
Public Hearing

before

SENATE JUDICIARY COMMITTEE

“Review of racial profiling”

LOCATION: Seton Hall Law School
Newark, New Jersey

DATE: April 18, 2001
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator William L. Gormley, Chairman
Senator Louis F. Kosco
Senator Robert J. Martin
Senator John J. Matheussen
Senator Norman M. Robertson
Senator Raymond J. Zane
Senator Garry J. Furnari



ALSO PRESENT:

John J. Tumulty
Jo Astrid Glading, Esq.

Christine Shipley, Esq.

*Office of Legislative Services
Committee Aide*

*Senate Majority
Staff Counsel*

Michael Chertoff, Esq.
Special Counsel to the Committee

Douglas Wheeler, Esq.
*Senate Democratic
Staff Counsel*

Scott L. Weber, Esq.
Assistant Special Counsel to the Committee

*Hearing Recorded and Transcribed by
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SENATOR WILLIAM L. GORMLEY (Chairman): The first witness for today will be Martin Cronin. Mr. Cronin, will you please stand and raise your right hand?

(Oath administered)

Okay. Now, we're going to turn off all the cell phones. Okay. Thank you.

Mr. Cronin, we would appreciate your opening statement.

ASST. ATTORNEY GENERAL MARTIN CRONIN:

Thank you, Sir.

In their testimony before this Committee, both Attorney General Farmer and Colonel Dunbar referred to the Office of State Police Affairs. They referred to its role in facilitating the change which is currently occurring within the Division of State Police and the Office of the Attorney General. I would like to take this opportunity to outline the purpose and structure of the Office of State Police Affairs; to define the relationship among this office, the Division of State Police, and the independent monitoring team appointed under the consent decree; to describe key provisions of the consent decree, a copy of which has been provided to each member of the Committee; and to describe the role which the Office of State Police Affairs has played in facilitating State compliance efforts with various consent decree provisions.

The creation of the Office of State Police Affairs was first recommended in the final report of the State Police Review Team issued in July of 1999. The staffing of this office did not begin until September of 1999, when I was appointed director. Shortly after my appointment, it became apparent to me that many viewed the interim and final reports as a sellout of the State Police and the failure to defend its members and its tradition. It also became equally

apparent that others viewed the observation made in these reports that the great majority of troopers are honest, dedicated professionals who are committed to enforcing the law fairly and impartially, as a sidestep of the issue and a failure to recognize the affront to human rights and dignity that accompanies an unwarranted racially biased traffic stop. A challenge posed to this office was to not allow either of these extreme views to improperly infect the substance of any solution.

To address this challenge, the office has sought to facilitate change and to ensure that our laws are equally applied to all of our citizens whom we serve. This office has sought to facilitate the implementation of these changes in a manner that does not adversely affect trooper safety or the ability of troopers to effectively function as law enforcement officers. These considerations guided our negotiations of the consent decree and continue to guide our approach in its implementation.

In our efforts to promote equal, effective, and safe law enforcement, this office has consciously solicited and received State Police participation in working groups, which formed the recommendations on key issues affecting State Police operations and consent decree compliance. This joint approach continues today.

As Colonel Dunbar alluded to, while disagreements have arisen concerning consent decree implementation, they are ultimately resolved, due in large part to the desire and the ability of our offices to work side by side to achieve the common goal of equal, effective, and safe law enforcement.

At this time, I would like to describe the responsibilities of the Office of State Police Affairs, which is set forth in Paragraph 110 of the consent decree, which you have. The consent decree provides that the Office of the Attorney

General shall create an Office of State Police Affairs, which will have the responsibilities to ensure implementation of the terms of the consent decree; to provide coordination with the independent monitoring team and the United States concerning State Police matters related to implementation of the consent decree; to audit the manner in which the State receives, investigates, and adjudicates misconduct investigations; to audit State Police use of the MAPS, or Management Awareness Program; to audit State Trooper performance in motor vehicle stop requirements; to provide technical assistance and training regarding these matters; and to conduct certain misconduct investigations.

In addition to these consent decree mandated compliance functions, the Office of State Police Affairs also provides certain legal advice to the superintendent and other State Police members.

The structure of the office: In structuring the office, we sought to draw upon the expert--

SENATOR GORMLEY: Excuse me. Could we close the door?
(noise in hallway) Thank you.

Go ahead.

ASSISTANT ATTORNEY GENERAL CRONIN: Thank you, sir.

In structuring the office, we sought to draw upon the expertise of already existing State agencies and focus the efforts of the Office of State Police Affairs towards consent decree compliance and coordination that the other State entities further the purposes of the decree. For example, the Division of Law continues the defense of civil lawsuits against the State Police or its members. Also, the Division of Criminal Justice and the county prosecutors continue to conduct criminal prosecutions of State Police members when warranted.

Presently, the Office of State Police Affairs is broken down into two functions or divisions. One is a compliance function. It's staffed by three DAGs; two members of the Division of State Police, which are detailed to the office; and four State investigators, who are not State Police members. As the consent decree -- as viewed in -- by the independent monitors, is broken down into several tasks that relate to motor vehicle stop documentation, misconduct investigations, etc., what this part of the office does is, individual members are assigned certain tasks required by the decree, and they are responsible for facilitating compliance with that. More specifically, this would require them to look at the requirements of the decree, assist State Police members in drafting protocols which satisfy the minimum requirements of the decree, and then solicit response from the State Police, which would not only satisfy the requirements of the decree, but further management objectives to make it a more effective organization.

Members of the office also teach Division members regarding issues such as the consent decree requirements and constitutional law as part of the training requirements of the consent decree. We also identify and retain consultants who have facilitated the creation of the MAPS program, have helped us with the ethics training, cultural diversity training, and surveys conducted on the New Jersey Turnpike.

The compliance arm, if you will, of the office also plays a central role in the processing of misconduct investigations. I'd like to take a few moments to speak about that, sir.

SENATOR GORMLEY: Yes.

ASSISTANT ATTORNEY GENERAL CRONIN: Under the consent decree, there are three major players in the processing of misconduct

investigations. One is the Office of Professional Standards of the Division of State Police. Under the consent decree, the Office of Professional Standards is obligated to receive all misconduct complaints against State Police members. They are also required to conduct all misconduct investigations subject to -- some cases can be done by my office, where there is a conflict or otherwise an agreement amongst the Attorney General and the Colonel.

Also regarding misconduct investigations, the Office of State Police Affairs has an obligation under the consent decree, Paragraph 110, to audit the manner in which the State receives, investigates, and adjudicates the misconduct investigations. So my office, as a separate auditing function of investigations done by the Division--

Yes, sir.

SENATOR GORMLEY: Just for background--

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR GORMLEY: --before your office existed--

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR GORMLEY: --who performed that function, or was it performed?

ASSISTANT ATTORNEY GENERAL CRONIN: Yeah, sir, it was performed. Within the Division of Law--

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: --there were DAGs that were assigned to review charges and specifications involving allegations of misconduct against members. They also represented the Division if there was a general disciplinary hearing before the Colonel. My office performs that function now.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. Also, under the consent decree, in addition to the auditing function which my office performs, the independent monitoring team under paragraph -- I believe it's 119 of the decree -- is obligated to review and evaluate the quality, timeliness of misconduct investigations, disciplinary actions, and interventions. Interventions are nondisciplinary -- like training, counseling, nondisciplinary approaches to violations of rules, regs, or procedures.

So what happens-- Would it be helpful if I walked through the flow of the disciplinary process?

SENATOR GORMLEY: Yes.

ASSISTANT ATTORNEY GENERAL CRONIN: Very well.

The disciplinary process begins with the filing of a State Police Form 251. It is an allegation of misconduct, and that is what begins the disciplinary process.

SENATOR GORMLEY: Excuse me. Would somebody please keep that door closed? I'm sorry.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. Thank you.

The 251 is filed, and then the allegation is categorized, and the investigation commences. Let us assume that this is an investigation that is conducted by State Police Office of Professional Standards. That investigation would proceed. There would be interviews. There would be evidence collected and certain-- And this is done by the investigatory arm of Office of Professional Standards within State Police. The Office of Professional Standards has an investigative group and an adjudicative group, adjudications bureau.

So what happens is, the Office of Professional Standards would conduct the investigation. They would reach conclusions as to whether the allegations are substantiated, not substantiated, insufficient evidence. If it is not substantiated-- If it's other than substantiated, the investigative part of that case would be closed. At that point, my office interacts there twice. Number one, to review whether the allegation in the 251 is properly characterized.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: The second point where we get into the investigative arm is, after the case is closed there are -- my office reviews the closed file for basic integrity. That is, a thorough investigation. A lot of the review is driven by requirements of the consent decree that appear in like paragraphs -- in the 70s and 80s. These are sort of minimum requirements for a thorough investigation, a preponderance evidence standard, no presumption that the trooper -- towards the trooper's statement, as opposed to a citizen witness. You review collateral misconduct. So there is a substantive review.

The actual factors looked at are agreed to between the independent monitoring team and my office. So my office performs that review. After we-- You know, if we find it sufficient, fine. If not, we can recommend that certain things go back. Then if it's closed, the independent monitoring team, an agent of the United States District Court, under the consent decree as part of its oversight, then reviews that file itself. So you have three levels, basically, of review for a misconduct investigation: the State Police management within the Office of Professional Standards, my office, and the independent monitoring team.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. Let's assume that the case is substantiated, that the allegation was substantiated. What would happen then is, the charge goes from the Office of Professional Standards investigation to the Office of Professional Standards adjudication. What they do then is, they draw up what are called charges and specifications. It's basically to place the State Police member on notice that they have been charged with a substantiated allegation. These charges and specifications, which I referred to earlier, are then reviewed by my office for legal sufficiency. Okay. If they pass it, then they are served upon the member, and the member has an opportunity to defend, accorded due process, a hearing in front of the Colonel if appropriate.

At that hearing, a DAG assigned to my office will represent the State and effectively prosecute that allegation of administrative misconduct before the Colonel.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: Now, I refer to two-- That's basically the way it flows.

SENATOR GORMLEY: On a complaint? If a complaint is filed?

ASSISTANT ATTORNEY GENERAL CRONIN: Correct, sir. Right.

Now, I referred to two arms of my office. One of the arms deals with compliance and basically prosecuting the misconduct allegation. Another arm performs legal advice. All right. And one of the forms of legal advice that is provided is that after a hearing -- after the record is completed, if you will, at the administrative hearing before the Colonel, that's a closed record. The people on the advice side of my office would then assist the Colonel in drawing up the

opinion. Okay. There is a separation between the attorneys who present the misconduct investigation, a Chinese wall, if you will, and the DAG who will assist the Colonel in writing the opinion. The attorney who is writing the opinion--

SENATOR GORMLEY: But they're all under the DAG?

ASSISTANT ATTORNEY GENERAL CRONIN: They all-- They ultimately-- Both sides ultimately report to me.

SENATOR GORMLEY: Oh, both sides report to you.

ASSISTANT ATTORNEY GENERAL CRONIN: But the side-- Let me take a step back. The side that basically prosecutes the case-- I'm the Director. There's a Deputy Director for compliance. Those people report to the Deputy Director, who reports to me. The DAG who would write the opinion reports directly to me and is not under the chain of command, if you will, of the compliance side. So that's how my office seeks to provide that function.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay.

May the record reflect that I've been joined by Captain Leonardis, Commandant of the State Police Training Academy.

SENATOR GORMLEY: Thank you.

Why don't you get up closer so we can make use of the microphone?

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. All right. In addition to the services provided in connection with misconduct investigations, there is also a requirement under the decree to produce semiannual aggregate data on certain State Police functions. My office coordinates that, and that's under the compliance side.

SENATOR GORMLEY: Because one of the issues that came up before was just compiling an annual report about how many complaints and not even naming individuals, obviously, but in terms of--

SENATOR ZANE: Senator Gormley, can we inquire as to who the legal advice--

SENATOR GORMLEY: Sure.

SENATOR ZANE: --is provided to?

SENATOR GORMLEY: Yes.

SENATOR ZANE: You provide legal-- You said there's two functions--

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ZANE: --at that level. One is to provide legal advice.

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR ZANE: Who do you provide it to?

ASSISTANT ATTORNEY GENERAL CRONIN: The request for legal advice comes through the Office of the Superintendent.

SENATOR ZANE: Yeah, but who are you providing the legal advice to? Are you providing legal advice to the trooper? Are you providing legal advice to-- To who? That's my question.

SENATOR MATHEUSSEN: Who's your client?

SENATOR ZANE: Yeah. Who's your client?

ASSISTANT ATTORNEY GENERAL CRONIN: It's the Division of State Police, but the requests come through the Office of the Superintendent.

SENATOR ZANE: Yeah, but I'm concerned. You indicated that there's two functions, one of which is to provide legal advice. Do you remember saying that a few moments ago?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR ZANE: I just want you to tell me, who are you providing the legal advice to? Are you advising a trooper? Are you advising the Superintendent of State Police? Who are you advising?

ASSISTANT ATTORNEY GENERAL CRONIN: Senator, it depends upon the specific question. An individual trooper may pose a legal issue, and that is passed through the chain, through the superintendent's office, to us.

SENATOR ZANE: So you may well then be advising a trooper who charges have just been filed against? Is that correct? And reviewed by you?

ASSISTANT ATTORNEY GENERAL CRONIN: That is possible.

SENATOR ZANE: Isn't that a conflict?

ASSISTANT ATTORNEY GENERAL CRONIN: It has not occurred yet, but it's possible.

SENATOR ZANE: Isn't that a conflict? How do you advise someone you just okayed the charges against? I mean, isn't that akin to somebody going to the county prosecutor who just invited them and saying, will you give me a hand, I need to figure out legally what to do with this?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, if that-- If there was-- If that situation did arise, or I can see how it can arise, there are -- that opinion could be referred to another arm, if you will, of the Office of the Attorney General.

