maryland collected data on motorist stops between 1995 and 1997. The statistics showed that African-American motorists constituted 77% of the persons stopped and searched on Interstate 95 — this among a group of persons who represent only 17% of the motorists who traveled that highway.

In February 1999, a bill was introduced in the Maryland Senate (S.B.430) which called for the establishment of a "Task Force to Study Stops for Routine Traffic Violations." The ten-member task force would consist of the Attorney General, the Secretary of the State Police, along with four citizens appointed by the Governor "who represent the rich ethnic, gender, and regional diversity of the

State.” The Governor would also appoint the chairman of the task force, which would be provided a staff by the Attorney General’s Office. The proposed task force mandate is similar to the provisions set forth in the federal and Massachusetts bills, except that the task force would be specifically charged with studying “the benefit of traffic stops with regard to the interdiction of drugs and the proceeds of drug trafficking, including the approximate quantity of drugs and value of drug proceeds seized on an annual basis as a result of routine traffic stops.”

In addition to the civil actions in Maryland and California, lawsuits that allege racial profiling by the police have been filed in other states, including Pennsylvania, Florida, North Carolina, and Indiana. The ACLU and other civil rights organizations have spearheaded this litigation.

G. *The Circular Illogic of Race-Based Profiles.*

Throughout the course of the national debate on “racial profiling,” some law enforcement executives have argued that it is appropriate for police officers on patrol to rely upon racial characteristics provided that objective crime trend analysis validates the use of these characteristics as “risk factors” in predicting and responding to criminal activity. As noted by the Eighth Circuit Court of Appeals in United States v. Weaver, “[f]acts are not to be ignored simply because they may be unpleasant ... we [must] take the facts as they are presented to us, not as we would wish them to be.” 966 F.2d 391, 394, n.4 (8th Cir. 1992), cert. den. 507 U.S. 1040 (1992).

Many of the facts that are relied upon to support the relevance of race and ethnicity in crime trend analysis, however, only demonstrate the flawed logic of racial profiling, which largely reflects a priori stereotypes that minority citizens are more likely than whites to be engaged in certain forms of criminal activity. This form of “scientific” analysis, in other words, is hardly objective. This is not to suggest that profile-minded analysts are biased, but rather that some of the numbers they rely upon are self-selected and thus inherently misleading.

In fact, many longstanding stereotypes are contradicted by the empirical evidence. Consider the assumption that minority citizens are more likely than whites to use illicit substances. While it is certainly true that the “drug problem” is especially vexing in certain urban communities, this is not because of the prevalence of drug use by minorities, but rather due to the way in which drugs are openly sold in these neighborhoods, attracting violence (and police attention) and degrading the quality of life for the law-abiding residents of these communities.

Studies of alcohol and other drug use among New Jersey high school students conducted by the Division of Criminal Justice every three years since 1980 have repeatedly and consistently shown that many of the stereotypes about drug use are simply wrong. The latest published survey, released in 1996, shows, for example, that white students are actually more likely than black or Hispanic students to report having ever used alcohol, marijuana, cocaine, amphetamines, or hallucinogens. “Drug and Alcohol Use Among New Jersey High School Students” (1996) (Table 9 at p. 47).- The studies also show that, in general, there

is little overall difference in drug or alcohol use with respect to socioeconomic status and where differences do exist, students from schools in the lower socioeconomic category were somewhat less likely to report using substances than those in the high or medium socioeconomic categories. *Id.* (Tables 9, 10 at pp. 47-48.)

The New Jersey high school findings are consistent with national research conducted by the Federal Substance Abuse and Mental Health Services Administration's (SAMHSA) "*National Household Survey on Drug Abuse.*" The 1997 survey found that the rate of illicit drug use for blacks (7.5%) was only slightly higher than for whites (6.4%) and Hispanics (5.9%). Among youth, the survey revealed that the rates of use are about the same for these three racial/ethnic groups.

We turn now to the specific assumption that is at the heart of the racial profiling controversy: the notion that a disproportionate percentage of drug traffickers and couriers are black or Hispanic, so that race, ethnicity, or national origin can serve as a reliable, accurate predictor of criminal activity. The proponents of this view point to empirical evidence, usually in the form of arrest and conviction statistics, that would appear at first blush to demonstrate quite conclusively that minorities are disproportionately represented among the universe of drug dealers.

The evidence for this conclusion is, in reality, tautological and reflects as much as anything the initial stereotypes of those who rely upon these statistics.

To a large extent, these statistics have been used to grease the wheels of a vicious cycle — a self-fulfilling prophecy where law enforcement agencies rely on arrest data that they themselves generated as a result of the discretionary allocation of resources and targeted drug enforcement efforts.

The most obvious problem in relying on arrest statistics, of course, is that these numbers refer only to persons who were found to be involved in criminal activity (putting aside for the moment the presumption of innocence). Arrest statistics, by definition, do not show the number of persons who were detained or investigated who, as it turned out, were not found to be trafficking drugs or carrying weapons. Consistent with our human nature, we in law enforcement proudly display seized drug shipments or “hits” as a kind of trophy, but pay scant attention to our far more frequent “misses,” that is, those instances where stops and searches failed to discover contraband. (Recall that among the universe of stops, searches are quite rare, and searches that reveal evidence of crime are rarer still.) Logically, of course, one cannot hope to judge the overall effectiveness of any practice or program by looking solely at its successes, any more than by looking only at its failures.

In gauging crime rates and crime trends, our Uniform Crime Reporting System recognizes a distinction between so-called “index” and “non-index” offenses. Index offenses are those that are likely to be reported by citizens and include murders, robberies, and rapes. It is thought that the number of index

offenses reported to police reflects, albeit imperfectly, the actual extent of particular crime problems.

The non-index or vice offenses, in contrast, are usually only detected as a result of proactive law enforcement efforts. This is especially true with respect to drug possession and distribution. Only a negligible percentage of drug offenses that are actually committed ever come to the attention of law enforcement agencies. The vast majority of drug sales, for example, are accomplished in private or otherwise out of law enforcement's view and, thus, never lead to an arrest, prosecution, or conviction. It is for this very reason that the non-index offenses, such as drug use and trafficking, are never relied upon in determining crime rates and trends. The number of drug arrests and seizures reflects, if anything, only the extent and nature of law enforcement's proactive efforts.

It follows, therefore, that the fact that a disproportionate percentage of drug arrests are of minorities does not mean that any particular minority citizen is more likely than a non-minority citizen to be committing a drug offense. Minorities are disproportionately arrested for selling drugs largely because urban drug dealers tend to operate in open-air drug markets, making them far easier to identify and arrest than their colleagues who are operating more discreetly behind closed doors in suburban and rural jurisdictions.

For this reason, it is hardly relevant (and, as noted above, inappropriate as a matter of sound policy if not constitutional imperative) to consider the racial or ethnic characteristics of persons who were determined during road stops to be

carrying drugs if the purpose of this exercise is to permit or encourage officers to draw inferences about minority motorists generally. Indeed, this practice utterly begs the question. To the extent that State Police and other law enforcement agencies arrest minority motorists more frequently based on stereotypes, these events, in turn, generate statistics that confirm higher crime rates among minorities, which, in turn, reinforces the underpinnings of the very stereotypes that gave rise to the initial stops. In short, police officers may be subjecting minority citizens to heightened scrutiny and more probing investigative tactics that lead to more arrests that are then used to justify those same tactics.

This insidious cycle has served to create an ever-widening gap in the perception of fairness that persons of color and whites have about law enforcement and the criminal justice system, and the resultant costs (the loss of confidence and trust in law enforcement by members of minority communities) must be weighed carefully against the benefits of seizing drugs in interstate transport. See discussion in § J, infra.

We are especially concerned in this regard that during the course of our review, we received information that at times the State Police Patrol Drug Response Unit disseminated information to State Police barracks concerning the racial and ethnic characteristics of persons who were found to be in possession of drugs. The dissemination of this information, while no doubt done in good faith and in accordance with the spirit if not the letter of "Operation Pipeline" and other federal drug interdiction initiatives, would tend to reinforce inappropriate

stereotypes, leading officers to believe that they would be more likely to encounter illicit drug traffickers by preferentially stopping, questioning, and searching the vehicles of minority motorists.

Further evidence of this basic approach to crime analysis can be found in the Uniform Crime Reports that are compiled and published by the State Police. These publications include "typical scenarios" for various index crimes, such as rape; robbery; aggravated assault; burglary; theft; motor vehicle theft; and arson. The scenarios describe not only the month when these kinds of offenses are most frequently committed, but also the "most frequent offender" in terms of age, sex, and race. Obviously, there is nothing intrinsically wrong in compiling information concerning the racial characteristics of persons arrested for various offenses. The danger, however, is that these same statistics could be used tautologically to describe a typical offender, which, in turn, could be used impermissibly to predict the likelihood that a person meeting these characteristics has, in fact, committed an offense.

We would be remiss at this point not to mention another variation of the "typical offender" typecasting that sometimes arises in the context of highway patrol: the notion that a motorist does not seem to "match" the vehicle he is driving, considering the value of the vehicle, and the driver's race, ethnicity, national origin, or manner of dress. We have heard numerous complaints that men of color who happened to be driving expensive vehicles were subjected repeatedly to traffic stops, sometimes for the most minor of offenses or no

apparent or explained offense at all. This form of de facto discrimination — based upon stereotypes about the expected income level of minority motorists and the profile characteristics of auto thieves — must also be addressed as part of the comprehensive reforms we recommend. See Part V, Action Step No. 5.

One of the real problems with many forms of “profiling” is that the characteristics that are typically compiled tend to describe a very large category of presumably innocent motorists. This point was expressly recognized by the United States Supreme Court in Reid v. Georgia, 448 U.S. 438, 441 (1980) (per curiam). Indeed, using profiles that rely on racial or ethnic stereotypes is no better, and in many respects is far worse, than allowing individual officers to rely on inchoate and unparticularized suspicions or “hunches,” which is clearly not permitted under Fourth Amendment jurisprudence.

While we have no doubt that federal, regional, state, and local intelligence reports reliably indicate that a large number of minority narcotics and weapons offenders are traveling between urban areas in and through New Jersey, so too are innocent minority motorists engaged in such travels, and in far, far greater numbers.

To underscore this point, it is appropriate to consider some of the crime trend analyses that have been conducted in an effort to enhance the efficiency of highway drug interdiction. The El Paso Intelligence Center (EPIC), which is one of the components of the Federal Drug Enforcement Administration’s intelligence program, provides state law enforcement agencies with bulletins concerning the

occupants of so-called "load" vehicles, that is, vehicles that were found to contain substantial quantities of illicit drugs. Typical information includes a finding that in 1998, the largest number of load vehicles (43%) were occupied by a lone male, followed by a male driver traveling with a male passenger (25%). The same bulletin reports that couples were most likely to transport heroin (19%) or methamphetamine (19%). In this same reporting period, the age group most frequently involved and responsible for the transportation of the majority of drugs and drug-related cash were persons between the ages of 20 and 29 (45%) and 30 to 39 (27%).

EPIC bulletins also describe driver nationality, noting that in 1998, most drugs and related currency were found in load vehicles that were driven by foreign nationals. With respect to marijuana, for example, 49% of the load vehicles were driven by US nationals, while 51% were driven by foreign nationals. With respect to cocaine, EPIC reports that 39% of load vehicles in 1998 were driven by US nationals, while 61% of the vehicles were driven by foreign nationals.

The bulletins also describe the state residence of the drivers of load vehicles, noting that the majority of drivers (61%) were from states identified by the Federal Government as "points of origin and destination for drugs," including Arizona, California, Florida, Illinois, New York, and Texas. The report suggests that the "next most active group (13%) were residents of Georgia, Louisiana, Michigan, North Carolina, New Mexico, and Ohio."

Finally, EPIC also compiles and disseminates information concerning the makes and models of the so-called "load" vehicles. The top ten automobile models were the Ford Taurus, Nissan Sentra, Honda Accord, Ford Thunderbird, Oldsmobile Cutlass, Chevrolet Lumina, Lincoln Towncar, Pontiac Grand Am, Toyota Camry and Mercury Cougar. Seventy-three percent of the load vehicles were privately owned, while 21% were leased or rented vehicles.

We certainly do not cite to these findings to reveal state secrets or to "tip off" drug traffickers that we are on to them. (As was noted by United States Supreme Court Justices Marshall and Brennan in their dissent in United States v. Sokolow, supra, even if profiles have reliable predictive value, their utility might be short-lived as drug couriers adapt their behavior to sidestep detection from profile-focused officers. 109 S.Ct. 581, 589, n.1 (Marshall and Brennan, J.J., dissenting). Rather, we cite this information to demonstrate that much of the information that might become part of a so-called "profile" would actually provide very little help to state troopers patrolling the Turnpike in winnowing the chaff from the wheat (i.e., major drug couriers from the universe of innocent motorists) or in articulating a reasonable suspicion to believe that any particular vehicle is involved in criminal activity.

The value of some of these potential profile factors may have been overstated in part because some law enforcement officials, no doubt frustrated by the inherent inefficiencies in highway drug interdiction, fail to recognize that information gleaned in hindsight (i.e., e.g., the characteristics of persons and

vehicles that fortuitously were found to be carrying large quantities of drugs) does not always translate into a reliable means of predicting future occurrences of a given behavior or outcome. If one out of a thousand stops results in a major “hit,” and that hit happened to involve a minority motorist, that fact does not mean that preferentially stopping minority motorists is likely to result in more seizures than would occur by stopping and scrutinizing motorists without regard to race, ethnicity, or national origin.

In the circumstances, and for the reasons described more fully in § J, *infra*, we are entirely satisfied that the policies and procedures announced in this Interim Report need have no adverse effect on New Jersey’s ongoing drug enforcement efforts.

H. Legal and Policy Pitfalls in Relying on “Group Associations” to Establish Suspicion of Criminal Activity.

In setting out a clear statement of law and policy, we would be remiss were we to avoid the delicate and complex issues concerning when and under what circumstances a law enforcement officer may consider a person’s possible membership in a group that is commonly associated with criminal activity (e.g., a “gang,” “set,” “posse,” or “family”). Clarification is necessary at this point because State Police members and other law enforcement officers as part of their in-service training are sometimes shown training videos of various groups, organizations, and criminal enterprises that are engaged in commercial drug trafficking as a substantial source of income.

The bona fide purpose of this training is to alert officers to the existence, activities, defining characteristics, and methods of operation (the aforementioned modus operandi) of these groups and to urge officers to exercise heightened caution when dealing with members of these organizations, who are often armed and are predisposed to commit acts of violence. The unintended, subtle effect of this training, however, may be to paint an inaccurate and misleading picture that persons of color should be treated differently than non-minorities on the tacit assumption that they are likely to be gang members. For the reasons set out below, these inferences of criminal activity are only legitimate when officers have reasonable grounds to believe that a particular individual is, in fact, a member of one of these criminal organizations.

We start our analysis by recognizing a simple and undeniable fact: Many criminal organizations are composed of persons of like racial, ethnic, and national origin characteristics. Many (but not all) of these groups are exclusionary. (Some gangs appear to be more territorial than racially selective, recruiting from select neighborhoods rather than select races or ethnicities.)

Ordinarily, a stop or ensuing frisk or search may not be based solely on the fact that a person is a member of a particular group, even if other members of that group are often associated with criminal offenses, such as drug trafficking, armed robberies, or loansharking. As the court in Drake v. County of Essex, 275 N.J. Super. 585 (App. Div. 1994) noted, "the courts have consistently held that a person's membership in a group commonly thought to be suspicious is insufficient

by itself to establish reasonable suspicion.” 275 N.J. Super. at 591 (citing to Reid v. Georgia, supra.)

By the same token, however, a person’s membership in a criminal organization, such as a “gang” or “set,” is relevant and may be considered by a police officer as part of the so-called “totality of the circumstances.” For obvious reasons, gang membership is especially relevant in the context of an officer’s reasonable suspicion that a person may be armed and dangerous, at least where members of the group that the person is believed to be associated with typically carry firearms or other weapons.

The legal and practical problem lies in reconciling this limited rule of relevance with the more fundamental principle we embrace that state troopers should not be permitted to draw any inferences of criminal activity from a suspect’s race. We accomplish this by concluding that while known membership in a criminal organization is a legitimate factor that an officer may use in determining whether a person is presently engaged in criminal activity, the officer is not permitted to use the person’s race, ethnicity, or national origin in assessing the likelihood that a person is, in fact, a member of any such criminal organization. To do otherwise would be to practice a form of legal bootstrapping, placing the cart before the horse by drawing inferences from a fact that has not yet been established.

On closer inspection, this rule makes perfect sense. It is certainly true that a person could not be a member of a particular exclusionary gang or group unless

the person shares the racial or ethnic characteristics of that group. It does not follow, however, that a significant percentage of persons of like characteristics are, in fact, members of the criminal organization. In fact, the percentage of persons who are actually members of criminal organizations is so negligible that an officer could make no rational (much less legally sufficient) conclusion about a person's membership based to any degree on the person's race or ethnicity.

Consider, by way of example, law enforcement's persistent efforts to deal with so-called "traditional" organized crime groups sometimes referred to collectively as "La Cosa Nostra" or the "The Mafia." The La Cosa Nostra families that continue to operate in the New York, New Jersey, and Philadelphia areas are comprised almost entirely of persons of Italian descent. Needless to say, it would be ludicrous for a police officer to treat a person stopped for a motor vehicle violation who appears to be an Italian-American as if he were a suspected soldier, associate, or "made" member of a La Cosa Nostra family. All but the most unenlightened bigot understands that the percentage of Italian-Americans who are associated with organized crime is negligible.

But these same logical restraints must apply to all colors, ethnicities, and national origins. This does not mean that there are not, by way of example, organizations composed of Nigerian nationals who traffick in heroin, but only that there is no basis to automatically and reflexively conclude that any individual Nigerian national is associated with a heroin smuggling operation.

Regrettably, and as a reflection of the inherently tautological nature of stereotypes, some members of our society might not be aware that the percentage of young African-American or Hispanic males who are members of organized "street" gangs is so small that no officer could harbour an objectively reasonable suspicion that a motorist is a member of a gang on the basis of the motorist's race or ethnicity. While gang membership is a relevant circumstance that should and must be considered by officers (for their own safety), an officer must first be aware of objective facts that reasonably suggest that a particular individual is, in fact, a member of a gang before the officer could rely upon that circumstance to justify certain investigative or self-protective steps including, but not limited to, ordering person(s) to alight from a vehicle; conducting a "frisk" for weapons; ordering a person to keep his hands in view; running a criminal history check or outstanding warrant lookup; or requesting permission to conduct a search.

For this reason, it is absolutely essential that state troopers be trained as to the objective criteria and indicia of criminal group associations, since it would be relevant for officers to consider that an individual is "flying the colors" of a gang or is wearing clothing or bearing a tattoo signifying street or motorcycle gang membership. Some criminal groups are far more organized and hierarchial than others; some proudly announce their affiliations, while others operate clandestinely as secret organizations.

The point is simply that a state trooper must be prepared to articulate why he or she harboured the suspicion of gang membership, and if suspected gang

membership is to be relied upon, the officer must be prepared to spell out all of the factors and observations that led to the officer's reasonable belief, going beyond the mere fact that the person was not excluded from the possibility of being a member of a particular criminal organization by virtue of his race or ethnic background.

I. The Impact of Ongoing and Anticipated Litigation.

This Interim Report is not written on a clean slate. It follows on the heels of litigation in which a number of alleged drug dealers have sought to suppress proof of their guilt by claiming that they were the victims of racial profiling. The exclusionary rule that these defendants hope to invoke is designed principally to deter police misconduct by creating practical incentives for law enforcement agencies to ensure that their officers strictly comply with the requirements of the Constitution.

We expect that this Report will be cited by other defendants who will seek to overturn or preclude their convictions by claiming selective enforcement. We cannot prevent defendants from raising these issues in future motions to suppress evidence, but we wish to make clear that as to any such future challenges, we will be prepared to fully and fairly litigate the question whether any particular defendant was, in fact, a victim of unconstitutional conduct by the State Police warranting the suppression of reliable evidence of guilt. The law is well-settled in this regard that constitutional rights, whether arising under the Fourth or Fourteenth Amendments, cannot be asserted vicariously. (We expect that as a

practical matter, a defendant who was traveling greatly in excess of the legal speed limit would have a much more difficult task in convincing a judge that he had been targeted by State Police on account of his race, than would a defendant who had been stopped for a comparatively minor or technical infraction. These are the kinds of individualized, fact-sensitive arguments that we will be fully prepared to litigate in future motions to suppress.)