SENATOR ZANE: Well, I don't mean to dominate this. I--

SENATOR GORMLEY: I know. What we'll do is, I think he should have one follow-up question, then we'll let you finish your testimony--

SENATOR ZANE: That's fine.

SENATOR GORMLEY: --because I started this, and actually I'd like you to have the opportunity to get through this. Why doesn't Senator Zane do one more follow-up question, then we'll continue with testimony.

SENATOR ZANE: Is your office playing sort of a role as -- I guess to equate it to the criminal justice system -- like the public defender's office for the State Police -- State Trooper who is being charged? Are you doing that?

ASSISTANT ATTORNEY GENERAL CRONIN: As a public defender?

SENATOR ZANE: I don't know what you're doing with this legal advice. I just need to get that clear in my mind. You are reviewing documents to be sure that they are in order, that the charges or the specs are drawn properly against the trooper. And once you determine that that has been done, the trooper is then served, correct?

ASSISTANT ATTORNEY GENERAL CRONIN: Correct.

SENATOR ZANE: Is that what you said?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR ZANE: After that trooper is served, your next comment had to do with legal advice, and my question is -- and I'm still not sure you've answered it -- are you providing that legal advice then to the trooper or are you serving the Attorney General? Are you serving the State Police as their attorney? Who's your client?

ASSISTANT ATTORNEY GENERAL CRONIN: Your question, I think, assumes that there's an overlap between a trooper charged with misconduct and a trooper requesting legal advice through the chain of command.

SENATOR ZANE: Mr. Cronin, my question is very simple. Who do you provide legal advice to? And then I'm off the subject. I just need the answer.

ASSISTANT ATTORNEY GENERAL CRONIN: Division of State Police.

SENATOR ZANE: Who do you advise?

ASSISTANT ATTORNEY GENERAL CRONIN: The Division of State Police.

SENATOR ZANE: Not the trooper then?

ASSISTANT ATTORNEY GENERAL CRONIN: It is conceivable, Senator, that a trooper could pose a question, pass it up the chain of command to the Office of the Superintendent, and the superintendent presents that question to us. So indirectly, I guess, we would be providing advice to the trooper, but the advice is flowing through the chain of command to the Division. Have I answered your question, sir?

SENATOR ZANE: Yeah. I think what you're telling me is that you could be providing legal advice to the party that is bringing the charges. At the same token, through some scheme or whatever, you also could be providing legal advice to the party who is charged.

ASSISTANT ATTORNEY GENERAL CRONIN: That is theoretically possible, but there are avenues where such a conflict arises where that specific advice, if you had the confluence of both charges against a specific trooper and a request for legal advice concerning the subject matter of those charges, could be referred to another arm of the Office of the Attorney General.

SENATOR GORMLEY: Senator Zane, why don't we get through the entire testimony now--

SENATOR ZANE: I understand.

SENATOR GORMLEY: --because obviously, he's--

SENATOR ZANE: I'm fine.

SENATOR GORMLEY: This is a very important witness, because he's dealing with the implementation of the consent decree, the interim report, and an enormous amount of responsibility has been placed on him.

SENATOR ZANE: I understand.

SENATOR GORMLEY: And why don't we let him get through everything, because I know there will be a number of other questions.

Go ahead, please.

ASSISTANT ATTORNEY GENERAL CRONIN: Thank you, Senator.

All right. Continuing on, this is the compliance side of the house, if you will, that under the consent decree this arm provides an audit of motorists -- on how the motorists have been interacted with by State Police members. We also do audits of complainants and completed misconduct investigations for their views on how their cases were handled. These are done-- Both of these audits are done pursuant to protocols that have been approved by the independent monitoring team and are reflected in the status reports that the monitoring team has filed.

This office also conducts certain misconduct investigations itself, where there is a conflict with, say, high-ranking officials within the State Police. Also, there's certain types of allegations, such as discriminatory motor vehicle stops, excessive use of force, where either the Office of Professional Standards or my office has to investigate the case.

Okay. I believe in response to Senator Zane's question, I explained the legal advice side of the house.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: But basically what -- just briefly-- The DAGs on this side of the house work with other agencies primarily responsible for some of the other recommendations made in the interim and final reports. For example, in the final report, there was recommendations for revising, reforming the recruitment and selection process. That process is the subject of a consent order entered into between the State and the NAACP. That litigation is under the control of the Division of Law. And so, the Division of Law -- it has primary responsibility for that aspect of the reform.

Similarly, the promotion process is primarily handled by attorneys in Tom O'Reilly's shop. And what my office does is keep advised of the progress of those reforms and make sure that they are consistent with the decree. For example, in the promotional setting, things that we did were -- was there was recently a promotional test. What my office ensured is that the SOPs and the questions on the promotional test included the SOPs that are affected by the consent decree, such that we reinforce member knowledge of the key procedures required to get into State compliance with the decree.

Also, the DAGs on this side of the house, the legal advice side of the house, also oversee the background investigation process for recruit candidates to make sure that there's adequate factual basis for disqualification, and that this is evenly -- it's evenhanded in its administration.

Okay. Briefly, the relationship with other entities: I believe in my explanation of the misconduct investigation process, I outlined the basic

functions of the Office of Professional Standards-- (interrupted by noise from audience)

SENATOR GORMLEY: Excuse me. Excuse me, we're going to have to ask you to leave. Okay. Thank you.

Well, it's nice to be on the road outside of Trenton. (laughter)
Okay.

Would you continue with your testimony?

ASSISTANT ATTORNEY GENERAL CRONIN: Certainly, sir.

The Office of Professional Standards receives all misconduct complaints. It operates the 24-hour complaint hot line. It conducts all misconduct investigations subject to certain cases which can be delegated to the field and some which are done by my office. We also, in the State Police Academy, for which Captain Leonardis is the Commandant, oversee the training, which is a critical component to the implementation of consent decree.

The training includes constitutional law, motor vehicle stop procedures as mandated by the decree, culture diversity, communications, ethics. The academy has changed its approach to providing training from going from the traditional large lecture -- and Captain Leonardis is far more conversant with this -- but to go from a large lecture class to adult-based learning, small classes, fact scenarios, critical thinking. A result of that has been-- It has been-- It's taking longer to train, because it's a lot harder to move 2400 people through a training module when you're going 30 people at a class, but--

The other major player, if you will, in the implementation of the decree is the independent monitoring team. The independent monitoring team are appointed by the United States District Court. They are independent agents of the United States District Court. They are not agents of either the State of

New Jersey or the United States Government. Okay. They have obligation to review and evaluate, as I've mentioned before, the quality and timeliness of misconduct investigations. They file reports detailing the State's compliance with the decree, and they file three such reports. Basically, in those reports, they identify tasks which the State must achieve compliance in, and they make assessments. Phase I assessment is, does the State have policies which require -- which comport with the decree? Phase II compliance is more difficult. Phase II compliance is that, are these procedures being implemented? In the last report, the monitors determined that the State was in Phase I compliance with 93 percent of the decree and 63 percent of Phase II compliance. So we have gone beyond just writing policies. We are in the process of implementing over a majority of the requirements of the decree.

The outstanding issue of consequence, before the State gets in Phase II compliance, is the development of the MAPS. We are now-- We hired contractors. We've worked through the design, and now they're actually getting to the nuts and bolts of rolling some of these modules out.

The second thing is the timeliness of misconduct investigation.

SENATOR GORMLEY: Excuse me?

ASSISTANT ATTORNEY GENERAL CRONIN: Sir?

SENATOR GORMLEY: We are somewhat familiar with MAPS. Would you describe the acronym? What it means?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR GORMLEY: So that everybody has-- We have some MAP comments. Go right ahead.

ASSISTANT ATTORNEY GENERAL CRONIN: The MAPS is defined in Paragraph 40 of the decree as a computerized system for maintaining

and retrieving information necessary for the supervision and management of the State Police to promote professionalism and civil rights integrity, to identify and modify potentially problematic behavior, and to promote best practices.

SENATOR GORMLEY: Now, this-- And I'm violating my rule. I will interrupt. I want to-- This is very important -- MAPS. What is it in layman's terms. Is it, in fact, a computerized personnel file of an individual member of the State Police? Is that what it is?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR GORMLEY: Okay. So what goes into this MAPS, or let's call it the computerized file in layman's terms. What is it? Is this a transition from what used to be called a personnel file in another era to a computerized system, to monitor the day-in and day-out actions of an individual member of the State Police?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR GORMLEY: Okay. Has it been adopted anywhere else in the country, the same or similar system? Are you familiar-- Is any other state, locale, trying to be this focused in terms of the process in garnering information of an individual member?

ASSISTANT ATTORNEY GENERAL CRONIN: I am not aware of another jurisdiction that is this detailed. However, in the city of Pittsburgh, who is also a party to a consent decree, they have a PARS system of performance. It's a performance system where -- which contains information regarding individual police officer uses of force and also sick leave and that sort of thing.

SENATOR GORMLEY: So, how many-- Now, I'll stop interrupting you after this question. In terms of the format for the MAP system, how many elements go into it? Is it 200, 300? I mean, there must be a number of

categories in terms of the elements that are reported. How would you outline that?

ASSISTANT ATTORNEY GENERAL CRONIN: Senator, probably the best way to quantify that-- Because if I gave you a number, I'm not comfortable with the number.

SENATOR GORMLEY: Okay, fine.

ASSISTANT ATTORNEY GENERAL CRONIN: The minimum requirements for the MAPS is outlined in the consent decree.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: And it's outlined in the consent decree starting in Paragraphs 41, etc. Let me give you a broad brush. The MAPS includes motor vehicle stop data, which is outlined in Paragraph 29 of the decree.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: All right. This motor vehicle stop data is gathered in two parts. One part is gathered from the computer-aided dispatch system. That is for all stops. The second part -- the second component of motor vehicle stop information is gathered from the motor vehicle stop report. The motor vehicle stop report is not filed for all stops, but rather for those stops which involved a post-stop interaction, specifically, asking a motor vehicle occupant to get out of the car, request for consent to search, nonconsensual search, use of force. So what happens is, you have these two groupings of information that are linked by the CAD incident number.

So that's motor vehicle stop data. Okay. The MAPS--

SENATOR GORMLEY: For the public, define CAD.

ASSISTANT ATTORNEY GENERAL CRONIN: CAD -- the computer-assisted dispatch system.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: What that is, is that when a trooper is on the road, the trooper communicates over a radio system to a communications officer at a different location. The information would be such as the reason for the stop, the race or ethnicity of the occupants, things of that nature. So that's basically a radio system. The motor vehicle stop report is separate. It doesn't involve a third party.

SENATOR GORMLEY: Okay. As always, I ask one question and think of ten more, so I will stop now.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay.

SENATOR GORMLEY: Why don't you continue?

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. Well, you asked a big one about what MAPS is.

SENATOR GORMLEY: Well, no-- Well, I think that's very important, because it is a key to reform.

ASSISTANT ATTORNEY GENERAL CRONIN: I agree with you, Senator.

SENATOR GORMLEY: And it is a key to providing information so that not only in those cases where there might have been misjudgment, it also would provide information where the judgment was correct and would create a balance for both sides.

ASSISTANT ATTORNEY GENERAL CRONIN: Absolutely. Can I just direct your--

SENATOR GORMLEY: Go ahead.

ASSISTANT ATTORNEY GENERAL CRONIN: If the precise question is what is MAPS, it's in Paragraph 41 of the decree. I refer it to motor vehicle stop information, that's in Paragraph 41a. It also has a, on 41b -- its' information about civilian complaints and compliments. It's sort of like the misconduct investigation or positive compliments of trooper behavior who are also logged there.

SENATOR GORMLEY: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: The third component, on Paragraph 41c, is implementation of interventions, the nondisciplinary training, counseling, information regarding--

SENATOR GORMLEY: So it is an electronic personnel file, to a great degree?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR GORMLEY: Okay. Why don't you finish your testimony, because I know the Committee members have a number of questions to ask.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. All right. I'd like to briefly describe the decree, if it's helpful to the Committee?

SENATOR GORMLEY: Yes. Go ahead.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. Colonel Dunbar has aptly described the consent decree as a road map or blueprint for change. There are no substantive requirements of the consent decree that the State did not commit itself to perform as a matter of policy in the interim and final reports. The difference between -- as a matter of policy and in the consent decree, is, number one, the consent decree has the power of a court order. Number two, the consent decree includes the independent monitoring team --

that arm or agent of the United States District Court to assess from the outside State compliance with the decree.

The decree is basically broken down into six substantive areas. They are separately laid out in the decree, and they interrelate with each other. The first area are policy requirements contained in Paragraphs 26 to 28. This includes the prescription against using race or ethnicity as a factor in performing a motor vehicle stop or a post-stop interaction with a motorist. It also requires the -- contains the requirement that troopers make a consent to search only upon the possession of reasonable suspicion that the search will reveal evidence of a crime, and based upon written consent. So that's the first. That's the policy part.

The second part, which I referred to a little bit earlier, Paragraph 29 through 34, is traffic stop documentation. The Attorney General, in his testimony before this Committee, observed that the first step in creating a culture of accountability is to obtain an accurate picture of what is occurring on the road. These paragraphs, 26 to 34, contain the motor vehicle stop documentation requirements. It requires the troopers to identify the race, ethnic origin, gender of all motor vehicle drivers who are subject to a traffic stop and record information about the reason for each stop -- moving, nonmoving, other, BOLO. Also, whether certain post-stop interactions are taken, namely, asking a motor vehicle occupant to exit the vehicle, frisk an occupant, request consent to search, conduct consensual, nonconsensual searches, and recover contraband, request a drug detecting dog, use force, or make arrests. Significantly, this information -- this latter information is on the motor vehicle stop report. Significantly, the facts supporting the exercise of discretion for each of these activities is contained on the motor vehicle stop report. These reports and the

adequacy of the supporting information is reviewed by the independent monitors during their site visits.

The third major area is the review of individual traffic stops. Once the trooper, say the road trooper, documents the reason for the stop -- just to -- writes up the reasons for the interaction, these reports are then reviewed. The motor vehicle stop reports, for example, is then reviewed by supervisors. The supervisors review the face of the report and as to whether there's adequate justification on the face of the report. Also, there's requirements to randomly do mobile video recorder, MVR, audio reviews of individual traffic stops.

What the State has done has recently received approval from the monitoring team for a sort of standard -- well, not sort of -- a standardized form for MVR reviews that require a checklist for compliance for various decree requirements, including the absence of any observed conduct that would indicate racial or ethnic bias. So these are ongoing State Police management reviews of motor vehicle stop activity.

The fourth area is supervisory review of patterns of conduct. That's really the MAPS -- Paragraphs 40 to 56. We're not just looking at individual stops, but also overtimes, comparisons of individual troopers to stations or the troop.

The next group of provisions under the decree outlines misconduct investigations and public outreach. It sets forth the requirements of who does misconduct investigations, certain minimum requirements that I referred to earlier about no group interviews, preponderance of evidence, and they are outlined in Paragraphs 57 and 92.

The next group of substantive requirements deals with training. And that's Paragraphs 93 to 109. I mentioned that earlier, cultural diversity,

communications, constitutional law, to not just have policies on the book somewhere, but to instruct the membership as to how to implement that. Parenthetically, the independent monitors have praised the training as state of the art in moving toward this adult learning module. The decree requires the semiannual public reports. It provides for the appointment of the independent monitor, and it also has specific provisions, Paragraph 131, regarding the term of the decree. The decree-- The basic term is five years. If the State is in substantial compliance, which is a legal determination by the court, for two years, then the State can get out in five years. If the State is in substantial compliance for two years before the expiration of five years, then the State can petition to get out earlier. The United States cannot unreasonably withhold consent -- it's joining that motion.

Once again, I would just like to note briefly, I know that members of the Committee have the most recent monitors' report. I would just like to emphasize that what the monitors recognize, that the State has made steady progress over time in implementing the decree. The monitors, as does the Colonel, as does the Attorney General, as I myself, acknowledge that the process will take time. And we have made demonstrable success in getting the policies in place in over 63 percent of the procedures actually implemented.

In closing, as noted by the Attorney General, the groundwork for lasting reform by further developing a culture of accountability is being laid. Cultural change takes time. We are not there yet. The Colonel predicted four years. That's a reasonable prediction. We are, however, making significant and steady progress and moving towards restoring public confidence of all the citizens of this state, in the State Police, the Office of Attorney General, and hopefully moving towards making this state a safer and better place to live.

Thank you, sir.

SENATOR GORMLEY: Thank you for your testimony.

We'll now open it for questions from members of the Committee.

We'll start with Senator Martin.

SENATOR MARTIN: I'm interested in the training you just described. I haven't studied it at length, but a quick review of the consent decree seems to suggest that the policy of training would continue to rely on State Troopers providing training, as opposed to outside persons from some other source, consultants, say, or even from the Attorney General's Office. Is that your expectation?

ASSISTANT ATTORNEY GENERAL CRONIN: Actually, it's neither my expectation nor is it the reality of how it's actually been implemented. Can I take a segue?

SENATOR MARTIN: Well, I'd like to know who is providing the instruction to whom.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. There are members of the State Police Academy which provide instruction. However, there's also outside contractors who are providing instruction. More specifically, the Anti-Defamation League is providing training on cultural diversity. They are cofacilitating this training, where you have a member of the ADL and a State Police member teaching troopers.

SENATOR MARTIN: Team teaching.

ASSISTANT ATTORNEY GENERAL CRONIN: Team teaching.

SENATOR MARTIN: It seems at the same time.

ASSISTANT ATTORNEY GENERAL CRONIN: Correct, sir. All right. For ethics and integrity, the State retained an expert, Michael Caldero,

who wrote a textbook called *The Corruption of Noble Cause*. Mr. Caldero taught the upper management, colonels, lieutenants, captains. He also taught the trooper coaches, who then went out and reinforced the training to the troopers on the road after they graduated from the academy. And he also taught a Train the Trainer group, which basically consists of members of the State Police who will be providing that training to the majority of the outfit.

So, once again, there are State Police members who are providing this training. But the lesson plan, it's not exclusive, and the lesson plans are approved by the independent monitors and my office.

Captain, am I missing--

CAPTAIN DAVID S. LEONARDIS: You've pretty much covered it all.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. So you are correct, Senator, that much of the instruction is provided by members, but there is a lot of outside influences. And there are DAGs who teach, members from my office. DAGs have taught the Constitutional Law Section during training last year, and we anticipate that they will be providing that training this upcoming year.

SENATOR MARTIN: I don't have a problem with State Troopers. In fact, I think it would probably be a good idea, at least, for State Troopers to provide some of the instruction. At least other witnesses indicated that some of the State Troopers are lawyers. In fact, I know several graduated from this law school here. But I guess the other question related to that is just one of quality control. To what extent is there an ongoing review of the selection of the instructors and the quality of those programs?

ASSISTANT ATTORNEY GENERAL CRONIN: Those two issues are expressly addressed in the consent decree. As to -- in the 90s, in the consent decree, there are provisions for eligibility criteria for academy instructors. Also, in the consent decree -- I believe it's Paragraph 104 -- it deals with feedback mechanisms, institutionalized feedback mechanisms as to the quality of the training. So it's not just little course sheets at the end of the course -- Did you enjoy the course? -- but there is feedback both in the MVR reviews in the field and also, as we go to regionalized training, an issue that may have been otherwise raised before this Committee, they'll be more feedback from the field as to what should be included in training. So we're developing a better picture as to the quality of our training and the quality of our trainers.

SENATOR MARTIN: One other area, and that's sort of a general one, and you could help explain something to me. We've heard discouraging information to the extent that ongoing racial profiling has continued at least with respect to certain data which has continued to be collected, as part of the consent decree, the number of minorities who have been stopped. The percentage who have then had consent searches seems to be extraordinarily high proportionately to their numbers in the public at large.

On the other hand, you've indicated that the State, although we're not there yet -- I think were your words a few minutes ago -- you indicated there has been a very high performance level in terms of this criteria that you used. Ninety-three percent, I think, was your number in the first stage. But regardless, you've been relatively pleased, as I understand it, of the State's improvement in terms of at least following the consent decree. Is there something wrong with these sort of two sides of the same issue? One is that the State seems to be in a fair amount of compliance with a progression that they're supposed to go to,

yet we still hear this data that suggests that a high number -- a disproportionate number of minorities are being stopped and State Troopers are engaging in consent searches. Why wouldn't the one start to go down based upon the other?

ASSISTANT ATTORNEY GENERAL CRONIN: Senator, I also believe I testified that we not quite -- we're not there yet.

SENATOR MARTIN: I understand that. On the other hand, it would seem to suggest that we're improving, at least, in some benchmarks that you've outlined. But the one that we're really looking to is the end result, and should there be a stronger connection between those benchmarks and the percentage of persons who are being stopped and being given consent searches.

ASSISTANT ATTORNEY GENERAL CRONIN: I think one of the-- And this goes back to the testimony the Attorney General gave, is that I think one of-- The promises in the-- If you look at the consent decree as disparate tasks, putting together systems that allow the State Police, the Attorney General, the monitors, the DOJ, to look at trooper behavior, what the promise in there is, it's going to be a process of responding to problems and issues. If you get the data and you identify a problem, it's incumbent to work on it, to resolve it, to have a remedial client. I believe if you--

I'm sure you remember the Attorney General's testimony regarding the consent searches. And one of the very powerful facts that came out of that was that there was, contrary to maybe some conceptions of some law enforcement officers, there was an inverse relationship between find rates and minority status. If you accept as a premise that the vast majority of troopers are dedicated law enforcement professionals, that is a very positive fact. Because, when properly trained over time, it is entirely consistent with some of the

numbers that gave us concern, that guide us into the inquiry will change over time.

SENATOR MARTIN: That may be so, but the other inconsistency is if, in fact, there's a greater find among consent searches of the white majority, why do we still disproportionately engage in consent searches much more so to selected minority groups? That's the part I don't understand.

ASSISTANT ATTORNEY GENERAL CRONIN: And to respond to that is, in the response to the issues on the Turnpike, there will be additional training, additional review of individual trooper conduct, supervisory conduct, and some other management responses to that situation. Education is a big part of the process.

SENATOR MARTIN: I'll let it go at that, but I -- it seems to me the means and the ends have to be better connected, or perhaps despite our view that the means are doing well, if the results don't connect, it seems to me there's something awry. But hopefully, that will improve over time.

I have just one additional question. I promise. We've talked about, in this Committee, the possibility of ending consent -- at least voluntary consent searches. As far as your role in this process, if they were eradicated, would that interfere, as you could see, with any of your work or the work of the State Police? You may not be the person to ask on this, but I'm looking for as much information as I can before we make a determination what to do with consent searches from a legislative angle.

ASSISTANT ATTORNEY GENERAL CRONIN: Senator, in my opening comments before I got into the decree and anything, I believe I spoke about the approach my office took towards the issues of change. And one of the concerns or considerations was to maintain the ability of the State Police to

function as a law enforcement agency, and acknowledging that the implementation of the consent to search doctrine on the southern end of the Turnpike requires further work. There are legitimate uses for consent searches.

For example, I'm sure you're aware of, though-- See, if you have a long-term investigation, it would allow to stop a motor vehicle to get evidence which is tied to a bigger case. And so I guess my approach to that is that we are in a lot of ways in the beginning stages of gathering the data and looking at the data to react to problems on the road. I would request or is my position that we give that process a little bit more time to work before the Committee would recommend a radical, I would submit, recommendation outlawing consent searches altogether.

SENATOR MARTIN: We may do that or we may not. We also have to-- We have another objective, and that is to weigh how much interference this causes with privacy and also just the basic freedoms of motorists who have to endure--

ASSISTANT ATTORNEY GENERAL CRONIN: As do I, Senator.

SENATOR MARTIN: --this process, especially if there's a high percentage who are not found to have contraband, but actually have to go through these so-called consent searches.

Thank you.

SENATOR GORMLEY: The next two -- Senator Matheussen and Senator Furnari.

SENATOR MATHEUSSEN: Thank you.

Let me pick up where Senator Martin just ended, and that is consent to search. I'm going through this consent decree, and Paragraph 28 lays

out some pretty specific requirements with regard to consent searches, does it not?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, it does, sir.

SENATOR MATHEUSSEN: As a matter of fact, specifically, it says that in order to help ensure that State Troopers use their authority to conduct consensual motor vehicle searches in a nondiscriminatory manner, the State Police shall continue to require that State Troopers may request consent to search motor vehicles only where troopers can articulate a reasonable suspicion that a search would reveal evidence of a crime, and then it was several other requirements. How does the MAP system maintain the integrity of what this consent decree says when it comes to consent searches?

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. What the MAP--

SENATOR MATHEUSSEN: And is it doing that now? What are your findings?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, the MAP is not operational, yet. The MAP is not operating.

SENATOR MATHEUSSEN: I know that, but how does it--

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. When we talked about the components of the MAP, and one of it was motor vehicle stop documentation, if you look at-- The MAP would contain information of instances in which an individual trooper utilized the consent to search doctrine. The MAP would permit a comparison between that individual trooper and his or her peers. And if there was a requisite disparity, then there would be a more fact-sensitive inquiry into the way in which that trooper is utilizing the doctrine. The MAP, since it also includes the motor vehicle -- has access to the motor

vehicle stop report, would also be able to retrieve the articulated reasons for the exercise of discretion upon individual instances. It would permit managers to have more real-time access to developing situations rather than an historical analysis of the use of consent searches, for example.

SENATOR MATHEUSSEN: In the opening sentence of Paragraph 28, it says -- again, I'll repeat it -- "That the State Police shall continue to require that State Troopers may request consent searches." Does this consent decree differ in any way from the previous SOP that was in place with the State Police about consent searches?

ASSISTANT ATTORNEY GENERAL CRONIN: It might--

SENATOR MATHEUSSEN: But first of all, if you could tell me what was the previous -- prior to this consent decree, what did the SOP say?

ASSISTANT ATTORNEY GENERAL CRONIN: I believe there was an SOP that was promulgated--

SENATOR MATHEUSSEN: Is it SOP 55?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, F-55 promulgated in 1990, which contained the reasonable suspicion standard.

SENATOR MATHEUSSEN: Is that any different than what's in this consent decree?

ASSISTANT ATTORNEY GENERAL CRONIN: No.

SENATOR MATHEUSSEN: So it is the same?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR MATHEUSSEN: Okay. Are you satisfied with the amount of time it's taken to develop the MAP system?

ASSISTANT ATTORNEY GENERAL CRONIN: Am I--

SENATOR MATHEUSSEN: And could it be done more expeditiously?

ASSISTANT ATTORNEY GENERAL CRONIN: I don't think it could be done more expeditiously given the time it takes to get the -- not just the procurement things, but there had to be a lot of design work done up front as to what is to be included and how it's going to be looked at. It had to be reviewed by DOJ and the monitors. Would I've liked an ideal world-- Would I've liked to get it up earlier? The answer to that is yes.

SENATOR MATHEUSSEN: Would you like to have started it earlier?

ASSISTANT ATTORNEY GENERAL CRONIN: Would I have liked to have started it earlier?

SENATOR MATHEUSSEN: Say in '96 or '97 or '98?

ASSISTANT ATTORNEY GENERAL CRONIN: Senator, I wasn't here in '96 or '97 or '98.

SENATOR MATHEUSSEN: When did you get here?

ASSISTANT ATTORNEY GENERAL CRONIN: September of '99, sir.

SENATOR MATHEUSSEN: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: But I think it's a valuable tool for management. I think it will assist both troopers and the public. Upon my arrival, upon the negotiation of the decree, and the identification of appropriate contractors, we moved as expeditiously as soon as we could to develop this program, which I believe is the centerpiece to ultimate compliance with the decree.