The county prosecutors will be asked to examine closely any case involving a State Police member in which the defendant claims selective enforcement in violation of the Equal Protection Clause and the prosecutors will be asked to recommend to the Division of Criminal Justice how these cases should be handled, considering the individual facts and circumstances of each case. To promote uniformity in dealing with these issues, the Division of Criminal Justice will seek input from county prosecutors in developing protocols and criteria to properly analyze cases and determine when litigation is appropriate. See Part V, Action Step No. 16.

Further, we intend to argue in all appropriate cases that a reflexive invocation of the exclusionary remedy is unnecessary in light of the extraordinary procedures and safeguards that will be adopted and fully implemented as a result of this Report. The exclusionary rule, as noted by former United States Supreme Court Justice Potter Stewart, is "intended to create an incentive for law enforcement officials to establish procedures by which police officers are trained to comply with the Fourth Amendment." Stewart, "The Road to Mapp v. Ohio and

Beyond: the Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases,” 83 Colum. L.Rev., 1365, 1400 (1983). The United States Supreme Court in the landmark case of Stone v. Powell, 428 U.S. 465 (1976), remarked that “the demonstration that our society attaches serious consequences to violation of constitutional rights is thought to encourage those who formulate law enforcement policies and the officers who implement them to incorporate Fourth Amendment ideals into their value system.” 428 U.S. at 492-93.

We believe that the policies and procedures that we propose to incorporate in a series of new State Police Standard Operating Procedures, training programs, and internal affairs reforms will prove to be a particularly effective and appropriate systemic remedy to address the problems addressed in this Interim Report. See State v. Novembrino, 105 N.J. 95, 158, n.39 (1987) (the Court “acknowledge[d] the obligation of the Judiciary to evaluate carefully the effect of any legislative or executive initiative intended to afford a source of enforcement distinct from or supplementary to the exclusionary rule”).

J. Continuing Commitment to Interdict Illicit Drugs in Transport.

We anticipate that the strong message that we are sending in this Interim Report might be misinterpreted by some as an abandonment or repudiation of New Jersey’s drug enforcement efforts, or as an abdication of the State Police responsibility to vigorously enforce all criminal laws. We think it would be ironic and unfortunate to substitute one misinterpreted message with another, and for this reason, we are prepared to explain what State Police members are allowed

and expected to do (i.e., positive training) and not just to focus on what officers are prohibited from doing by law or Standard Operating Procedures.

The enforcement of our drug laws must remain an urgent priority of the State Police and all law enforcement agencies. It is simply wrong to suggest, moreover, that our laws can only be enforced at the expense of violating federal and state constitutional rights.

The original Statewide Narcotics Action Plan of 1987 recognized that the strategic objective of choking off the supply of illicit drugs cannot realistically be achieved solely by physically interdicting drugs in transport, since it is only possible to seize a tiny fraction of the total quantity of drugs that are actually being transported every day into and through New Jersey, a so-called "corridor" state. Given the inherent limitations of any highway interdiction drug enforcement strategy, the original action plan and ensuing state strategies concluded that all drug seizures must lead to successful prosecution and the imposition of appropriate punishment by the courts, thereby furthering the goal of general deterrence and significantly increasing the "risk premium" borne by drug traffickers.

This sound approach, in turn, requires that all evidence seized by law enforcement be admissible in court and not be subject to the exclusionary rule, which generally mandates the suppression not only of physical evidence that is illegally seized, but also the suppression of all information and investigative leads

that are directly derived from an illegal search — the so-called “fruits” of the search.

As importantly, there are other vital public policy reasons, independent of the threat of the exclusionary rule, for taking decisive steps to ensure strict compliance with all search and seizure rules and equal protection principles. Notably, it is imperative that the New Jersey State Police and all other members of the New Jersey law enforcement community fully embrace the notion that the so-called “war on drugs” must be waged with — not against — the communities that the New Jersey State Police and other law enforcement agencies are sworn to protect. It is therefore essential to balance the risks of any particular enforcement strategy or tactic against its benefits.

Accordingly, it is now necessary and appropriate to review and refine Standard Operating Procedures and protocols in order to enhance public confidence in the commitment of the State Police to make certain that no officer makes a decision to stop a vehicle, to approach a suspect, to conduct a frisk, or to request permission to conduct a search based upon inappropriate criteria, such as race, ethnicity, or national origin. To the extent that some citizens, and particularly members of minority communities, believe that such practices routinely occur or are expressly or even tacitly tolerated, public confidence in law enforcement is eroded and this, in turn, interferes with the critical objective of enlisting public support for drug enforcement programs and initiatives.

Simply stated, for law enforcement and prosecuting agencies to be effective in combating the scourge of illicit drugs, they must earn and maintain the respect and confidence of all citizens.

To underscore this point, we recommend that the Attorney General release an updated drug strategy pursuant to Governor Whitman's Drug Enforcement, Education and Awareness Program and this Report. This updated strategy should explain in detail how each and every law enforcement and prosecuting agency in the state will be expected to contribute to a comprehensive, multi-disciplinary and multi-faceted effort to address both the demand for and supply of illicit drugs.

We recommend that the updated drug strategy ensure that drug enforcement resources and efforts are focused so as to have the greatest possible impact on New Jersey's evolving drug problem. We also recommend that a study be conducted on the tactics used in highway interdiction to determine, for example, whether the present use of the consent-to-search doctrine by state troopers represents an effective and efficient use of their time. (As noted throughout this Report, State Police Standard Operating Procedures already impose significant limitations on the use by troopers of consent searches, going well beyond the caselaw and the policies of most jurisdictions in limiting the situations where troopers are authorized to request permission to search.)

PART V. REMEDIAL STEPS.

A. *General Considerations.*

Having identified in the previous sections of this Report the nature and scope of the problem, it is necessary without delay to initiate a series of reforms to ensure that all routine traffic stops made by the State Police are initiated and conducted in an impartial, even-handed manner. In developing these specific remedial steps, we are aware of the actions that have already been taken in a number of other jurisdictions. While we have carefully reviewed these models, our proposed reforms go well beyond the remedial steps that have been undertaken in any other jurisdiction. We do this not because we have reason to believe that the problem of disparate treatment of minorities traveling on the New Jersey Turnpike is more pervasive or intractable than in other jurisdictions, but rather because we believe that the New Jersey State Police has always embraced "cutting edge" law enforcement policies and practices.

Some of the policies and procedures described in the following action steps are new. Others are a reaffirmation or clarification of existing State Police policies and practices. We expect to recommend additional and complimentary reforms as part of the more comprehensive review of State Police recruiting, training, and internal affairs policies and practices.

We think it is also important to emphasize we are not writing on a clean slate in that the State Police has already undertaken a series of initiatives to

address these issues, beginning in 1990 with a comprehensive Standard Operating Procedure governing the conduct of motor vehicle stops. That SOP included a number of important and innovative safeguards, including a requirement that state troopers have a reasonable, articulable suspicion to believe that evidence of a crime would be found before asking for permission to conduct a consent search, and a requirement that all consents to search be reduced to writing.

The State Police have also issued policies and procedures that require troopers to advise the dispatcher as to the racial characteristics of motorists who are stopped, that require troopers to record this information on patrol logs, and that prohibit the practice of "spotlighting" vehicles to ascertain the racial characteristics of the occupants of vehicles that have not yet been ordered to pull over. The State Police has also provided in-service training programs to explain that racial profiling is prohibited and that falsification of records concerning the racial characteristics of detained motorists will not be tolerated.

Most recently, pursuant to the Governor's and Attorney General's initiative, State Police vehicles were equipped with video cameras that can be used to provide conclusive evidence of the conduct of motor vehicle stops. These video records, when coupled with the other data-collection systems described hereinafter, will provide the basis for a reliable and trustworthy system to detect problems, to prevent abuses, to protect officers and citizens alike, and to restore full public confidence in the State Police.

We recognize that troopers who have consistently performed their duties in accordance with the law and in an impartial fashion may take umbrage at our proposal to issue new Standard Operating Procedures that are designed to monitor more closely the exercise of their discretion. We hope and expect that all well-intentioned troopers will understand that procedures of the type described in this Report (like the video cameras that were recently installed in troop cars) will serve many purposes, and will actually help to protect constitutionally-compliant officers, insulating them from unfair and unfounded allegations. As importantly, the new recordkeeping systems we establish in this Report will help the prosecution in future motions to suppress evidence to show in individual cases that defendants were not the targets of impermissible selective enforcement.

The constitutional requirement of reasonableness — the foundation of all Fourth Amendment jurisprudence — is satisfied, literally, when a government actor can articulate legitimate and sufficient *reasons* to justify an invasion of privacy or intrusion upon a private citizen's recognized liberty interest. Most constitutional violations, as it turns out, are thoughtless ones. For the most part, our recommendations would not actually restrict the exercise of police discretion, but rather would only require an officer to be prepared to explain the reasons for his or her discretionary decisions. This is hardly an unreasonable or insuperable impediment to effective law enforcement.

We have in this Report made an earnest attempt to balance the need to establish such a system as against the need to avoid creating unwarranted

paperwork burdens that could distract officers from performing their other duties. Our goal in this regard is to channel police discretion, but not to eliminate discretion or to go so far as to require, for example, that a patrol supervisor be present at all critical stages of every motor vehicle stop, to require a police legal advisor be consulted before a trooper may conduct a search, or to ban the use of consent searches.

The procedures that we propose proceed from the assumption that much of the current problem is based upon the goal of interdicting drugs in interstate transport, recognizing that some law enforcement officers may have been influenced by stereotypes in trying to increase the odds of finding significant drug shipments. Our review has identified certain common characteristics of these efforts that provide the template for designing appropriate reforms.

Notably, a trooper who is bent on finding drugs will be more likely to rely on the consent-to-search doctrine. Furthermore, it is reasonable to expect that any such officer would engage in comparatively protracted patrol stops, since his or her objective would not be simply to issue a summons or warning, but rather to undertake a full-blown criminal investigation. For this reason, we propose the establishment of a system that would allow supervisors and the State Police hierarchy to monitor the duration of road stops. If, for example, the median length of patrol stops by a given officer is shown to be correlated to the race, ethnicity, or national origin of motorists, that circumstance would trigger the "early warning system" and require appropriate follow-up investigation and

explanation. With respect to these follow-up investigations, moreover, the systems we propose would permit, indeed require, supervisors to act promptly so that an officer would have the opportunity to provide any legitimate explanations for his or her conduct.