SENATOR MATHEUSSEN: How does the MAP system deal with ghost stops? Can it ensure that they not exist?

ASSISTANT ATTORNEY GENERAL CRONIN: The MAP system itself, Senator, I do not believe can deal with ghost stops.

SENATOR MATHEUSSEN: Okay. How about spotlighting?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, this is how it can. Let me retract that slightly. Ghost stops are problematic, because there's no record of those. Spotlighting to the extent that the individual is subjected to a stop as a result of spotlighting, they would be identified. If there was a complaint, the complaint would appear within the MAPS. There are periodic audits of motorists which are done by my office -- there's one per quarter -- which would identify that. It's not MAPS specific, but it's part of the oversight contemplated by the decree in an effort to identify that.

SENATOR MATHEUSSEN: If you have a citizen's complaint that there was an instance of being pulled over, they're suspicious of some misconduct on the part of the State Police, and that complaint comes into your office and you find that there is no corresponding stop report--

ASSISTANT ATTORNEY GENERAL CRONIN: Could you repeat that, sir?

SENATOR MATHEUSSEN: If you have a complaint that comes into your office-- You said that you sometimes get citizens' complaints--

ASSISTANT ATTORNEY GENERAL CRONIN: Correct.

SENATOR MATHEUSSEN: --of some allegation of misconduct on the part of State Police, and you find no corresponding stop issued by the State Trooper in that particular case, what happens?

ASSISTANT ATTORNEY GENERAL CRONIN: What happens then is that, as any investigator would, you pursue circumstantial evidence. You probe for circumstantial evidence to establish whether the motorist interacted with this trooper. Does the motorist have a name or a badge number? Does the motorist claim that the stop was on a stretch of road that was patrolled by that trooper? Does the motorist describe the trooper in this specific-- You would pursue it as--

SENATOR MATHEUSSEN: You pursue it. You come to a reasonable conclusion that this stop actually existed, it happened, but there's no corresponding police report. What happens next? What's the disciplinary procedure?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, the disciplinary procedure would be -- that would be a failure to file a report.

SENATOR MATHEUSSEN: What's the consequence?

ASSISTANT ATTORNEY GENERAL CRONIN: It depends upon-- The ultimate penalty would be dependent upon factors including the trooper's disciplinary history, whether the trooper accepted responsibility for the conduct, or so it-- It would be similar to-- It depends on the facts of the case, I guess.

SENATOR MATHEUSSEN: "Yes, I did it. It will never happen again." That's the response.

ASSISTANT ATTORNEY GENERAL CRONIN: Those have resulted in suspension, I believe, for about 30 days.

SENATOR MATHEUSSEN: Loss of pay?

ASSISTANT ATTORNEY GENERAL CRONIN: For some part of that.

SENATOR MATHEUSSEN: Just for some part of it. How much part of it?

ASSISTANT ATTORNEY GENERAL CRONIN: I'd say 20 of the 30-- I mean, we're getting--

SENATOR MATHEUSSEN: I'm just curious. Why wouldn't-- If you're suspended for some misconduct on the job, whether it's State Police or any other job, if you're suspended for some misconduct, assuming that there are no contractual responsibilities, why would we pay the suspended employee part of that time -- any of that time?

ASSISTANT ATTORNEY GENERAL CRONIN: In prior practice, before Colonel Dunbar came to become superintendent, that was routinely done.

SENATOR MATHEUSSEN: Why?

ASSISTANT ATTORNEY GENERAL CRONIN: I can't answer that, Senator. All I can say is that under Colonel Dunbar's administration, that has ended.

SENATOR MATHEUSSEN: The SOP that we talked about before, you had stated that 55 was -- when did it come into effect? Do you know?

ASSISTANT ATTORNEY GENERAL CRONIN: I believe it came into effect in 1990, sir.

SENATOR MATHEUSSEN: Okay. And it would seem from all the hours of testimony that this Committee has heard from all kinds of people involved -- AG's Office, State Police -- that racial profiling continued during that SOPs -- while it was in effect, continued at a fairly significant rate. Why then does the consent decree use the same basis as far as consent searches when it would seem that SOP 55 was ineffective?

ASSISTANT ATTORNEY GENERAL CRONIN: I think what the consent decree acknowledges, that before the *Carty* decision was passed last year, is that the requirement for reasonable suspicion was not constitutionally mandated. It was a prophylactic measure enacted by the State Police and the State to limit discretion in the exercise of consent searches. It was so-- Absent that language in the 1990 version of F-55, the law which applies to consent searches, as I'm sure you're aware, is the law that applies to other constitutional rights, is that if it's a knowing and voluntary waiver, the right to trial can be waived, the right to counsel.

SENATOR MATHEUSSEN: But didn't the SOP require that a reasonable suspicion exist?

ASSISTANT ATTORNEY GENERAL CRONIN: The 1990 version? Yes, sir.

SENATOR MATHEUSSEN: Okay. So then why did we not see an impact on the amount of racial profiling and consent searches that were being conducted? Why didn't we see a positive impact? I'm not sure I understand. Were there no consequences for violating the SOP?

ASSISTANT ATTORNEY GENERAL CRONIN: I'm not sure the disciplinary-- I'm not comfortable what the disciplinary record is for violations of F-55 prior to '96, '97.

SENATOR MATHEUSSEN: But there are specific consequences, disciplinary consequences for violation of the consent decree, are there not?

ASSISTANT ATTORNEY GENERAL CRONIN: There are disciplinary consequences for failure to follow SOPs, rules, and regulations of the New Jersey State Police, some of which are incorporated by reference in the consent decree. In other words, I'm not trying to quibble with you. It's just that

the violation of the consent decree is not punishable in and of itself. You have to violate a State Police rule or regulation.

SENATOR MATHEUSSEN: I think Senator Martin may have asked you this already, but let me ask it again. There are numbers of people out there right now who have testified before this Committee -- some who've not, some who've talked to us -- and obviously we're looking at a host of, perhaps, changes that could take place over the next year or so regarding profiling. One of them is the abolition of consent searches altogether. What's your feeling on that? How does that affect where we are right now and where we could be in a couple of years from now?

ASSISTANT ATTORNEY GENERAL CRONIN: I tried to answer that with Senator Martin.

SENATOR MATHEUSSEN: Try it again.

ASSISTANT ATTORNEY GENERAL CRONIN: We are developing, in the consent decree and the process of change within the State Police, the ability to gather information and respond to it on a more timely basis. I fully anticipate that as you gather information, you're going to identify problems. And it's the responsibility of management and the membership of the State Police to commence upon remedial action to deal with those things. Very early in the decree, we've identified an issue concerning consent searches. We think it's important for the process to allow the State to try to remedy this short of the loss of a potentially and often useful law enforcement tool. Reasonable minds can disagree, obviously, on that, but--

SENATOR MATHEUSSEN: I understand. I understand. But I also think that-- Well, for instance, a short time ago, this meeting was interrupted for a very short period of time because there were some concerned

citizens who say that rights are being violated on a regular basis. And they are saying, you know, how dare we take our time in producing results or dealing with this issue. Because as we do, there are people who are having their civil rights violated each and every day. Now, I understand that there is a procedure which has to be followed. I understand that it takes some time to develop these things. But how do we go back to the public and say give us some more time when they have been seemingly on the short end of the stick for a long, long time? I realize it's not--

ASSISTANT ATTORNEY GENERAL CRONIN: Obviously, that's-- I mean, that is part of the equation that I struggle with, that the Colonel struggles with, and which the AG struggles with, but there are potential benefits to ensuring civil rights integrity on a vast -- large variety of issues that I would submit will not be realized if the tool is taken away. I have more of a faith and a desire to continue on a system to resolve the problem short of eliminating the tool.

SENATOR MATHEUSSEN: When does the MAP system get up?

ASSISTANT ATTORNEY GENERAL CRONIN: The MAP system will become operational as rolling modules. The first module is motor vehicle stop data. Later this month, early May, it will be tested in select stations to permit members of the State Police to develop -- orient themselves to it, work out some of the technical kinks. The system overall is scheduled to come on line in September.

SENATOR MATHEUSSEN: Nothing further, Mr. Chairman.

SENATOR GORMLEY: Senator Furnari.

SENATOR FURNARI: Yes. I just want to understand your testimony clearly. Your testimony has not been here today that the current reforms as they currently exist are working, is it?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes. There are aspects of the reforms that are working.

SENATOR FURNARI: Well, in the 2001 -- January 2001 monitors' status report is indicating that there continues to be very high stop rates for the Moorestown Barracks, right? Numbers that were equivalent with the *Soto* case, is that right?

ASSISTANT ATTORNEY GENERAL CRONIN: I don't believe the monitors' report says that.

SENATOR FURNARI: I think this is the monitors' report--

ASSISTANT ATTORNEY GENERAL CRONIN: I believe you're referring to the semiannual aggregate data.

SENATOR FURNARI: --or the aggregate data report, okay. Well, would you agree that those numbers are correct?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR FURNARI: And those numbers continue to show that these numbers are still pretty bad, right?

ASSISTANT ATTORNEY GENERAL CRONIN: They show that the rates at which minorities are stopped exceed the rates in which they travel on the roadway.

SENATOR FURNARI: It shows that stops from May the 1st through July the 20th, 2000, at 31.1 percent were black, 8.3 percent -- or just about 40 percent or more were minority stops. Correct?

ASSISTANT ATTORNEY GENERAL CRONIN: I don't have that in front of me, but the 30 percent sounds familiar.

SENATOR FURNARI: And those numbers are approximately the numbers that were demonstrated in *Soto*? Is that correct?

ASSISTANT ATTORNEY GENERAL CRONIN: I'm not sure that they are the same as *Soto*.

SENATOR FURNARI: Well, would you agree with this statement, that those numbers are not very good, they would not demonstrate that there is not a problem, they would be strongly indicative that there is a problem of racial profiling?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, Senator, let me answer it this way, that those numbers were a factor in the State Police and OAG inquiry into the exercise and consent to search doctrine in Moorestown.

SENATOR FURNARI: And the numbers continued to be that way from July 21st through October 31st of 2000.

ASSISTANT ATTORNEY GENERAL CRONIN: Approximately 30 percent. Yes, sir.

SENATOR FURNARI: Thirty-one-point-nine percent black, 8.3 percent -- they were exactly the same -- Hispanic. Did you have a discussion to discuss these numbers with the State Police at all?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR FURNARI: Specifically, could you tell us what the conversations that you might have had with the State Police about those numbers were?

ASSISTANT ATTORNEY GENERAL CRONIN: In general terms it was -- given the population survey showing about 16 percent or 17 percent in

the southern end of the Turnpike, what are -- why is this number where it is, what would account for the difference? And various reasons were given. And one of which was the recognition that the population survey measures physical presence on the road and that there may be factors in addition to physical presence on the road which would influence a trooper's decision as to whether to stop a vehicle. In order to evaluate that, the State has contracted to perform a speed violators' survey on the southern end of the Turnpike to test the hypothesis as to whether or not differing driving behaviors may affect the rates at which various people are stopped on the road. There are other things also, sir.

SENATOR FURNARI: Go right ahead. I'm trying to learn more. I'm trying to understand. And again, from your previous statement that you think that the reforms might be working, when we get empirical data back that seems to be glaring to me that -- particularly here -- they're not working, the choice is to investigate whether or not the numbers may be wrong, as opposed to looking maybe more at saying the reforms aren't working. And that's a--

ASSISTANT ATTORNEY GENERAL CRONIN: As I believe in response to Senator Matheussen's question, what the -- the reforms are a process. And what the reforms envision is that as information is gathered and analyzed, that the State go from, say, aggregate numbers into more specific facts supporting cases. And here, when you start with the 30 percent stop rate in Moorestown, well, what's the response? Well, then you look at--

SENATOR FURNARI: Just for verification, it's actually -- probably if we rounded it, it's 32 percent.

ASSISTANT ATTORNEY GENERAL CRONIN: Very well.

SENATOR FURNARI: And that's if only we're referring to blacks. But if we're referring to minorities, it's more like 40 percent.

ASSISTANT ATTORNEY GENERAL CRONIN: So you start with the stop rate, and you continue on and try to go further to get an explanation for what's going on. Additionally, when you talk about -- the reforms apply to the entire New Jersey State Police, which includes areas other than the Turnpike. And the assessments drawn by the monitors and by my office apply to the entirety of the reforms. We acknowledge that there are issues and that we're not quite there yet, but the reforms -- the statement as to whether there is progress and implement in the reforms applies to the entire Division.

SENATOR FURNARI: You just mentioned the consent searches. I'm going to refer to my notes here. I think it's the monitors' third report in dealing with Task 114. As I have it, it says that the State Police are to prepare semiannual public reports. That would have been, according to the way I read this, there would be a report that was due out in June of 2000 and January of 2001. The reports shall include the aggregate statistics of State Police traffic enforcement activities, both broken down by race and ethnicity of civilians involved. Part of this requirement provides that the consent search data be provided, including requests for consent to search, nonconsensual searches, and use of force.

Now, two weeks ago, when Attorney General Farmer indicated that for the first time he was providing us with the consent to search data, but the two previous monitors' reports held that the State was in compliance on this task-- Now, can you tell me, if the first time we received the consent search data was two weeks ago, how did the reports indicate that the State was in compliance with the consent search data?

ASSISTANT ATTORNEY GENERAL CRONIN: Senator, do you have the semiannual public report in front of you, sir?

SENATOR FURNARI: Is this the monitors' third report?

ASSISTANT ATTORNEY GENERAL CRONIN: Is this the monitors' report? I believe that--

SENATOR FURNARI: I have the monitors' third report which says, when it comes to that, the State has produced its second semiannual public report of the aggregate data -- that's the methodology -- in response to the provisions of the decree. And it says members of the monitoring team have reviewed the report entitled Second Annual Report, prepared by the Office of the State Police, and found it to be responsive. And then it says compliance, Phase I, Phase II.

ASSISTANT ATTORNEY GENERAL CRONIN: I can explain that, Senator.

SENATOR FURNARI: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. When the State published its semiannual aggregate data reports, both in -- I think it was June and December -- it explained in the executive summary that the State was providing information that the current technology could provide. And so in the first report, the State had information on number of stops only. Okay. As modifications to the CAD system came into effect, the State could thereafter record the reason for the stops, whether it be moving, nonmoving, or other. So if you look at the reason for the stop in the first report-- I'm sorry. You just have the number of stops in the first report. In the second report you have stops broken down by category. And in the third report, since the electronic motor vehicle stop report has become operational in November of 2000, we anticipate providing to -- consistent with existing technology some of the interim data that you're referring to -- the post-stop data.

SENATOR FURNARI: So, even though we weren't in compliance, if we say that we couldn't compile the data with the current computer technology, that's sufficient for the monitor to say we're in compliance?

ASSISTANT ATTORNEY GENERAL CRONIN: That that was their determination, sir.

SENATOR FURNARI: Now, as I understood the Attorney General's report, there were only 272 consent searches down in Moorestown and Cranbury. So it really doesn't seem, especially since we're dealing with something we all-- And you would agree that consent to search data is crucial data when -- in dealing with this issue of racial profiling.

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR FURNARI: Does it seem that it was that difficult? I mean, how many consent searches could there have been in the entire state to--

ASSISTANT ATTORNEY GENERAL CRONIN: It was. To compile the data for Troop D required hand pulling of the individual reports, which did incur a lot of time. I can't quantify it, but it wasn't an easy undertaking. As the reforms go on, we're entering into an area where that information will be electronically captured and more readily capable of being produced.

SENATOR FURNARI: I understand that it might more readily be produced, but we certainly have heard testimony that Sergeant Gilbert was able to do this in relatively easy fashion. It's a significant issue. We have a consent, and our answer is-- And we know certainly in more than just D, Troop D. There were only 272. This doesn't seem like such a monumental task, certainly considering the significance of the issue. I'm still puzzled as to how a Federal monitor can say that that's in compliance.

Now, in addition to that which I haven't seen, can you direct me to any of the reports that have been filed that have addressed the issue of -- which is probably just as important. And certainly, it was important enough to make it to the consent order for the requests for consent to search data. I find it nowhere in these reports. And staff indicates that it's nowhere.

ASSISTANT ATTORNEY GENERAL CRONIN: Sorry. Which report are you referring to, sir?

SENATOR FURNARI: Any report. Any document that has been submitted in conformity with the consent order or not. The consent order, as I understand it, Task No. 114 requires that the "aggregate statistics (including requests for consent to search)," and then it goes on to say, "consent searches, nonconsensual searches, and use of force."

ASSISTANT ATTORNEY GENERAL CRONIN: That information has not-- Based upon existing technology, that information has not been produced pursuant to Paragraph 114.

SENATOR FURNARI: Do we know and is it around-- I mean, there's no reference to it at all. Do we know now it hasn't been in the report, maybe an aggregate number of this or anything about--

ASSISTANT ATTORNEY GENERAL CRONIN: We can-- As we're preparing the report, we can probably get some aggregate numbers before the report date.

SENATOR FURNARI: Do you believe now that generally throughout the troops that the troopers would feel that if they were involved in this day with some kind of racial profiling activity that they would be disciplined in some manner?

ASSISTANT ATTORNEY GENERAL CRONIN: I would believe so.

SENATOR FURNARI: Since the undertaking, has there been any State Trooper -- a time frame since we've been under the consent order -- has there been any trooper who has, that you're aware of, that has been disciplined in any way, shape, or form for involvement in some kind of racial profiling activity?

ASSISTANT ATTORNEY GENERAL CRONIN: I do not believe that there's been a substantiated complaint for disparate treatment. However, there has been substantiated complaints, say, where there's been an allegation of disparate treatment. There has been substantiated allegations of failure to comply with patrol procedures, such as calling in the stop or things of that nature. So these are not -- they're not directly on point, if you would, for a disparate treatment finding, but are often associated with such activity.

SENATOR FURNARI: Certainly, we've seen some information from the State Troopers that if there really is evidence that exists out there for some racial profiling, then why weren't any of the troopers ever called in for counseling, training, or discipline. That, as I understand it from representatives of the State Troopers Union, no one has been -- suffered under any discipline for this. And you would agree with me that if there is a problem when a trooper's response is, well, if it's happening, where are the guys that are doing it and why isn't there some punishment if you're going to say that there's racial profiling, how do we answer that?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, both the State and the monitors do acknowledge that there is a large backlog of discipline cases, many which predate the arrival of the Colonel, the entry of the consent decree. And that is a fact. There have been, to date, no substantiated complaints regarding profiling.

SENATOR FURNARI: Colonel Dunbar testified in 1998 there were 225 Internal Affairs complaints. In 2000, there were 524 Internal Affairs complaints. In 2001, there were approximately 500 complaints. And we're projected out to be 900 this year. Can you-- Do you have any ability to speculate as to why there's been such an increase?

ASSISTANT ATTORNEY GENERAL CRONIN: I believe that as part of the reforms is that there has been a public outreach and more accessibility to the complaint process. Complaints can be -- complaint procedures were publicized in radio ads last year. There are some posters in public access areas. Troopers have the complaints with them in the cars. I believe the process is more accessible to the public, and part of it may be a feeling that the system is more accessible.

SENATOR FURNARI: Going back to the third report, the monitors' third report, the State was found to be in noncompliance with Task 87, which requires the State to complete misconduct investigations within 45 days after assignment to an investigator. Now, that's in the decree. According to the report, 45 days was extended to 120 days. But despite that, 44 of the cases reviewed by the IAB -- none were completed even within 120 days. And in fact, the completion rate ranged from 6 to 16 months. Is there something that you think that we ought to recommend that we can do to speed up the process to make it more efficient for both the person who makes a complaint, as well as a trooper who has to sit through 16 months?

ASSISTANT ATTORNEY GENERAL CRONIN: I think you have-- The first priority in addressing the internal investigations procedure was to ensure both to the public and to the troopers that the process was thorough and fair. That has been the initial push. In each of the monitors-- Well, in the

second and third, the monitors did not substantively review misconduct investigations in their first report. In the second two reports, the monitors concluded that these investigations were thorough and fair. What remains, as you properly identify, is that these are not being done expeditiously.

The State has already -- the Office of Professional Standards has virtually tripled its size since 1998, from 19 to 50-somewhat people. My office is expanding. I think if you want to maintain the twin goals of thorough and fair investigations and expeditious investigations, there has to be additional resources to the investigation of these complaints. I think the Colonel has recognized that, as has the General.

And there are some internal procedural things which we are exploring to-- And we have explored with the monitors, such that certain administrative complaints, you know, the infamous hat off, and things like that, loss of equipment, could be removed from the ambient of discipline and treated as a performance issue. We are currently working on that. We've had the discussions with the monitors and will pursue those with the unions. That has hope, Senator, but I think we have to both decrease our resources to account for the initial backlog and then the more accessible complaint procedures. And number two, internally deal with it a little bit in a more streamlined manner.

SENATOR FURNARI: Well, would you know how-- I mean, it seems like a monumental problem today. It seems on its face to be a blatant disregard for a consent order, when you're going from 45 to 16 months. But my question is, do you know who initially agreed to that or do you know -- was this not a problem that one could foresee procedurally changing at that time? Or has it been something new that's been added to the problem? And not to give you

too many parts to the question, but-- And finally, is there something that you believe that you should do to resolve this?

ASSISTANT ATTORNEY GENERAL CRONIN: The 45-day thing, I believe there was internal regulations that referred to 45 days for something within the State Police. I think the situation has been exacerbated by backlog cases and also the infusion of more complaints into the system. I believe, as I mentioned in the answer to the previous question, that additional resources -- that there be appropriation for additional resources to funnel -- to address this problem which, as you properly point out, it adversely affects the public, it adversely affects the troopers, and it is a significant compliance issue in the consent decree.

And it's not just unique to New Jersey, and let me tell you why -- is that, in the consent decree that is in existence in the city of Pittsburgh, the one task that took the longest to get in compliance with was the timeliness of misconduct investigations. It came after their PAR system, their computer system. It was the last thing. And I acknowledge, as does the Colonel and the General, that this is a significant issue that's going to require our attention.

SENATOR FURNARI: Thank you. I have no other questions.

SENATOR GORMLEY: Thank you.

Senator Robertson.

SENATOR ROBERTSON: Good morning, Mr. Cronin.

ASSISTANT ATTORNEY GENERAL CRONIN: Good morning.

SENATOR ROBERTSON: A quick question first. When did we put the cameras in the patrol cars?

ASSISTANT ATTORNEY GENERAL CRONIN: Senator, I've consulted counsel.

SENATOR ROBERTSON: I guess the answer is not as quick as the question.

ASSISTANT ATTORNEY GENERAL CRONIN: Yeah. We're halfway there. It started last year, and it's a rolling process by trooper.

SENATOR ROBERTSON: Okay. I want to go back to consent searches for a second. You're aware of the statistics that the Attorney General brought to our attention last week?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ROBERTSON: They involved -- what? -- the Cranbury and Moorestown barracks?

ASSISTANT ATTORNEY GENERAL CRONIN: The consent searches were pulled from all three stations within Troop D--

SENATOR ROBERTSON: All three. Oh, all right.

CAPTAIN LEONARDIS: --but I believe that the General's testimony focused on Cranbury and Moorestown.

SENATOR ROBERTSON: Well, the point is that we were told there were 271 consent searches done by that troop during the calendar year 2000. Does that sound about right?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ROBERTSON: Now, there are some things that we saw that were pretty obvious there and striking, and you mentioned them during your testimony. Basically, that the find rates didn't seem to support what I've been calling the suspicion rate. Because the suspicion rate, namely that point at which you ask someone to search the car because you have reasonable articulable suspicion, was about three to four times higher depending on what barracks you

were talking about, for minority drivers than it was for nonminority drivers, correct?

ASSISTANT ATTORNEY GENERAL CRONIN: There was a great disparity there.

SENATOR ROBERTSON: So we learned a lot just from that, didn't we?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ROBERTSON: As a result of what we learned, what are we doing now in the State Police, irrespective of whatever computer programs we hope to put into place? What are we doing now out on the road with respect to consent searches?

ASSISTANT ATTORNEY GENERAL CRONIN: Okay. A few things. During the calendar year 2000, there were little if any MVR reviews of consent searches. That's not a violation of policy, because--

SENATOR ROBERTSON: MVR being?

ASSISTANT ATTORNEY GENERAL CRONIN: Mobile Video Recorder, the videotape. The SOPs that were in effect require two random reviews per quarter. And since consent searches are such a small number of actual motorist's interactions, I mean, it is unlikely that a consent search would come up randomly. So what Troop D is doing is, there is a 100 percent MVR review of consent searches. Number two, the--

SENATOR ROBERTSON: Describe what that means, though, so that if driving along we have a stop, the person is asked, can we search your car, it's 271 times, which is less than once a day. What will happen in terms of supervision with respect to that stop?

ASSISTANT ATTORNEY GENERAL CRONIN: Very well. There is-- The State Police has developed a standardized form for MVR review. This was approved by an independent monitoring team. And what this is, basically, it walks you through the stop. It's compliance with the procedures -- did you call it in, did you call it in properly, race/ethnicity, were you professional in demeanor, did you have reasonable suspicion, was there any--

SENATOR ROBERTSON: Well, who fills this out?

ASSISTANT ATTORNEY GENERAL CRONIN: The supervisor. The supervisor fills it out of the trooper's conduct, and that, in turn, is audited.

SENATOR ROBERTSON: Yeah. Because you were saying in the second person. I mean, you were saying it--

ASSISTANT ATTORNEY GENERAL CRONIN: I'm sorry. No. Okay.

SENATOR ROBERTSON: You mean, did the trooper have a professional demeanor, did the trooper--

ASSISTANT ATTORNEY GENERAL CRONIN: I'm sorry. Yes. The trooper on the road -- does have professional demeanor, does the observed conduct reflect any indication of prohibitive, ethnic, or racial discrimination. That's a question on the form. It's reinforced every time it's done. That is done -- is being done for-- Well, we have to train on that form, because it just got approved by the monitors. But that will be done for every consent search on the Turnpike. In addition--

SENATOR ROBERTSON: When did that go into place?

ASSISTANT ATTORNEY GENERAL CRONIN: The monitors just approved it their last--

SENATOR ROBERTSON: Do you want to know something? Let me just say something in general. The monitors -- that's a very important thing, and the consent decree is a very serious item. But you know what? We are not constrained by the four corners of the consent decree. If we think something makes sense, we can go beyond the consent decree. And that means that we can go beyond the consent decree before the consent decree was in place. Because I had a discussion like this with the Attorney General at our racial profiling hearings two years ago. Well, actually with Paul Zoubek two years ago, where we noted that consent search data already was suggesting that there were serious problems, except that we didn't have find rates to be able to draw a conclusion as to whether or not the find rates support the suspicion rate. And then that started to be done. But that was in 1999.

And I guess one of the questions that Senator Matheussen had, and that's the question that I have, is, why aren't we more aggressively doing the things that we can do now or all of the folks in a more bureaucratic -- and I'm not trying to use that pejoratively -- in a bureaucratic setting are taking care of things like approving the forms by the monitors and doing the CADs -- we already have the CAD system -- the MAP system, and doing all of those sorts of things? Why don't we have MVR review as soon as the thing got into the cars? Why isn't that the standard operating-- Do you understand our frustration here?

ASSISTANT ATTORNEY GENERAL CRONIN: I understand. I believe I misspoke. I mean, they're doing MVR reviews now, the supervisory reviews. They're not using this-- We're not saying hold off until the form is there--

SENATOR ROBERTSON: Oh, all right.