Finally, the proposed remedial steps call for the establishment of multiple, independent sources of information, so that these records could be cross-checked through random and automated auditing procedures. This would help to ensure the integrity of all records and thereby help to maintain public confidence that a reliable "early warning system" has been established that would not only serve to detect potential problems, but that would serve to deter violations from occurring in the first place by making it difficult if not impossible for an officer bent on relying on inappropriate criteria to do so without subjecting him or herself to heightened scrutiny, prompt follow-up investigation, and remedial and/or disciplinary action.

Ultimately, the cornerstone of this system is to enhance professionalism through enhanced accountability. The comprehensive system we propose will send a strong message that racial profiling and other forms of disparate treatment of minorities will not be tolerated, but, as importantly, will provide an opportunity to demonstrate conclusively that the overwhelming majority of state troopers are, indeed, dedicated professionals who perform their sworn duties with integrity and honor.

B. Goals and Objectives.

GOAL:

To enhance public confidence in the New Jersey State Police by ensuring that all motor vehicle stops are conducted in a professional, courteous, and constitutional manner, and by providing assurances that state troopers do not rely to any degree on race, ethnicity, or national origin in selecting vehicles to be stopped or in exercising police discretion at any point during the course of a motor vehicle stop.

OBJECTIVES:

1. *To ensure that all state troopers assigned to patrol duties are properly trained in the methods for conducting lawful stops, while reaffirming the need to ensure officer safety and to be vigilant in enforcing all laws.*
2. *To ensure that State Police patrol supervisors provide appropriate supervision.*
3. *To ensure that state troopers and supervisors are held accountable for the appropriate exercise of police discretion by carefully documenting the legitimate reasons for exercising discretion during the course of a motor vehicle stop.*
4. *To establish a reliable and efficient recordkeeping system, using multiple, independent sources of information and records (e.g., radio logs and recordings; officer reports; and patrol vehicle video tapes) that can be cross-checked to ensure the integrity and accuracy of all recorded information.*
5. *To ensure that all necessary information is accurately recorded while minimizing unnecessary paperwork burdens on patrol officers and supervisors.*
6. *To establish a database and automated audit program to serve as an "early warning system" to identify reporting discrepancies or anomalies or other circumstances that would warrant a prompt follow-up investigation and/or remedial action.*

C. *Specific Action Steps.*

We recommend that it be the responsibility of the Office of the Attorney General and the Review Team assembled by Attorney General Verniero and headed by First Assistant Attorney General Zoubek to ensure that the following action steps are implemented. All new or revised policies, procedures, training and orientation programs, and written materials developed pursuant to this Report including, but not limited to, formal State Police Standard Operating Procedures, should be made at the direction of the Attorney General or his designee and should not be issued or disseminated unless final approval, on recommendation of the Review Team, has been given by the Attorney General or his designee.

1. *Updated Statewide Drug Enforcement Strategy.*

We recommend that the Attorney General issue an updated statewide drug enforcement strategy to define the enforcement priorities and contributions of all law enforcement agencies as part of a comprehensive, coordinated, and multi-disciplined response to New Jersey's drug problem. The last such strategy, the Statewide Narcotics Action Plan II, was released in 1993. In the intervening years, the nature of the drug problem and enforcement opportunities and technologies have evolved significantly, and much has been learned about the comparative effectiveness of various strategies and tactics.

The new strategy should be designed to ensure the most efficient and effective use of resources by *focusing* drug enforcement efforts on carefully-

identified “impact cases.” By targeting and coordinating resources (as opposed to pursuing more random “targets of opportunity”), state and local law enforcement agencies can put significant offenders at greater risk, while ensuring that concerted efforts are made to shut down the open-air drug markets that degrade the quality of life for the residents of many communities across the state.

The strategy should review recent developments and state-of-the-art crime-fighting technologies with a view toward replacing ineffective or counterproductive tactics with ones that have been proven to be successful. The strategy should also make certain that the enforcement activities of one agency do not unwittingly interfere with or undermine the efforts of other agencies. (As noted throughout this Report, certain highway interdiction tactics, for example, can have the unintended and counterproductive effect of alienating law-abiding members of minority communities, leading to mistrust and causing these citizens to be less willing to work cooperatively with other law enforcement agencies in disrupting local drug-distribution operations.) The revised strategy should thus clarify the role of highway interdiction and reinforce the message that racial profiling and other forms of discrimination will not be tolerated. In addition, the new strategy should call for an evaluation of the effectiveness of the use of consent searches on the New Jersey Turnpike to determine whether these searches represent an appropriate and efficient deployment of State Police resources.

Importantly, the new strategy should outline steps to enhance public confidence in narcotics enforcement efforts, embracing and adapting the

principles of community or “problem solving” policing and enlisting the full support and cooperation of the residents and businesses in those neighborhoods that are most directly affected by the illicit drug trade.

As part of the new drug strategy, we recommend that the Attorney General, in consultation with the county prosecutors, issue a policy statement to the law enforcement community clearly explaining the law and policies recommended in this Interim Report concerning “racial profiling” and any other form of disparate treatment of minorities during the course of traffic stops.

2. *Quarterly Publication of State Police Statistics.*

The Department of Law and Public Safety should prepare and make public on a quarterly basis aggregate statistics compiled pursuant to the databases created in accordance with the recommendations of this Interim Report, detailing by State Police station the proportion of minority and non-minority citizens who were subject to various actions taken by State Police members during the course of traffic stops.

3. *Establishment of an “Early Warning System” and Enhanced Computerization of Records.*

The Superintendent should within 120 days of this Report issue a comprehensive Standard Operating Procedure creating and establishing a protocol for the use of an “early warning system” to detect and deter the disparate treatment of minority citizens by State Police members assigned to patrol duties. The system should utilize all available automated, video and manual sources of

information regarding State Police personnel duty assignments, officer-initiated enforcement activity, and the performance and disposition of such activity. The system should be designed and employed to provide early identification of individual officers whose performance suggests a need for further review by supervisory personnel. The system will also be constructed and utilized to provide early identification of agency policies or Standard Operating Procedures that result in enforcement practices or recurring patterns warranting heightened scrutiny by State Police management and executives.

The protocol for use of the "early warning system" should provide for the routine supervisory review of videotapes, patrol officer logs, Traffic Stop Report forms, Search Incident forms, and any other patrol work product. The protocol should also provide for regularly-conducted audits of enforcement patterns including traffic stops, the issuance of motor vehicle summons, and search and arrest activity. A system of station and officer sampling and selection should be devised to maximize the effectiveness of the audit program in providing early identification of potential problems.

The Superintendent, in cooperation with the Office of the Attorney General, should take steps to ensure that the CAD/RMS System is made operational as soon as possible to support the "early warning system." The system should be designed so that all appropriate "incident transactions" (e.g., DMV lookup; NCIC check; ordering driver/passenger out of vehicle; frisk; summoning drug-detection canines; etc.) can be easily and accurately recorded. In addition, the Superinten-

dent should take such other steps as are necessary and appropriate to enhance the computerization of records and data concerning the activities of State Police members assigned to patrol and patrol supervision duties.

4. *Revised Standard Operating Procedure for Traffic Stops.*

The Superintendent should within 90 days of this Report issue a single, comprehensive Standard Operating Procedure to replace, update, and supersede all existing Standard Operating Procedures regarding traffic stops. The newly promulgated Standard Operating Procedure will apply to all motor vehicle stops made by the State Police. It will explain in detail how the State Police should initiate and conduct traffic stops based upon observed motor vehicle violations, suspicion of driving while intoxicated, and suspected criminal activity.

In preparing the Standard Operating Procedure, the following should be considered:

1. Before exiting his or her police vehicle, a State Police member will inform the dispatcher of the exact reason for the stop (e.g., speeding, 70mph), a description of the vehicle and, when possible, a description of its occupants (i.e., the number of occupants and the apparent race and gender).

2. A system should be established to monitor the exact duration of all stops.

3. When the patrol vehicle is equipped with a video camera, the State Police person will ensure that the camera is activated before exiting the patrol

vehicle and will not turn the camera off until the detained vehicle has been released and departs the scene.

4. In the case of routine stops, the State Police member will at the outset of the stop introduce him or herself by name and inform the driver as to the reason for the stop. The member should not wait for the driver to inquire as to the reason for the stop, which may not be readily apparent to the driver. The failure at the outset of the encounter to explain the basis for the stop can lead to misunderstandings and a feeling of resentment.

5. When the vehicle or occupant description provided to the dispatcher was inaccurate or incomplete, the State Police person will as soon as possible provide the dispatcher with corrected or additional information.

6. At the conclusion of the vehicle stop, the State Police person will inform the dispatcher as to the stop outcome (e.g., warning, summons, etc.), and the dispatcher will close the vehicle stop incident number. This notification must be provided before the trooper leaves the scene and returns to patrol duties so that the exact duration of the stop can be determined.

7. All State Police members conducting a motor vehicle traffic stop must utilize a Traffic Stop Report form, which shall record all officer action information necessary for immediate supervisory review or to supplement information recorded by the Computer Aided Dispatch System. This form shall be designed to record all significant events that occurred during the course of the stop that entailed the exercise of officer discretion.

8. All Traffic Stop Report forms are to be reviewed by supervisory personnel at the conclusion of all duty shifts. The information contained in the reports should be entered into the "early warning system" database by means of the CAD/RMS System or otherwise.

5. *Development of Practical Stop Criteria.*

The Superintendent, as part of the Standard Operating Procedure issued pursuant to Action Step. No. 3, should develop a comprehensive set of criteria to be used by State Police members in exercising discretion in selecting vehicles to be stopped from among the universe of vehicles that are being operated in violation of the law (e.g., seriousness of violation; "aggressive" driving; number of occupants; age or condition of vehicle; multiple violations [combination of moving and equipment violations]; proximity to troop car; etc.). These criteria should be incorporated into the comprehensive Standard Operating Procedure issued pursuant to Action Step No. 3 and should be incorporated into all future basic and in-service training curricula and materials provided to officers assigned to patrol duty.