ASSISTANT ATTORNEY GENERAL CRONIN: --but they will be doing the forms. So I misspoke, sir.

SENATOR ROBERTSON: So now you have better forms even to do it with?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR ROBERTSON: Okay.

ASSISTANT ATTORNEY GENERAL CRONIN: And, Senator, one of the concerns in looking at the MVR reviews historically that my office, State Police Management, has seen is the lack of uniformity. They go from reviewed above-mentioned tape, compliance with rules and regulations, to *The Tale of Two Cities*. So we want to get is a standardized-- So I understand what you're saying. The second thing that we're doing is-- And this is driven by manpower in the sense that we're getting recruit classes graduated, and there are some labor issues regarding sergeants, but have increased -- and this is subject to labor negotiations, sir -- increased road presence, at least on Troop D, for supervisors -- supervisors on the road.

There's a debate about, because it involves the *State v. Dickey* decision, as to whether there should be a supervisor present during the consent to search or whether we should just have a requirement that there be a communication between the road trooper and the supervisor as to the reasons supporting the consent search before it's executed. My concern about *Dickey*, sir, is that if we require the motorist and the trooper to wait until the sergeant gets there, it's going to prolong the stop into a de facto arrest.

SENATOR ROBERTSON: Absolutely.

ASSISTANT ATTORNEY GENERAL CRONIN: Also, as we continue the supervisory review, performance notices are being issued to -- or

observed conduct does not comport with the rules and regs, and some disciplinary referrals have been made.

SENATOR ROBERTSON: Have some--

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ROBERTSON: For what sort of violations?

ASSISTANT ATTORNEY GENERAL CRONIN: Patrol practice violations, indications of racial bias.

SENATOR ROBERTSON: From having done the MVR?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, the MVR in addition to reviewing the reports and the general analysis that, I believe, the general--

SENATOR ROBERTSON: But more as a matter of supervisory review, as opposed to citizen complaint?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes. This is an internal process, sir.

SENATOR ROBERTSON: Because one of the things that strikes me and one of the questions that we're going to have to ask ourselves with respect to consent searches is what the level of demonstration needs to be before you can engage in a consent search, if at all. Right now, it's reasonable articulable suspicion. Obviously, probable cause is a higher standard which could be used. Although one of the interesting things I saw with the data that we did have is that there wasn't a substantially different find rate with the probable cause searches than with the articulable suspicion searches.

That leads me to question whether or not it's a useful tool at all, given the fact that the find rates are as low as they are. Because we have to be concerned about how many searches are being conducted on folks who are not

carrying contraband and who are being delayed. You know, you're talking about 271. You're talking about 150 of those, or more I should say, probably 200 or more of those, who are not carrying contraband and are subjected to searches. That we have to wonder whether or not probable cause standards will just result in applications for warrants. I mean, all of these sorts of things are what we need to do. You have a year's worth of data to draw upon. It would be helpful to this Committee if the Attorney General's Office had a well-reasoned and complete recommendation to make with respect to consent searches.

I mean, everybody who sits in that chair says, well, you know, it is a useful tool for law enforcement. Yeah, no kidding. I mean, I understand that. But at what price? What have we learned? And I don't want to wait for a computer program to go in, because we've been waiting for two years already to even have a serious discussion about the computer programs. So it's very, very frustrating. So I just encourage you to bring that message back and to try to get us some more information.

ASSISTANT ATTORNEY GENERAL CRONIN: I will, sir.

SENATOR ROBERTSON: Question: Are you aware of any searches that were done pursuant to warrants with respect -- that were incidental to car stops?

ASSISTANT ATTORNEY GENERAL CRONIN: On Troop D during 2000 or--

SENATOR ROBERTSON: Well, let's start with ever. Because if the answer to that is no, then it doesn't matter.

ASSISTANT ATTORNEY GENERAL CRONIN: I don't know, sir.

SENATOR ROBERTSON: Nothing comes to mind?

ASSISTANT ATTORNEY GENERAL CRONIN: Nothing comes to mind.

SENATOR ROBERTSON: Okay. Because one of the things that we need to understand is if there are all these probable cause searches, how come we aren't getting warrants and how come we're relying on consent searches? Do you see what I'm saying? And the reverse is true. What happens is we don't-- What happens if we require probable cause, should we require a warrant in that case? What sort of Pandora's box does that open up? And just so you know, and I know-- Because when you get involved with doing this on a day-to-day basis, there's always the risk of winding up talking about form more than substance.

But the fact of the matter is, when we're dealing with consent searches, that is at the heart of what we're talking about, because that is what propels a lot of the decisions that are being made out on the road even with respect to stops. That's the reason we keep asking about these questions, because troopers may be being pressured to make arrests, and we've had testimony to that effect. Arrests have to come from finding contraband. Contraband has to come from a search. The search has to come from some basis for the search, which would be consent. The likelihood of an individual stop resulting in arrest comes from all of the foregoing. So that some of the decisions as to which car to stop is going to be -- in large measure depend upon the availability of consent search as part of the arsenal of trooper discretion.

ASSISTANT ATTORNEY GENERAL CRONIN: I understand that line of argument, sir. I would just like to make one point, though. Your statement that-- I understand there was testimony that troopers were under pressure to make arrests. Since I have been working with the Colonel since his

appointment in November, I think the Colonel has delivered a very loud, clear, and consistent message that he views the compliance with constitutionally and compassion as his watchword. So the message coming from the top is that.

SENATOR ROBERTSON: Well, let me ask you this then: Do you have any systems in place where you could hear from troopers on a no-name basis about their concerns about what's happening in their barracks, what's happening on the road, you know, some independent agency that's not going to take down the trooper's name, who will conduct focus groups so you will see you get the straight scoop? Is there anything in place right now?

ASSISTANT ATTORNEY GENERAL CRONIN: I believe that capability exists in the ombudsman. The ombudsman is a former member of one of the unions who works with the Colonel, who the Colonel has asked to provide a very similar function.

SENATOR ROBERTSON: Well, let me ask you a question. Supposing you were a trooper out on the road, and we've had testimony from troopers who've said, gee, you know, I'm getting pressure to do arrests, I'm getting pressure to engage in things that I know that I feel in my heart are wrong. And whether they're right or wrong about that, would you feel comfortable going to someone who worked so closely with the superintendent in order to articulate those concerns? Or would you prefer to have a quorum in which you could articulate those concerns on a no-name basis?

ASSISTANT ATTORNEY GENERAL CRONIN: I guess it, in part, goes to the reputation of the-- It seems to be a personal-- It's a personal reputation of the ombudsman whether that is someone who can maintain confidences. I mean, that's how I would look at it. You're asking me if I was a trooper, how I would look at it?

SENATOR ROBERTSON: Absolutely. And I don't blame you. And I don't blame you. But let me give you another sense of our frustration. There's a reason we're here. There's a reason we're having these hearings. And part of that reason is because people have been giving other people assurances that everything is being taken care of or that there is no racial profiling going on or that constitutionality is our watchword. The very same sort of assurances you just gave me are the same sort of assurances that were given to this Committee two years ago, that were given to the Attorney General two years before that. I mean, at what point do we sit down and say let's get to the root of this problem by talking to the grassroots, by talking to the troopers on the road in a way that will ensure confidentiality in order to really understand what's going on out there? Because if all we do is write reports and talk to each other, nothing is going to change.

And I've sat here through hours and hours of testimony now, and I keep getting the same uneasy feeling. That this is 2001's round of assurances to each other, and once we do that, we can go home saying that we did the job, until we come back in 2003 to a new spate of complaints.

Now, and I'm not trying to denigrate all the work that's being done through the monitors, but I would strongly, strongly suggest-- And in fact, when we deliberate as a Committee, I would strongly suggest to our Committee that we find ways to ensure that troopers on a no-name basis can discuss what the heck is going on out in the barracks, if they have that kind of a concern, without fear of being tagged by their fellows for doing so, if, in fact, that happens. And we've had testimony to that effect.

So, to the degree that you have any direct authority in this field, I would strongly urge you to exercise it in that fashion. No one can rely on the

assurances of any one person to say what's going on in an organization of more than 2000 people. It just can't be done or else we wouldn't have these complaints. Just venting a little bit. It's been a difficult week. (laughter)

Another question. You mentioned before, they had a large backlog of complaint cases. And this may be an unfair question. But why does it continue to be so large and to what degree have we doubled or tripled or quadrupled the resources necessary to get to the bottom of these complaints?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, we have tripled the size of OPS, okay. We've tripled that and augmenting it with some civilian hires, too. But as I believe, my office could benefit from some increased staffing--

SENATOR ROBERTSON: That's what we're for.

ASSISTANT ATTORNEY GENERAL CRONIN: --because-- And let me explain why. Early on in the reform process, a lot of what the focus was, was on designing policies, interacting with troopers, designing policies. Now we're moving into the implementation stage where it's operational. And things like reviewing the MVRs at Moorestown, however, that's very labor intensive, and frankly, we could benefit from that. As to why, to answer your question, why does this grow, I believe--

SENATOR ROBERTSON: No. That's not really-- I'm not asking why has it grown. I'm asking can we assure ourselves that we're actually paying enough attention to that issue to be able to bring those numbers down? I mean, when you say you've tripled the staff, that makes me feel a little better. Because if we were just sitting around saying, this is something we have to turn our attention to, I wouldn't feel that great. But that is the case, you've tripled the staff. All right.

On another subject, and this will be the last subject I cover. You've heard the term ghost stops, right? When was the first time you heard that term?

ASSISTANT ATTORNEY GENERAL CRONIN: Probably when I read the interim report sometime in the spring of '99.

SENATOR ROBERTSON: Okay. And regardless of how pervasive it might be, it's not an illogical concept, is it, that you could have a situation where there are ghost stops taking place, or do you dismiss that as a possibility?

ASSISTANT ATTORNEY GENERAL CRONIN: I'm sorry. An illogical--

SENATOR ROBERTSON: No. Isn't it a logical assumption to make that there is at least the possibilities in any organization of something like a ghost stop taking place?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ROBERTSON: That being the case, what specific steps have been taken, since you have been there, since you can only speak to that point in time, to deal with the question of ghost stops? (pause) Not to be facetious, but is that your answer?

ASSISTANT ATTORNEY GENERAL CRONIN: No, sir. Ghost stops are very difficult to police. I mean, that's--

SENATOR ROBERTSON: Granted, I could acknowledge that in the first conversation I had on the job. It's the first conversation I'm having on it. That being the case, what specifically has been done to police it?

ASSISTANT ATTORNEY GENERAL CRONIN: To the extent that a ghost stop may be reflected in, say, a warning to an issue to -- being issued in the name of someone who was never stopped, the staff inspection team of State Police within OPS, Office of Professional Standards, have made efforts to locate

on an individual audit basis, identify the persons whose identity is reflected on the warnings or the summonses. And if they do, it's mostly warnings, because it doesn't involve court action. And if that is not confirmed, that is an indication of -- that there was a ghost stop.

SENATOR ROBERTSON: What is your understanding of the term ghost stop?

ASSISTANT ATTORNEY GENERAL CRONIN: My understanding of ghost stop is -- it's either, (a) the issuance of a warning, if you will, for a stop which never occurred in order to inflate activity, and also, it is the stopping of a motorist without calling it in or otherwise recording it on a patrol chart or other documentation that would provide some extrinsic evidence, if you will, that the stop occurred.

SENATOR ROBERTSON: All right. With respect to illustration number two, what specifically is being done to deal with that type of ghost stop?

ASSISTANT ATTORNEY GENERAL CRONIN: The only thing that I could see that would address this issue would be the increased supervision on the road.

SENATOR ROBERTSON: Well, how many times has this issue turned up in discussions with yourself and the top brass of the State Police?

ASSISTANT ATTORNEY GENERAL CRONIN: Several, I can't--

SENATOR ROBERTSON: Several times?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR ROBERTSON: And the ultimate conclusion was it's just very, very difficult. But no SOPs or anything else were issued with respect to supervision or anything? I mean, is there any practical signal that has been sent other than to reinforce SOPs to the troopers to suggest that this is going to be

dealt with very, very severely, or that we're out there or that we're watching, or that we're keeping our eye out for that?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, it is a violation of the SOP. And if substantiated, it may result in discipline. But as far as a formal plan or formal response, I don't have one for you, sir.

SENATOR ROBERTSON: Are you concerned by the numbers that you saw with respect to consent searches of the low find rate? Does that concern you?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ROBERTSON: And it concerns you, why?

ASSISTANT ATTORNEY GENERAL CRONIN: Is an indication that it's not being used effectively as a law enforcement tool. It also indicates that -- to the extent that there's an inverse relationship between find rates and, say, minority status, that there may still be continuations of old concepts linking minority status to criminality, which is troubling.

SENATOR ROBERTSON: And you're aware of the efforts that are being made with respect to internal audits, as well as prosecution, for those who falsely put down or misidentify drivers and falsify reports, correct?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ROBERTSON: I don't know if you heard any of the testimony last-- Did you hear any of the testimony last week from the troopers?

ASSISTANT ATTORNEY GENERAL CRONIN: I saw some of it on the TV.

SENATOR ROBERTSON: Well, it would be useful. And if you don't have transcripts, I would ask the Committee to send you transcripts, since you are the guy on the job.

But one of the inescapable conclusions is that to the degree that ghost stops may exist, that those find rates are even lower than in the reported stops. You know, if it's 25 percent of the 271 stops, and there were X number of ghost stops on top of it, that find rates even lower.

So I guess my question is, given how ghost stops could be used by a trooper who wanted to get around the system as a way of turning off the light on that stop, why isn't more being done to get to the bottom of the issue of ghost stops?

ASSISTANT ATTORNEY GENERAL CRONIN: I can't answer that, sir.