It is vitally important to provide precise guidance and direction to state troopers assigned to patrol duties on how lawfully, safely, and effectively to exercise their discretion; this important function should not be left to informal "coaching" or to the predilections and enforcement philosophies of individual State Police members. The Standard Operating Procedure should also clearly and precisely explain those criteria and factors that State Police members may *not*

consider in selecting vehicles to be stopped, including race, ethnicity, and national origin of occupants of the vehicles. Nor should a State Police member consider that the driver or occupants do not appear to "match" the type of vehicle, since such assumptions are, by definition, based upon stereotypes and invariably rely upon the racial or ethnic characteristics of the occupants.

In addition, specific, comprehensive criteria should be developed governing the exercise of officer discretion during the course of a motor vehicle stop with respect to certain significant events, such as running a computerized check for outstanding warrants or to determine the criminal history of a detained motorist. Recently, the Divisions of State Police and Criminal Justice prevailed upon the Federal Bureau of Investigation to revise the policies governing the administration of the National Crime Information Center (NCIC) database so as to make it easier for officers assigned to patrol duties to gain access during routine traffic stops to information concerning prior crimes that were committed by the persons who are stopped. These recent revisions are designed to enhance officer safety by providing accurate, objective information relevant to the appropriate self-protective steps that officers should take during the course of the encounter. The specific criteria to be developed by the Superintendent should be designed to allow and encourage troopers to have access to and rely upon objective information (i.e., the record of a detained motorist's actual criminal history), whenever possible, rather than to rely on inferences based solely on training and experience. It is important that safeguards be established to make certain that the decision to run a

computer check for outstanding warrants and/or a motorist's criminal history is never based to any degree upon the person's race, ethnicity, or national origin. It is also important to make certain by means of a detailed Standard Operating Procedure and training programs that officers understand how this computerized information may be used so that, for example, they are made aware of and comply with the rule established by the New Jersey Supreme Court in State v. Valentine, 134 N.J. 536 (1994), which explains that an officer's knowledge about a detainee's prior record of armed offenses is relevant, but not sufficient by itself, to justify a protective frisk for weapons.

6. *Procedures Governing Consent Searches.*

The Superintendent should within 120 days of this Report issue a single, comprehensive Standard Operating Procedure to replace, update, and supersede all existing Standard Operating Procedures regarding consent searches. The Standard Operating Procedure should reaffirm the existing policy that a State Police member may request permission to conduct a search only when facts are present that constitute a reasonable, articulable suspicion to believe that the search will uncover evidence of a crime. The approved State Police Consent to Search form should be reviewed and revised as necessary to account for the provisions of the revised Standard Operating Procedure.

The Standard Operating Procedure should also include provisions to require that:

1. All State Police members initiating a consent search incident must utilize a Search Incident form which includes all information necessary to document and record the search incident.

2. The Search Incident Form will provide that all consent searches require written authorization before the search is initiated.

3. In all instances, written authorization on the Search Incident form will be obtained before any search is begun.

4. The Search Incident form must be completed whether or not permission to search was granted and must include all circumstances which constituted the reasonable suspicion giving rise to the request.

5. No consent searches shall be conducted on the basis of verbal or "implied" consent.

6. Notwithstanding the holding in Ohio v. Robinette, 117 S.Ct. 417 (1996), all State Police members must advise any person being asked to give permission to search that he or she is free to leave when, in fact, such is the case.

7. The Search Incident form should specifically inform the person being asked to give permission to search that he or she has the right to be present during the consent search.

8. The immediate supervisor of the State Police member initiating a consent search incident is responsible to review the circumstances and outcome of the incident within 24 hours.

9. Where a State Police vehicle is equipped with a video camera, the entire consent search incident will be recorded.

7. *Case-by-Case Review of 1997-1998 Consent Search Incidents.*

In light of the consent search data examined by the Review Team, State Police personnel designated by the Superintendent should review all available reports concerning all of the consent searches that were conducted by State Police members assigned to the Turnpike in 1997 and 1998 to determine whether reporting requirements and Standard Operating Procedures were complied with and to verify that these consent searches were conducted after a written consent form had been signed by the person giving consent and to verify that an adequate factual basis for requesting permission to search (i.e., reasonable, articulable suspicion to believe the search would reveal evidence of a crime) was fully documented in accordance with Standard Operating Procedures. Apparent deviations from accepted practices should be reported to the Review Team.

8. *Enhanced Training.*

The Superintendent should within 120 days provide for the completion of steps required to compile curricula and conduct the training programs necessary to implement the provisions of this Report.

Training efforts and activity should include:

1. The content of all patrol-related and drug-interdiction training programs conducted or attended by State Police personnel should be reviewed to ensure that the message provided is consistent with the policies proposed in this Interim Report.

2. Components of training programs that include discussions of the law regarding arrest, search and seizure, and custodial interrogations should be taught by a deputy attorney general, assistant attorney general or an assistant prosecutor.

3. As soon as practical after the issuance of the Standard Operating Procedures recommended in this Interim Report, an in-service training program should be provided to all State Police personnel assigned to patrol or dispatch duty. The program should provide orientation to the Traffic Stop and Search Standard Operating Procedures, Consent Searches Procedures, as well as any other operational issues arising from the Interim Report.

4. As soon as practical after the issuance of the Standard Operating Procedures recommended in this Interim Report, an in-service training program should be conducted for all personnel who supervise patrol activities. The program should communicate supervisory responsibilities to ensure compliance with the Standard Operating Procedures and the principles contained in this Report.

5. A training program should be developed for members assigned to conduct or review internal affairs investigations concerning the law of arrest, search and seizure, and custodial interrogation.

9. *Criteria for Summoning Drug-Detection Canines or Equipment.*

The Superintendent should within 120 days of the issuance of this Interim Report develop specific, objective criteria for when a State Police member would be authorized to summon a drug-detector dog and/or ion mobility spectrometry equipment. These criteria must be designed to recognize the psychological impact on persons who are subjected to this procedure. These protocols should also be designed to account for the rule established by the New Jersey Supreme Court in State v. Dickey, 152 N.J. 468 (1998), which makes clear that an investigative detention based upon mere reasonable suspicion (as opposed to full probable cause to arrest) must be brief, and that protracted detentions will be deemed by the courts to constitute an arrest requiring full probable cause.

10. *Requirement to Inform Dispatcher of Intention to Conduct a Probable Cause Search.*

Whenever a State Police member executes a probable cause "automobile exception" warrantless search, the member should be required, where practicable, to alert the communications center before initiating the search. Because probable cause searches are, by definition, bona fide criminal investigations based on an objective assessment that a search would reveal contraband or evidence of a crime, a patrol supervisor should ordinarily be dispatched to the scene and should

be present prior to the execution of the search when feasible. Note that since these searches must be predicated upon full probable cause, the encounter at this stage would no longer be considered to be a mere investigative detention or "Terry" stop, so that any resulting delay in the actual execution of the probable cause search while awaiting the arrival of a patrol supervisor would create no legal problems under State v. Dickey, 152 N.J. 468 (1998), which recently confirmed that investigative detentions must be "brief."

In addition, the State Police member should be required to set out all of the facts and circumstances known to the officer constituting probable cause in a formal report whether or not the probable cause search revealed contraband or other evidence of a crime. An unlawful search that reveals no evidence may not implicate the exclusionary rule, since there is nothing to suppress, but still must be remedied through internal procedures to ensure that constitutional violations do not recur.

11. Criteria for Making Custodial Arrests.

The Superintendent, as part of the comprehensive Standard Operating Procedure to be promulgated pursuant to Action Step No. 3, should establish specific criteria explaining when and under what circumstances a State Police member can make a custodial arrest rather than issue a summons. These criteria must comply with the requirements of State v. Pierce, 136 N.J. 184 (1994) and the principles established in R. 3:3-1.

12. *Availability of Legal Advisors.*

The Division of Criminal Justice and the county prosecutors should make available deputy attorneys general and assistant prosecutors to serve as police legal advisors and to answer search and seizure, custodial interrogation, and other legal questions on a 24-hour, 7-day per week basis. The Superintendent, in consultation with the Director of Criminal Justice, should implement procedures to explain when State Police members assigned to patrol duties or to patrol supervision will be expected and/or required to consult with the police legal advisor on duty. The Director and the county prosecutors should make certain that these deputy attorneys general and assistant prosecutors have sufficient training and experience to perform this critical function.

13. *System to Report Suppression of Evidence.*

The Director of the Division of Criminal Justice should consult with the county prosecutors and should within 120 days of the issuance of this Report establish a reporting system that would require a county prosecutor to alert the Superintendent where evidence seized during the course of a patrol stop made by a State Police member is suppressed by a court. In addition, the prosecutors should be required to alert the Superintendent and Director if their review of a State Police case results in the dismissal, downgrading, or less favorable plea offer by the prosecutor based upon the anticipated suppression of evidence. (More egregious violations may not lead to a formal court order to exclude evidence because the prosecutor will not attempt to defend the officer's unlawful conduct.)

The county prosecutors should be required to direct municipal prosecutors within their jurisdictions to alert the county prosecutor's office in the event of a successful suppression motion heard in Municipal Court involving a State Police patrol stop. Information concerning stops, frisks, arrests, or searches found by courts or prosecutors to be illegal should be entered into the "early warning system" database. The Superintendent should establish a system to counsel troopers found to have made unlawful stops, arrests, frisks, or searches with a view toward preventing future violations.

14. Development of Inventory and Impoundment Policy.

The Superintendent should within 120 days of the issuance of this Report develop a written inventory and impoundment policy. This policy should go beyond the minimum requirements of the Federal and State Constitutions. The inventory and impoundment exception to the warrant requirement is based solely on the need to protect police departments from civil liability claims with respect to the handling of property that was lawfully taken into custody. Such inventories may not be used as a pretext or subterfuge to conduct a search for evidence of criminal activity, and any such criminal law searches must be done pursuant to a warrant or another recognized exception to the warrant requirement. To the extent that the State Police have entered into contractual arrangements with private vendors to tow and to store disabled vehicles, the proposed inventory and impoundment policy should generally preclude State Police members from conducting an inventory search where the risk of civil liability can be avoided by

requiring the vendors to indemnify the State Police in any resulting lawsuits. Therefore, unless it is necessary and appropriate for the State Police (rather than a vendor summoned by the State Police) to take control and custody of a vehicle or other property, State Police members should not be permitted to conduct an inventory and impoundment search. Furthermore, criteria should be established as part of the new Standard Operating Procedure to explain when it would be appropriate for State Police, rather than the vendor, to take custody of the vehicle or other property, and procedures should be established that require the written approval of the officer in charge of the station before any such inventory or impoundment search is conducted.