SENATOR ROBERTSON: I have no further questions.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Mr. Cronin, were you previously with the U.S. Attorney's Office?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ZANE: Was that where you met and got to know John Farmer?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ZANE: Okay. What was your background there that would lend itself to what you're doing in your present position at the State of New Jersey -- any particular training that you had in this area?

ASSISTANT ATTORNEY GENERAL CRONIN: In my-- I was-- I had a supervisory capacity at the U.S. Attorney's Office as the deputy chief of the Criminal Division. I was not an administrator at this level. I did work for 10 years with law enforcement officers.

SENATOR ZANE: Did you ever do any work in this kind of an area for the Federal government? Did you ever do any work in this type of area for the U.S. Attorney's Office?

ASSISTANT ATTORNEY GENERAL CRONIN: Civil Rights?

SENATOR ZANE: Yeah.

ASSISTANT ATTORNEY GENERAL CRONIN: No, sir.

SENATOR ZANE: Okay. One of the comments that you made earlier during your presentation -- towards the end of it, You talked about cultural changes. Do you recall that?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ZANE: I think practically everyone on this Committee concedes and agrees that the vast majority of State Police are totally in compliance and recognize a person's civil rights and treat them accordingly. But apparently, there are some that do not. Is that correct?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR ZANE: And you talked about cultural change, and you quoted the superintendent, and you indicated that he had said that this would take approximately four years to deal with. Do you recall that?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ZANE: He is 18 months into that four years. What are you doing differently to bring about cultural change within the State Police?

ASSISTANT ATTORNEY GENERAL CRONIN: Differently than--

SENATOR ZANE: Differently than you were 18 months ago.

ASSISTANT ATTORNEY GENERAL CRONIN: Quite a bit, sir.

The training--

SENATOR ZANE: Who is being trained, new troopers coming in?

ASSISTANT ATTORNEY GENERAL CRONIN: There's both recruits coming in, and also, there's extensive in-service training, which occurs for the present force.

SENATOR ZANE: At what level of management is involved in that training?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, the entire State Police. It's both troopers and sergeants.

SENATOR ZANE: So from the superintendent on down.

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ZANE: Is that correct?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

SENATOR ZANE: And how much training do they actually get to change these cultural mores?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, training is part of the process. But they receive training on integrity and ethics, cultural diversity, communications, motor vehicle stop procedures, supervisory responsibilities.

SENATOR ZANE: If we cut through all the flack, aren't we really talking about prejudice, racial prejudice? Is that really what leads to racial profiling?

ASSISTANT ATTORNEY GENERAL CRONIN: Part of it, sir.

SENATOR ZANE: What are we doing to deal with that? When we talk about the cultural changes that have to take place, aren't we really saying that there's pretty good indication that there are some people that-- There was testimony by troopers that there were people in management that were racist. What are you doing to-- Assuming that that is correct for the moment-- If it is

not, tell me it's not correct. But what are you doing to deal with people who are thought to be racist?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, if they perform acts of discrimination, that is something that has to be proven and litigated.

SENATOR ZANE: And has it been proven with any -- and any litigated in the last 18 months?

ASSISTANT ATTORNEY GENERAL CRONIN: Not in an administrative misconduct investigation.

SENATOR ZANE: So that would suggest that there isn't any racist or prejudice that's operating in the State Police. Is that correct?

ASSISTANT ATTORNEY GENERAL CRONIN: That would indicate that there has not been a substantiated allegation.

SENATOR ZANE: Or it would prove-- It would suggest that you can't identify it.

ASSISTANT ATTORNEY GENERAL CRONIN: Or prove it.

SENATOR ZANE: I'm sorry?

ASSISTANT ATTORNEY GENERAL CRONIN: Or prove it.

SENATOR ZANE: Or prove it. Yet, we have statistics that John Farmer, when we were in the State House -- when he testified, there were statistics that he gave us that indicated that the numbers -- the percentages, as far as racial profiling are concerned-- The latest numbers reflect that ain't nothin' any different since it was in '96, '97, and those years before, correct? I can tell you that's correct. I was there for those hearings. That was his testimony. Nothing really is any different.

Let me ask you this: Have any members of management within the State Police been identified as people that may have racist tendencies?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, through litigation, that is correct.

SENATOR ZANE: What have you done with them? What has been done, if anything at all, to change whatever the cultural problem might be?

The answer's nothing, isn't it?

ASSISTANT ATTORNEY GENERAL CRONIN: No, that's not the answer, sir.

SENATOR ZANE: Then tell me what the answer is.

ASSISTANT ATTORNEY GENERAL CRONIN: It's the delivery of the clear message that it's unacceptable, and the development of a promotion process, and -- that rewards appropriate behavior, and the processing of claims and allegations of misconduct or discriminatory behavior, which are presently being investigated and litigated.

SENATOR ZANE: Have you had conversations with the superintendent regarding the very thing that we're talking about right now?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR ZANE: As a superintendent -- people that he identified as bullies or whatever-- Has he provided you with names of who they might be?

ASSISTANT ATTORNEY GENERAL CRONIN: No, sir.

SENATOR ZANE: So a name has never been mentioned. It's never been suggested that Captain X or Lieutenant X or whatever might have a problem in this area. That's never happened.

ASSISTANT ATTORNEY GENERAL CRONIN: He did not identify bullies or--

SENATOR ZANE: Is there any effort being made within the State Police to identify people that have been accused of being racist? Is there counseling that's provided? If so, what kind of counseling?

ASSISTANT ATTORNEY GENERAL CRONIN: There is-- Persons identified, whether it be in litigation or otherwise, of -- engaged in prohibited discrimination -- they may be counseled by the EEOAA as part of the administrative processing of that allegation.

SENATOR ZANE: Has it been done?

ASSISTANT ATTORNEY GENERAL CRONIN: I believe it has, sir.

SENATOR ZANE: You believe that it has? Do you know how many cases have--

ASSISTANT ATTORNEY GENERAL CRONIN: Not off the top of my head, but it has been.

SENATOR ZANE: I'm not getting the feeling that anyone, including the superintendent, is really making an effort to identify the individuals. I mean, if we have racial profiling, as recognized that we do -- the Federal government has recognized it, the State has recognized it, we're here talking about it -- somebody has to know who is doing it. And I guess my question is, to those that are doing it, have you identified them? And what are you doing with them to change -- to make these cultural changes? And if you say to me it's the training, I'm going to ask you to spell out the type of training that deals with a cultural change. And I don't want to hear honesty and integrity and doing the right thing. I want to know what you're doing. I want to know if somebody is sitting down and saying, "You can't be Archie Bunker. This is how you have to conduct your life. This is the rights of people. They must be

respected.” I want to know what’s happening, because I’m not getting a sense that anything is really happening other than talk.

ASSISTANT ATTORNEY GENERAL CRONIN: Well, in-- After being appointed, the Colonel met with each and every member of the State Police during the year 2000 and stated his expectations of what he wanted in the terms of complying with the Constitution and doing such with compassion. The processes which we -- are put in place and the analysis of stop activity, etc., is developing this culture of accountability where if one engages in discriminatory behavior, it’s difficult to conceal, and therefore, unlikely to occur.

SENATOR ZANE: But you’re talking in platitudes, right?

ASSISTANT ATTORNEY GENERAL CRONIN: No, sir.

SENATOR ZANE: You’re not really doing anything about it, are you?

ASSISTANT ATTORNEY GENERAL CRONIN: That’s not true, sir.

SENATOR ZANE: Then please tell me what you’re doing about it. Please tell me--

You know what, there’s a trooper sitting in this audience who said, when he testified about certain things, that he did. Has anybody reached out to that trooper and said -- he still works for the State Police -- “Why did you do it?”

Other troopers said, “I’ve worked with people that told me to do this.” Has anybody gone to those troopers who said those things and said, “Give me the names of who they are?” Because I’ve had phone calls, I can tell you names. I’m sure some of the other Committee members could. That’s not my job, though.

Has anybody then said, “Okay, fine. Let’s take those people aside, let’s sit down with them, let’s talk to them, let’s find out why this has happened?” And the answer is no, isn’t it?

ASSISTANT ATTORNEY GENERAL CRONIN: Due to concerns about being represented by counsel in litigation, that does constrain the ability to do that.

SENATOR ZANE: Well, has anybody--

ASSISTANT ATTORNEY GENERAL CRONIN: I’m not aware of any such meetings.

SENATOR ZANE: Are you suggesting that there’s some legal reason as to why you can’t reach out to a trooper who has testified in an open forum such as this and say, “We want to know why you did it. We want to know who those other people are that you said did it. We’d like, at least, the opportunity to talk to them.” You can’t do that?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, there are-- When someone’s represented by counsel in a legal proceeding alleging discrimination, the ability to speak to that represented person is limited.

SENATOR ZANE: Are you suggesting that the only-- Are you suggesting that the people that may have profiled or the people that say they were instructed how to profile-- Are you saying they’re all in litigation, and you can’t talk to them?

ASSISTANT ATTORNEY GENERAL CRONIN: No, sir.

SENATOR ZANE: Well then, let’s talk about the ones that aren’t in litigation. So forget the representation. Is there a reason why they can’t be reached out to? Is there a reason why the State of New Jersey can’t say to people -- a very small minority, I’m sure -- very small number of troopers, because I’m

sure the vast number aren't doing it. Is there any reason why somebody can't reach out and say to them, "Guys, we've got to end this problem. We've got to do something?" But you're not doing it, right?

Look, I'm not picking on you. You're part of the system. The system isn't doing it, right?

ASSISTANT ATTORNEY GENERAL CRONIN: I don't know if that's--

SENATOR ZANE: And then we're going to sit around here, and we're going to say, as Senator Robertson said a little bit ago, in 2003 and in 2005, either you or somebody else is going to sit there, and we're going to talk about some formula, some something, some new computer program that's going to address this issue. And meanwhile, people are still going to be racially profiled, because it's still happening.

Please tell me where I'm wrong. Please tell me what overtly the State of New Jersey is doing right now to take people who culturally-- You're not the only person that has said this. The superintendent said it yesterday in a meeting I attended with him. Tell me what -- where we're doing anything to change that culture. Tell me who the people are that are supposed to be changing it. Tell me what their qualifications are.

I'm a Senator. We're all charged with running the State. And we have this problem. It's got to be addressed. We can't do to people's civil rights what has been happening, not just in this state, throughout the entire country. We're only concerned with this one.

And I'm not getting a good feeling.

ASSISTANT ATTORNEY GENERAL CRONIN: Sir, the entire process-- I mean, you said you didn't want to hear about training, but it's

training -- it's gathering the information to identify people, it's the supervisory systems we're putting in place. That whole system is an effort to address the issue.

SENATOR GORMLEY: Just if I may, one of the things I was--
Just to interject-- Not to ask a question.

Is it-- One of the things we will do, Captain, is we -- Committee -- members of the Committee, we'd like a day to be available to go out and observe training, ask questions about training firsthand, and also have a chance to interact with that process. I'm not saying that's an answer for the question that Senator Zane's mentioning, but I think we should afford ourselves a day with you and observe the process or make it available to members of the Committee. We'll be doing that. I just wanted to interject that through a factual perspective.

Senator Zane.

SENATOR ZANE: I don't have any other-- You know, we sat through hours and hours of testimony, had all kinds of witnesses -- and I feel like I'm really jumping all over this gentleman, and I don't mean to attack you personally, I really don't. But we-- I mean, it's clear to me, from the testimony we've heard, that -- and again, practiced by a very small number, I am sure. I'm confident of that.

The State Police is a great organization with great people in it. And I sincerely mean that. I have all the respect in the world for them. But there are some bad apples. And we've talked about it. I mean, we have probably 70 hours into this now.

I've been in the Senate 28 years. I've never been on a Committee that met this intensely to deal with an issue since I'm here. And I commend everybody for their time and effort.

But you know what, we have to get our answers from you, because we are not psychologists, it's not our responsibility to figure out what's going on. But I'm getting the sense, very clearly, nobody else is really doing anything. And do you know the end result of that? The end result of that is John Farmer, or his successor, will come before this or some other Committee two years from now, and we'll be doing the exact same thing. And somebody will say, "Jeez, on the Turnpike, it's still the same numbers."

That's what frustrates me. I mean, I am a goal-oriented person, and I don't see goals being really met with this. I see platitudes, I see talk, not results. And I just--

I'm done. I don't have any--

Do you want to say something else to respond to that, please do. Do you have anything to say to make me feel better about the attitude I'm expressing?

ASSISTANT ATTORNEY GENERAL CRONIN: There are things being done that I've already expressed to you.

SENATOR ZANE: Give me 30 seconds more with you. Tell me the training that troopers or management in the State Police is getting to deal specifically with prejudice. That's what this is about, I believe. Some have suggested--

SENATOR GORMLEY: Excuse me, Captain, we might as well have-

-

If I may, Ray.

I think it would be more appropriate, Captain-- The Captain is going to submit his testimony because of our time restraints today, because we can't have one of our 11:00 sessions. We're getting ejected at 5:00. I think it

would be appropriate, as a response, if, Captain, you could respond to that, because you are in charge of that training. Mr. Cronin's referred to it. It would be appropriate--

SENATOR ZANE: I'll tell you exactly what I want. I would like to know the amount of time. I'd like to know how you selected people to go into it. I'd like to know at what level of management, and I mean management, are summonsed to it, how much management has already been through it, and how much actual time is spent on that issue when you talk about racial profiling -- I'm not talking about all the other things -- how much time you spent on racial profiling, and who is it that's doing the instructing and changing these cultural mores that have gotten this State in trouble.

CAPTAIN LEONARDIS: Senator, to answer that-- I have to agree with Director Cronin to some extent. We're talking about changing the culture of the organization. And you just can't do that with one facet. It has to be throughout-- There's got to be a common theme throughout the training.