15. Interim Procedures Concerning Internal Affairs Investigations of Selective Enforcement Allegations.

Subject to the release of future reports and recommendations of the Review Team, the Superintendent should develop a comprehensive Standard Operating Procedure for handling all complaints involving allegations of racial profiling, selective enforcement or disparate treatment of minorities. The revised procedures should be designed to ensure the full and fair investigation of such complaints with a view toward enhancing public confidence in the objectivity, professionalism, and integrity of the internal affairs process. In the interim, all allegations of discriminatory practices should be reported promptly to the Review Team and a deputy attorney general should review the complaint before the internal affairs investigation is commenced. The Standard Operating Procedure should further

provide that no internal investigation of any complaint, whether lodged by a private citizen or a State Police member, alleging "racial profiling," selective enforcement, or any other form of disparate treatment of minority citizens should be administratively concluded (whether by means of a finding of sustained, not sustained, or unfounded) until the investigation results have been reviewed by the Division of Criminal Justice.

16. *Uniform Handling of Selective Enforcement Litigation Involving State Police Members.*

The Division of Criminal Justice, in consultation with the county prosecutors, should establish protocols setting forth factors to be considered in evaluating pretrial claims of selective enforcement by State Police members and in determining whether a case will be litigated. The Appellate Bureau of the Division of Criminal Justice should be available for consultation in any pretrial selective enforcement case. Post-conviction or appellate issues arising with respect to selective enforcement issues should, in cases where a county prosecutor is handling the matter, be litigated only after consultation with the Appellate Bureau of the Division of Criminal Justice. Any legal position taken by a county prosecutor's office should comport with the position developed by the Division of Criminal Justice.

17. *Legislative Initiative.*

The Director of the Division of Criminal Justice should within 30 days report to the Attorney General on specific recommendations for legislation that

would create new official misconduct offenses to deal specifically with the use of police authority to knowingly or purposely violate a citizen's civil rights.

18. *Development of a Reliable Benchmark.*

Throughout the course of the Soto litigation, the Attorney General's Office posed bona fide criticisms of the Turnpike population survey methodology that was developed by the Public Defender's Office. It is therefore necessary to develop an accurate and reliable survey to put State Police stop and arrest statistics in proper context. The Department of Law and Public Safety is in a far better position than the Public Defender to design and implement a means of accurately compiling information about persons and vehicles that travel on the New Jersey Turnpike and other major roadways. The goal would be to develop an objective, accurate snapshot of certain characteristics of persons and vehicles that travel on the Turnpike and other interstate highways patrolled by the State Police that can then be used as a benchmark to trigger heightened scrutiny and supervision of the exercise of police discretion as part of the automated "early warning system" described in Action Step No. 3.

The Superintendent and the Director of the Division of Criminal Justice should within 120 days of the issuance of this Report develop a suitable survey methodology in consultation with an independent statistical expert and the United States Department of Justice. The statistical expert would also be responsible for designing a weighted sampling plan, that is, a means for random sampling so as to minimize the burdens of survey administration while establishing a sufficient

sample size to ensure maximum comparability and to create a useful benchmark for stops occurring at different times of day and along the entire length of the Turnpike.

In developing a meaningful benchmark, we are mindful of a series of state and federal cases that hold that it is not possible to determine whether a police agency has made a disproportionate number of traffic stops of a particular group of people without first producing a statistically-valid violator survey, establishing the percentage of violators from each relevant classification. See e.g., United States v. Armstrong, 517 U.S. 456, 465, 116 S.Ct. 1480, 1486 (1996); see also State v. Kennedy, 247 N.J. Super. 21, 33 (App. Div. 1991) (noting that the defendant's survey should have contained information on the racial composition of the group of persons who violate the traffic laws on roadways patrolled by the New Jersey State Police). While the law on this point seems clear, we are aware of no study that supports the hypothesis that minority motorists are more likely to violate motor vehicle laws than non-minority motorists, or that violations committed by minority motorists tend to be more serious than violations committed by non-minority motorists. In the absence of any plausible reason to believe that race, ethnicity, or national origin is in any way correlated to driving behavior, we question the need to undertake the difficult task of conducting a violator population survey. For this reason, the Superintendent and the Director of the Division of Criminal Justice should consult with and work cooperatively with the United States Department of Justice in determining whether it is necessary and appropriate to develop any such violator survey methodology.

PART VI.
CONCLUSION.

After considering voluminous records concerning activities on the New Jersey Turnpike, as well as anecdotal information from a number of sources, we have concluded that while the New Jersey State Police has never issued an official policy to engage in racial profiling or any other discriminatory enforcement practices, minority motorists have been treated differently than non-minority motorists at various stages of motor vehicle stops. This Interim Report has carefully reviewed the issue of racial profiling and some of the potential causes and sources of this problem. Most importantly, this Interim Report has recommended a series of remedial steps to ensure that all citizens are treated fairly and with dignity and respect.

Although the racial profiling issue has gained state and national attention recently, the underlying conditions that foster disparate treatment of minorities have existed for decades in New Jersey and throughout the nation, and will not be changed overnight. Even so, we firmly believe that this Interim Report represents a major step, indeed a watershed event, signaling significant change. We thus hope that this Report, once fully implemented through the issuance of new and comprehensive Standard Operating Procedures, a monitoring system, training, and other reforms, will ensure that New Jersey is a national leader in addressing the issue of racial profiling.

ACKNOWLEDGMENT

The members of the State Police Review Team include Assistant Attorneys General Jeffrey J. Miller, Director of the Division of Law, Alfred Ramey, Jr., of the Office of the Attorney General, Debra L. Stone, Deputy Director of Operations for the Division of Criminal Justice, and Rolondo Torres, Jr., Director of the Division on Civil Rights, under the leadership of Paul H. Zoubek, First Assistant Attorney General and Director of the Division of Criminal Justice.

The Attorney General wishes to thank the members of the Review Team for their time and effort and to particularly recognize Assistant Attorney General Ronald Susswein, Deputy Director of Policy of the Division of Criminal Justice, for his extraordinary efforts in preparation of this Report.



***INTERIM REPORT OF
THE STATE POLICE REVIEW TEAM
REGARDING ALLEGATIONS OF RACIAL
PROFILING***

*Peter Verniero
Attorney General*

*Paul H. Zoubek
First Assistant Attorney General*

April 20, 1999

117*

ANATOMY OF A TYPICAL TRAFFIC STOP

1. The Stop
2. The Contact
3. Discretionary Decisions
4. Consent to Search
5. The Arrest

118x

STOP, ARREST, AND SEARCH DATA

Table 1.

*Motor Vehicle Stops by Cranbury and Moorestown Stations
April 1997 through November 1998¹*

Station	Percent					Total Number
	White	Black	Hispanic	Asian	Other	
Cranbury	60.3	24.6	8.2	3.9	3.0	36,645
Moorestown	58.8	28.7	5.9	3.9	2.7	50,844
Total	59.4	27.0	6.9	3.9	2.8	87,489

119x

SEARCHES

Table 2.

*Searches Conducted by Cranbury and Moorestown Stations
Various Time Periods¹*

Station	Percent					Total Number
	White	Black	Hispanic	Asian	Other/ Unknown	
Cranbury	24.8	52.4	21.4	0.6	0.8	500
Moorestown	18.9	53.7	26.1	0.7	0.6	693
Total	21.4	53.1	24.1	0.7	0.7	1,193

120x

ARRESTS

Table 3.

*Arrests by Cranbury, Moorestown and Newark Stations
1996 through 1998*

Station	Percent			Total Number
	White	Black	Other	
Cranbury	29.4	67.0	3.6	779
Moorestown	34.1	61.4	4.5	883
Newark	33.3	58.6	8.2	1,209
Total	32.5	61.7	5.8	2,871

12/1x

INTERPRETATIONS OF THE DATA AND AREAS OF SPECIAL CONCERN

1. Disproportionate Use of the Consent-to-Search Doctrine.
2. Missing Data About Racial Characteristics of Detained Motorists.
3. Lack of Automation.
4. Correlation of Discretion and Likelihood of Stopping Minority Motorists.
5. Significance of Stop Statistics.
6. Significance of Arrest Statistics.
7. Significance of the Proportion of Searches That Result in an Arrest or Seizure.

122x

CONDITIONS THAT FOSTER DISPARATE TREATMENT

1. Ambiguities and misunderstandings about the law;
2. Ambiguities, imprecision, and omissions in Standard Operating Procedures;
3. Conflicting, subtle messages in otherwise bona fide drug interdiction and gang-recognition training programs;

123x

4. The tautological use of statistics to tacitly validate pre-existing stereotypes;
5. Formal and informal reward systems that encouraged troopers to be aggressive in searching for illicit drugs, thereby providing practical incentives to act upon these stereotypes;
6. The inherent difficulties in supervising the day-to-day activities of troopers assigned to highway patrol; and,
7. The procedures used to identify and remediate problems and to investigate allegations of disparate treatment.

124x

LAW AND POLICY ON “RACIAL PROFILING” AND THE DISPARATE TREATMENT OF MINORITIES

1. The Negative Effects of Stereotyping on Minority Communities
2. The Critical Distinction Between Legitimate Crime Trend Analysis and Impermissible Racial Profiling
3. Emphasizing That Race Should Not Be Considered At All by a Trooper in Exercising Discretion to Stop a Motor Vehicle

125x

4. State Police Should Not Take Race, Ethnicity, or National Origin Into Account in Taking Any Step During a Motor Vehicle Stop

5. The Importance of Perceptions

6. Racial Profiling as a National Problem

7. The Circular Illogic of Race-Based Profiles

126x

8. Legal and Policy Pitfalls in Relying on “Group Associations” to Establish Suspicion of Criminal Activity

9. The Impact of Ongoing and Anticipated Litigation

10. Continuing Commitment to Interdict Illicit Drugs in Transport

127x

SPECIFIC ACTION STEPS

1. Updated Statewide Drug Enforcement Strategy
2. Quarterly Publication of State Police Statistics
3. Establishment of an “Early Warning System” and Enhanced Computerization of Records
4. Revised Standard Operating Procedure for Traffic Stops
5. Development of Practical Stop Criteria

128x

6. Procedures Governing Consent Searches

7. Case-by-Case Review of 1997-1998 Consent Search Incidents

8. Enhanced Training

9. Criteria for Summoning Drug-Detection Canines or Equipment

10. Requirement to Inform Dispatcher of Intention to Conduct a Probable Cause Search

129x

11. Criteria for Making Custodial Arrests

12. Availability of Legal Advisors

13. System to Report Suppression of Evidence

14. Development of Inventory and Impoundment Policy

15. Interim Procedures Concerning Internal Affairs
Investigations of Selective Enforcement Allegations

136x

**16. Uniform Handling of Selective Enforcement Litigation
Involving State Police Members**

17. Legislative Initiative.

18. Development of a Reliable Benchmark.

131x



INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

RESOLUTION

Adopted By the Executive Committee
Houston, Texas, April 17, 1999

PROFESSIONAL POLICE CONTACTS

WHEREAS, in a free society law enforcement is entrusted and expected to protect the civil rights of its citizens; and,

WHEREAS, the overwhelming majority of police officers perform their duty in a professional and impartial manner, free from bias; and,

WHEREAS, the International Association of Chiefs of Police recognizes that tensions created by some police contacts with citizens have become a concern to police and citizens alike; and,

WHEREAS, this tension has been heightened by allegations of bias profiling and discriminatory practices, and the IACP in November 1998, conducted a forum addressing one of these areas of concern: traffic stops; and,

WHEREAS, the IACP has recognized the important nature and necessity of traffic stops as a vital and effective law enforcement tool that saves lives, reduces injuries and other crimes; and,

WHEREAS, traffic stops have been proven to reduce street and violent crimes, increase the apprehension of criminal offenders, combat illegal drug activities, illegal guns and other crimes, and,

WHEREAS, forum participants acknowledged that bias, real or perceived, is detrimental to the relationship between police and the community they serve and erodes the basic foundations of trust affecting community policing; and,

WHEREAS, participants at this forum, developed a series of recommendations to reassure the community that their concerns are being addressed and that steps are being taken to correct problems where they occur; and,

WHEREAS, participants at this forum acknowledged that to strengthen trust and confidence between law enforcement and the community, its citizens and officers must have mutual respect; now therefore be it

RESOLVED, that the IACP reaffirms its long standing position against bias enforcement or any other type of discriminatory practices; and be it,

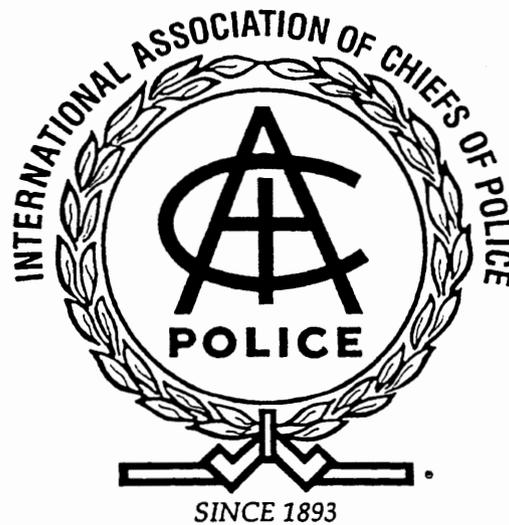
FURTHER RESOLVED, that the IACP does not endorse, train, teach, support, or condone any type of bias profiling by any law enforcement agency or individual acting under color of law; and be it,

FURTHER RESOLVED, that it is the law enforcement executives, in conjunction with their officers, who have the responsibility to open dialogue and discussion with community groups to produce guidelines for police policies, operational procedures, and training programs; and be it,

FURTHER RESOLVED, that the IACP encourages the law enforcement profession to employ the recommendations of the Professional Traffic Stops Forum along with the recommendations that are developed at future IACP forums; and be it,

FURTHER RESOLVED, that the IACP hereby commits its resources and energies to work at all levels to enhance trust between police and the communities they serve.

Recommendations from the First IACP Forum on Professional Traffic Stops



April 1999

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International Association of
Chiefs of Police

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April 6, 1999

This report summarizes the issues framed and recommendations produced at IACP's first *Forum on Professional Traffic Stops*. The Forum continued work that has been ongoing at IACP for some time. The gathering was conceived as the first in a series of continuing discussions with the ultimate goal of establishing guidelines for traffic stop policies, training, and operational procedures that safeguard the constitutional rights of citizens. We believe this can be accomplished while, at the same time, allowing police to conduct duties that are of demonstrable benefit to citizen safety on streets and highways, and aid in crime reduction.

Though our policing institutions do not train nor do they promote the exercise of bias in conducting traffic stops, there are, nevertheless, a few officers who engage in this kind of behavior. These individuals must be identified and removed from service, and police administrators must remain ever vigilant in the fight against those who engage in these kinds of illegal practices.

The objectives of the first Forum were to address, head-on, the complex and emotional question of bias in traffic stops, to foster open and honest discussion of a range of traffic stop issues, and open channels of communication among those with critical interests in traffic stop policy and practice.

Our first discussion helped to shed light on issues that are critically important to the effective functioning of police departments and to ensuring the continuing trust between the public and its law enforcement officers. I feel privileged to be able to acknowledge the outstanding contributions of participants and to have been a part of the deliberations. We look forward to future collaborations.

Sincerely,

Ronald S. Neubauer
President

ENSURING PROFESSIONAL TRAFFIC STOPS

Proactive traffic enforcement is an effective strategy to protect the public from the devastation caused by drug abuse, street and highway traffic-related death and injury, illegal trafficking in and possession of weapons, continued freedom of fugitives, and to otherwise promote and maintain an orderly and law abiding society.

Proactive traffic enforcement must and will continue to be conducted in fullest compliance with the constitutional and statutory safeguards established to preserve the rights of citizens, the prescriptions of case law, and the sanctioned policies and practices of law enforcement agencies.

Proactive traffic enforcement that is race or ethnic-based is neither legal, consistent with democratic ideals, values, and principles of American policing, nor in any way a legitimate and defensible public protection strategy. It is not, cannot, and will not be tolerated by the police profession.

I. PROACTIVE ENFORCEMENT

One criminal interdiction strategy designed to suppress or terminate the activities of drug couriers, traffickers in illegal firearms, violent gangs, terrorists, and others who pose a threat to public safety and security is proactive traffic enforcement. Proactive traffic enforcement should be focused on areas where a reduction in crashes and criminal activity will result.

- Traffic Safety.** Selective enforcement has been used successfully for years to reduce traffic deaths and injuries by focusing efforts on types of violations that most frequently cause traffic crashes, and deploying officers by days of the week, hours of the day, and at locations where, statistically, crashes are most likely to occur. This strategy also enables resource-strapped law enforcement agencies to invest personnel cost effectively.
- Drunk Driving.** Drunk drivers account for nearly 40% of the 40,000 or more highway deaths every year. Scientific research has enabled the National Highway Traffic Safety Administration to develop a set of daytime and nighttime cues to help patrol officers spot drunk drivers. Several cues, spotted in combination, constitute probable cause for officers to believe a person is either intoxicated, sleepy, injured, or ill. The logical follow-on, then, is to pull them over to determine their actual condition. Statistical probabilities have been developed, based on the number of cues present, to indicate the likelihood of a driver being under the influence of alcohol or drugs. These cues are used in many states in

place of more intrusive methods, such as roadblocks, to detect drunk drivers on the road.

- Criminal Activity.** Lessons can be learned from the most successful officers who are able to go beyond the traffic stop and apprehend criminal suspects. Officers skilled in this technique have succeeded in spotting drug couriers, detecting stolen vehicles, apprehending fugitives, and in determining behavioral commonalities that can be used in developing possible cause.

The contributions and cost-effectiveness of proactive enforcement, measured in arrests, drug confiscations, and deterrent value are impressive:

- Studies have shown more illegal guns are taken off the street through traffic stops than through any other tactic.
- The Drug Enforcement Administration estimates that 40 percent of all drug arrests in this country are the outgrowth of traffic stops.
- When the Traffic Enforcement Index goes up, the traffic death and injury toll often goes down.

II. PROFESSIONAL VERSUS BIASED TRAFFIC STOPS: THE WORK OF THE IACP

The increasing prevalence of proactive enforcement, traffic stops, and incidents alleging enforcement based on bias, motivated the IACP to confront this complex, emotional matter.

- Prioritizing Issue.** In the July, 1998, *Police Chief*, President Bobby D. Moody highlighted traffic stop issues. *Professional Traffic Stops vs. Biased Traffic Stops*, the President's Message, noted that:
 - Professional traffic enforcement is a vitally important tool that saves lives and reduces crime.
 - Bias has no place in law enforcement, and traffic stops must be performed in a professional and fair manner.
 - To stop and search an individual simply because of race, gender, or economic level is unlawful, unconstitutional, and should not be tolerated in any police organization.

- Unfortunately, like other areas of law enforcement policies are not always followed and mistakes are sometimes made. Some officers base their actions on their own bias rather than on the actions of an individual.

- ☐ **Guiding Principles.** In June, 1998, the IACP's Highway Safety Committee, began to explore the issue of bias in traffic stops. Members of the committee prepared recommendations and guiding principles to serve as the basis for IACP's investigation of, and response to public concern over traffic enforcement policies.

- ☐ **IACP's State and Provincial Police Division.** In addition to its work in organizing the Traffic Stops Forum, the Division held discussions during its North Atlantic Regional Meeting on conflicting pressures generated by Justice Department programs that were to increase highway interdiction efforts which then lead to investigations of the Justice Department's Civil Rights Division.

- ☐ **Meetings with other Groups.** IACP members and staff have participated in sessions conducted by the U.S. Departments of Justice and Transportation examining the issue of traffic enforcement policies.

III. THE PROFESSIONAL TRAFFIC STOPS FORUM

The IACP has acted to provide a national platform from which we all can address proactive enforcement, traffic stops, and related enforcement issues. We intend, also, to develop and sanction policy, procedure, and training guidelines that simultaneously maximize the potentials of proactive enforcement/traffic stop strategies, and protect and defend the constitutional freedoms and safeguards of every citizen.

In pursuit of this goal, President Ronald S. Neubauer convened the first of a projected series of Professional Traffic Stop meetings on November 13, 1998, in Alexandria, Virginia. Thirty selected participants represented federal, state, and local law enforcement agencies: Office of the Attorney General of the United States; United States Department of Justice – Civil Rights Division and Office of Community Oriented Policing Services; United States Department of Transportation – Civil Rights Division and NHTSA; National Urban League; National Organization of Black Law Enforcement Executives; and National Sheriff's Association. Members of the IACP's State and Provincial Division and Highway Safety Committee participated as well. Representatives of several other interest groups were invited, but did not attend.

Seven objectives were fashioned for our meetings:

- Foster open and honest discussion of the issues surrounding police traffic stops.
- Open channels of communication among participants to promote ongoing dialogue and discussion of mutual highway criminal interdiction and traffic stop concerns.
- Review and analyze available data to substantiate or refute allegations of prejudice in traffic stop operations.
- Discuss the need for additional data, who should collect it, resource requirements, and the impact collection procedures would have on law enforcement operations.
- Clarify official DOJ positions on a range of highway criminal interdiction issues.
- Discuss the costs, personnel and monetary, likely to be incurred by law enforcement agencies to comply with sweeping requests for information from the federal government.
- Initiate a process to produce consensus guidelines for police policies, operational procedures, and training that safeguard constitutional rights of all citizens and allow police officers to fulfill their sworn duty to identify and

apprehend criminals and interdict illegal traffic in drugs, and dangerous weapons and contraband.

The first meeting was designed to open discussion, pinpoint the issues, and discuss the best responses.

IV. ISSUES AND NEEDS

The range of issues and needs that surround proactive enforcement, traffic stops, and bias stops is broad, complex, and attests to a diversity of perspectives and interests among core stakeholders. Prominent issues and needs raised by Forum participants are presented later in the report. The issues coalesce around several themes: Leadership Obligations; Problem Definition and Data Collection; Policy and Practice; Training; Community Engagement; Technology; and Peer Engagement and Collaboration.

An additional set of issues that seem to participants to embody conflicting objectives generated especially compelling discussion:

- Aggressive enforcement versus biased stops, actual or perceived.
- Rights to privacy versus police powers of interdiction.
- DEA enforcement-oriented goals versus DOJ Civil Rights Division goals.

During deliberations, participants offered observations on factors that possibly contributed to the reality and the perception of unprofessional and biased traffic stops:

- Misinformation about profiling and controlled use of discretion is sometimes relayed as truth.
- Absence of proper supervision may leave improper practices uncorrected.
- The actual purpose for traffic stops is not readily apparent or revealed to motorists. This can cause misunderstanding and resentment. Not educating the public about enforcement programs, rationales, and true objectives can undermine credibility of enforcement efforts.
- Department enforcement policies and/or their implementation may send conflicting messages, thereby reinforcing behavior that is not officially sanctioned, and violates the department's mission.

- The value of traffic enforcement activities often is discounted. These activities often lead to the identification of wanted criminals, evidence of other crimes, and can contribute to the overall safety of our communities.
- Aggressive enforcement of seat belt laws leads to enhanced safety, but can lead to misunderstandings between police and minority citizens.

The most contentious issue discussed was the reporting requirements proposed in HR-118. This unfunded federal mandate would force the police to collect data on a driver's race at the scene of a traffic stop. The bill's reporting requirements would be easily circumvented by erroneous or non-reports filed by the biased officer. This can lead to jeopardizing officer safety and to offending motorists. The cost, practicality, and problems inherent in collecting and distributing the data were also of concern.

V. RECOMMENDATIONS

Several of IACP's objectives were achieved at the forum, namely to foster open and honest discussion of critical issues, open channels of communication among participating stakeholder representatives, and discuss data collection requirements and collateral resource issues. Forum participants also fashioned a package of recommendations to further professionalize traffic stops and directly confront biased enforcement. Recommendations address:

- Leadership Obligations
- Problem Structuring & Data Collection
- Policy & Practice
- Training
- Community Engagement
- Technology
- Peer Engagement and Collaboration.

Law Enforcement Leadership Obligations

Even more important than any recommendation that follows is the obligation of each chief law enforcement executive to establish a value structure and an organization culture that regards human dignity and constitutional protection and liberties as paramount, and that unmistakably treats biased behavior as intolerable.

Problem Definition & Data Collection

The need to further understand and quantify traffic stop issues and identify problems is paramount. Limited core information exists on the frequency of traffic stops; the

characteristics of those who are stopped, especially race, gender, and ethnicity; and the number and results of consent searches, including ticketing.

1. **Provide Federal Funding For State and Local Databases to Support Examination of Traffic Stop Activity and Outcomes.** There was little expressed at the Forum to support federally mandated and controlled data collection. The common objective of the federal government and police agencies at all levels would be better served by local data collection efforts.
2. **Fund a Voluntary National Traffic Stops Clearinghouse for Law Enforcement Agencies.** To satisfy a variety of research, planning, operations, and evaluation needs, the Federal government should provide incentive grants that enable law enforcement agencies to pool traffic stops information and forward it to a national clearing-house. The IACP "Use of Force Database" is one possible development process that can serve as a model.
3. **Rely on Driver Licensing Agencies for Race and Ethnicity Identification Data.** To reduce potentials for misunderstanding by drivers and promote officer welfare and safety, participants were unanimous that data on race and ethnicity be gathered in the least obtrusive manner, which is regarded to be from the driver's license.

Policy & Practice

Clear directives, effective supervision, and emulation of best practices will enhance targeted enforcement and professional traffic stops objectives sought by law enforcement and debilitate biased traffic enforcement activity.

4. **Clarify & Reinforce Sanctioned Professional Traffic Stops Objectives.** The true objectives of traffic stops must be dealt with openly, candidly, and framed within a commitment to the citizen's rights as expressed in agency mission and value statements.
5. **Develop a Model Professional Traffic Stops Policy.** IACP should update and expand upon existing policies and Training Keys that pertain to traffic stops, including the IACP Police Traffic Services Policies and Procedures Manual.
6. **Observe the Guiding Principles of the Highway Safety Committee.** The IACP's Highway Safety Committee has diligently and comprehensively examined the professional traffic stops issues. Its *Statement of Guiding Principles*, the product of the Committee's work, should be adopted and endorsed by IACP members, by resolution.
7. **Develop a "Best Practices" Model.** Many jurisdictions have achieved great success with proactive strategies with few allegations of biased enforcement.

These approaches have achieved striking success and should be emulated in a locally tailored fashion. Preparation and distribution of a "Best Practices" model can foster this objective.

8. **Ensure That Traffic Stop Activity is Adequately Supervised and Monitored.** Field supervisors and their commanders must be held strictly accountable for the quality, outcome, and constitutionality of traffic stops. Leaders at the highest level of law enforcement agencies must monitor traffic stop patterns and allegations of biased activity. In addition, training for first line supervisors focusing on encouraging appropriate enforcement tactics of subordinates should be developed.
9. **Employ Performance Reviews To Reward Professional Traffic Stop Behavior.** Performance goal setting and review practices should be structured to acknowledge and, when possible, reward officers who demonstrate professionalism in traffic stop activities.

Training

Intensified, highly focused training—at many levels—has been singled out as a core requirement to enhance the professionalism of traffic stop practices.

10. **Develop A Model Professional Stops Training Curriculum.** The curriculum should encompass a comprehensive spectrum of objectives, policies, practices, and issues:
 - Objectives
 - Legal Requirements
 - Policies
 - Procedures
 - Best Practices and Strategies
 - Officer Safety
 - Citizen's Rights
 - Diversity
 - Critical Issues.

The curriculum must examine race and ethnically-based enforcement and offer strategies to prevent its occurrence.

Participants urge the IACP to lead training curriculum development. This is the best course to promote acceptance, use, and uniformity of training nation-wide.

11. **Involve Stakeholders In Curriculum Design & Development.** Curriculum developers should involve advisory groups that reflect the interests, expectations,

and advice of the community, minority groups, civil liberties advocates, legislators, scholars, and others, as partners with law enforcement.

Community Engagement

Community involvement and early education should occur, whenever feasible, to engender support for proactive enforcement efforts and their positive results on the community so as to minimize misunderstanding.

12. **Intensify Public Information Activities Regarding Traffic Safety Issues.** Law enforcement agencies should not allow any information gap to develop with respect to safety strategies. Otherwise public perceptions are formed largely by media preoccupation on isolated law enforcement abuses. Both the public and law enforcement will be well served by an aggressive and balanced public information campaign.
13. **Employ Community Policing Opportunities to Enhance Communication and Trust.** Misunderstanding and suspicion of traffic-stop motives should diminish with increasing minority group trust of the police. Community policing interactions, of many types, allow police to earn greater trust in minority communities.

Technology

Police agencies welcome the opportunity to prove that traffic stops are justified and conducted in compliance with sanctioned policies and procedures. Technology can help.

14. **Equip Vehicles With Video Cameras and Audio Recording Capability.** Agencies that have turned to this technology for traffic stop situations have experienced measurable success in demonstrating the integrity of their conduct.
15. **Encourage Federal Support for Technology Acquisition.** Participants urge the federal government to assist state and local law enforcement to ease the financial burden of in-car video, audio recording and other forms of technology that document stops.

Peer Engagement and Collaboration

The police profession at the local, state, and federal levels, and a range of stakeholders including minority groups, have a mutual obligation to spotlight and find balanced solutions to traffic stop issues.

16. **Develop An IACP-DOJ-Congressional Action Plan.** The timing and the environment for a concerted, collaborative response to traffic stop issues is most opportune. Representatives of the DOJ attended and contributed to the IACP Forum. IACP representatives attended and contributed to the work of a DOJ-organized "Profiling Problem Solving Group." The Attorney General has expressed her commitment to working with law enforcement on traffic stop issues. The platform for constructive, collaborative action is in place. Action steps should be a next order of business.
17. **Clarify Goals & Expectations of Federal Agencies.** One objective of future meetings must be to examine the consistencies and conflicts that federal agencies' expectations and goals seem to present for police agencies. We invite federal agencies to work with us on this matter.
18. **Highlight Traffic Stop Issues in Professional Journals.** The IACP has been advised to publish a series of articles in the *Police Chief* to publicize traffic-stop problems, examine the dimensions and nature of the problem, and the need for improved policies and training.

VI. FUTURE ACTIVITIES

Based on the preceding, much remains to be done. A first step has been taken and insightful information developed that will serve as a basis for structuring future activities. The IACP recognizes and accepts the challenge. It also recognizes that a solution cannot be found in a vacuum. In keeping with our philosophy of community policing, minority groups most effected by these problems and perceptions are needed to join us in arriving at mutually acceptable solutions. We will proceed with the development of an Action Plan to address the recommendations in this report. In this endeavor we will solicit, and need, the assistance and support of a wide range of concerned individuals, agencies, and activities. We feel confident that the response will be positive.

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