With all of the in-service training that we're doing right now, we're doing more in-service training than we've ever done before. In the past, we've only-- We spent, normally, an hour -- I'm sorry, a day per year. That's excluding the firearms training. But right now, we're in a situation where we're spending days at different intervals for search and seizure, for Internal Affairs type issues, preventing and avoiding misconduct. Ethics is going on right now. As a matter of fact, yesterday morning, I delivered the first hour and a half--

SENATOR ZANE: What about civil rights?

CAPTAIN LEONARDIS: Civil rights are part of the--

SENATOR ZANE: How much time spent to that?

CAPTAIN LEONARDIS: It's part of the constitutional issues, in-service training.

SENATOR ZANE: How much time spent to it?

CAPTAIN LEONARDIS: Well, we spent approximately four hours in the spring of last year through the summer, and we're going to be spending another four hours starting May 14th. And that's something that every member of the Division will go through. What we've been trying to do is have the upper management go through any in-service training that we're providing first so that they can see it, and they understand it. And then we're delivering it to the rest of the rank and file.

We're in the process of presenting, as I said, search and seizure, constitutional issues, Internal Affairs issues, cultural awareness. We'll spend an entire day. And I think you heard the format there. It's going to be one member of ADL, one member of the Division who's been trained by the ADL. They've gone through a weeklong training program. They'll work together on it and co-team -- team teach. We have supervisory training coming up -- go over the MVR reviews, the MAPS program.

Come fall, there's a lot of technology that most troopers are not aware of -- how it's going to work. And some of it, as you know, isn't in place yet. But all of those training issues are changing the culture of the organization.

And from where I sit, I'm in a sort of unique position, because with in-service training, I get a chance to see -- talk to troopers that most other officers don't have an opportunity to, plus I get an opportunity to read critiques.

I see the changes in the organization coming about where we had 180 troopers go through our trooper coach training program, a six-day program that we've never done before. Reading the critiques, the top instructors is one

of the attorneys from the Attorney General's Office, Ron Susswein, because he teaches search and seizure issues. And every single critique that I've read says we need to see more of this. We need to have Attorney General Susswein come back for four hours, eight hours, for sixteen hours. That tells me-- That sends a very clear message that the rank and file in the Division -- the professional people-- They want to do a better job. And I think, in time, they're going to continue to improve, especially with all the training that we have scheduled.

To change the culture of the organization isn't something that you can do overnight. And I feel the same way you do. If you have one person -- one trooper violating one person's civil rights, that's one too many. How do you change an entire organization? It's going to take time. If we had a smaller organization -- 100, 200 people, it would be that much quicker, that much easier. So I think we all--

And I know the Director -- I'm speaking on the behalf of him, but I know that he feels the same way that I do about this. And I think the rest of the Division does, too.

For us, as members of the Division -- or management of the Division, it's hard to understand that in light of everything that's going on with our training and with what's happened in the past three years, that there still is racial profiling going on. And if that, in fact, is true, which apparently it is, it's hard to understand. And I think that we're changing it in a matter of time.

It's almost like coaching a team of good athletes. I've been involved with coaching wrestling for most of my life. If you have good athletes, and you have people that are motivated, it's just a matter of time before they're going to succeed.

And my feeling is that the State Police is made up of good people, intelligent people, who want to do a good job. And I think, over time, they will succeed, because they want to be successful.

SENATOR ZANE: So really, what we have to say to the public is, “Sit tight, we’re going to address it. Racial profiling will continue for a while, but we’re going to address it.” Isn’t that really the bottom line of what you just said, Captain?

CAPTAIN LEONARDIS: What I’m saying is--

SENATOR ZANE: I mean, isn’t it?

CAPTAIN LEONARDIS: No, Senator, what I’m saying is, it’s going to take time to change the culture of the organization. If racial profiling is going on right now, it’s got to stop, and it’s got to stop through the supervision within the State Police. First-line supervisors have got to be out there to see what the troopers are doing and how they’re doing. And that’s the message that all the captains are sending when they kick off the ethics training every day of this in-service training that’s going on. It’s really important that first-line supervision is out there to see and know what’s going on. That will bring an end to it. And that will bring an end to it quicker than, obviously, training will.

SENATOR ZANE: Last question, it really is. Do you believe that with whatever the training is that has been implemented, that one year from now, if we look at this issue, the racial profiling numbers will be gone, they’ll look like what they should have, fair representation of the population?

CAPTAIN LEONARDIS: I don’t know if they’ll be gone, but I do believe that they will improve. I really believe in my heart that the members -- the rank and file members of the organization want to do a good job. You’re always going to have people that have a different viewpoint. You’re always going

to have a few people that march to the beat of a different drum. And as much as you try to, you're never going to change it with an organization of 2600.

But for the most part, I really believe that everybody wants to do a good job. If I didn't believe that-- I have almost 28 years in with the State Police. If I didn't believe that, I could have retired three years ago when things started getting hot. I believe in the organization. I believe in the members of the organization. I think we have a good organization. And I think things are changing, and things will change over time.

SENATOR ZANE: Okay.

SENATOR GORMLEY: Thank you, Senator Zane.

Just for the members of the Committee, we obviously want to explore every area, but we are limited to 5:00, and we have a number of witnesses left.

What I'll do-- We have a couple of the members, and counsel have asked for a few questions.

Mr. Chertoff has two questions, Jo Glading has three questions, John Matheussen has one question, and Norm Robertson has one question. So we'll run through these very limited and short questions before we take a break.

Mr. Chertoff.

MR. CHERTOFF (Special Counsel to the Committee): Two questions, but I don't know if there's a limit to subparts. (laughter)

SENATOR MATHEUSSEN: Spoken like a true attorney.

MR. CHERTOFF: There really are two questions.

Mr. Cronin, just on the issue of discipline, I think you told us that right now, the Professional Standards Bureau handles most of the investigations, but your office handles allegations of discrimination and excessive force.

ASSISTANT ATTORNEY GENERAL CRONIN: No, sir. Under-- Those allegations -- they're in Paragraph 74 of the decree -- discrimination, excessive use of force -- are ones that have to be investigated, either by the Office of Professional Standards or by my office. And they cannot be delegated to the stations or out in the troops.

MR. CHERTOFF: All right. And the professional standards investigators, are they State Police?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, sir.

MR. CHERTOFF: Let me just ask you for your reaction to this: Assuming there was the appropriate money, is there some reason you could give of why it would not be a good idea to set up, outside the State Police, an office that would, at least, undertake the investigations of more serious allegations like discrimination and excessive force? I don't mean, you know, you didn't button your uniform, but something of that nature. Is there some problem with doing it that way?

ASSISTANT ATTORNEY GENERAL CRONIN: Theoretically, there's no problem with that. But as a matter of practice -- that the investigations that have been conducted by OPS, as reviewed by my office and the monitors, have been consistently found to be thorough and fair. So while it's a theoretical possibility, it doesn't appear to be a demonstrated--

MR. CHERTOFF: I'm not saying that there's anything wrong with the way it is now. I'm just saying if in the future you were going to-- You know, 10 years from now you'll have different people. Can you think of an institutional objection or problem if when set up, like an office of professional responsibility outside the Division, that would have the personnel to investigate the more

serious allegations in the way that's not being done within the Division? Is there an institutional problem there?

It's not a trick question, I just want-- We want your reaction.

ASSISTANT ATTORNEY GENERAL CRONIN: There's no prohibition of it. To demonstrate the need -- I have a question.

MR. CHERTOFF: Now, let me ask the second question. The Colonel now makes the decision about discipline. He's like the judge.

ASSISTANT ATTORNEY GENERAL CRONIN: Correct. He's the head of the administrative agency.

MR. CHERTOFF: Does that seem wise to you as opposed to having either an administrative law judge or an official outside the State Police being the "judge" on the discipline matters?

ASSISTANT ATTORNEY GENERAL CRONIN: No, it's not unwise.

MR. CHERTOFF: You don't see a problem with a person who is -- ultimately got responsibility for having supervising and, in many instances, promoting people who might be -- have allegations -- also being the person who was the judge in the case?

ASSISTANT ATTORNEY GENERAL CRONIN: No, I don't see a problem with that. In the structure of the State Police, the ability of the superintendent to impose discipline is very important in its ability to maintain order within the State Police.

SENATOR GORMLEY: Excuse me. That would be parallel to the uniform code of military justice. In other words, being paramilitary, if you will, in its origins. They adopted a system. The discipline is very familiar to the uniform code of military justice. Is that a fair comment?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR GORMLEY: Then the question takes another direction. If, in fact, you have a system with its system of discipline that is parallel to the uniform code of military justice, are there the same prerogatives that a commander would have in terms of overall discipline, in terms of the range of powers? Are they available to the Colonel also? See, if you're going to have a part of the military system, should you have the whole system with the prerogatives to take the disciplinary steps that would be available in the military?

ASSISTANT ATTORNEY GENERAL CRONIN: I don't think you necessarily have to have that.

SENATOR GORMLEY: Okay.

Jo Glading.

MS. GLADING (Senate Democratic Staff Counsel): Is the CAD system currently fully operational?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

MS. GLADING: And the RMS system, when is that expected to be fully operational?

ASSISTANT ATTORNEY GENERAL CRONIN: I don't know exactly, it's either late this year or next year -- RMS -- Record Management System.

MS. GLADING: Well, the MAP system, you testified, was going to be operational by the fall, but as I understand it, the MAP system is composed of the CAD system and the RMS.

ASSISTANT ATTORNEY GENERAL CRONIN: There are components of MAP that are also going to be in the RMS system, but the RMS

system includes other data, report writing and etc., that's not in that. So they're not coextensive.

MS. GLADING: So when is the Records Management System going to be on-line?

ASSISTANT ATTORNEY GENERAL CRONIN: Either late this year or early next year.

MS. GLADING: My understanding is that the Records Management System is what is going to track many of the personnel issues that's going to make MAPS effective.

ASSISTANT ATTORNEY GENERAL CRONIN: Some of the components, and I guess I'm speaking unclearly-- Some of the components of RMS are in MAPs. Those RMS components should be effective in September or October. There are other components of RMS that will take longer, so they will not delay, if you will, MAPS.

MS. GLADING: Did you read Robert Watkins's testimony from last week before the Committee?

ASSISTANT ATTORNEY GENERAL CRONIN: No, ma'am.

MS. GLADING: Did you hear it?

ASSISTANT ATTORNEY GENERAL CRONIN: I heard parts of it.

MS. GLADING: He testified that the RMS-CAD system was originally put out to bid actually '94 or '95, and that had to be rebid because of problems. Is that your understanding of how the system was bid?

ASSISTANT ATTORNEY GENERAL CRONIN: There were some issues with CAD.

MS. GLADING: Okay. And he also testified that the original target date of 18 months has obviously been missed, because we still don't have an RMS system. The contract delivery date was originally 18 months.

ASSISTANT ATTORNEY GENERAL CRONIN: For CAD and RMS, or just for CAD?

MS. GLADING: No, you tell me.

ASSISTANT ATTORNEY GENERAL CRONIN: I know that RMS was-- My understanding of the actual bidding process for CAD and RMS were that they were separate.

MS. GLADING: Okay. Which contractor is providing the CAD system, and which contractor provided RMS?

ASSISTANT ATTORNEY GENERAL CRONIN: I don't know the identity of the actual contractors.

MS. GLADING: Is a company called Bull involved in--

ASSISTANT ATTORNEY GENERAL CRONIN: Bull is involved in CAD.

MS. GLADING: In CAD. Okay. Do you know how much has been spent since 1996? Actually, my understanding is, as of 1996, \$4 million had been spent. Does that sound accurate to you?

ASSISTANT ATTORNEY GENERAL CRONIN: I'm not that sure of the actual budget.

MS. GLADING: Now, five years later, do you have the total amount that's been spent on the CAD and RMS systems?

ASSISTANT ATTORNEY GENERAL CRONIN: No, ma'am.

MS. GLADING: Do you know what the reason for the delay was in a system that was originally bid in '96 -- why we still don't have it in place?

ASSISTANT ATTORNEY GENERAL CRONIN: No, I don't know, ma'am. I don't know.

MS. GLADING: In the area of compliance with CAD reporting-- In Task No. 30, I guess you're familiar with, the State failed to comply with that task, and there was a 24 percent error rate in the CAD records that were examined by the monitors. What steps have been taken to--

Well, first of all, does that rate concern you? That seems very high.

ASSISTANT ATTORNEY GENERAL CRONIN: It does concern me. Steps have been taken with the contractor to address that in a sense that when -- where the error rate occurred were for motor vehicle aids that turned into stops. And the way the system was designed is that if it's a motor vehicle aid, the race or ethnicity is not a mandatory field on the CAD. It's an optional field. It's typed in. And there were some errors there. And we're addressing with the contractor to make it a mandatory field, and therefore -- for motor vehicle aids -- and therefore, that we would expect that the compliance rates would mirror those of regular stops.

MS. GLADING: The original final report of the State Police Review Team recommended having satellite offices for complaints. Were three satellite offices ever -- to -- for Internal Affairs to receive complaints-- Were three satellite offices ever created?

ASSISTANT ATTORNEY GENERAL CRONIN: No.

MS. GLADING: Okay. Was one satellite office created in Freehold?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

MS. GLADING: Do you know how many complaints have been processed through that satellite office?

ASSISTANT ATTORNEY GENERAL CRONIN: Walk-ins -- by walk-ins, not many.

MS. GLADING: Okay. Have you been to that office?

ASSISTANT ATTORNEY GENERAL CRONIN: I have not physically been to that office.

MS. GLADING: My understanding that it's in a strip mall, and it's very difficult to find. Does that sound--

ASSISTANT ATTORNEY GENERAL CRONIN: I know it's in a strip mall. I don't know how difficult it is to find.

MS. GLADING: The lack of compliance also with the video recording -- the absence of sound in many recordings-- We saw a video last week in which a trooper put a motor -- a driver in front of the video so you couldn't actually see what was going on in the car. What steps are being taken to improve compliance with the requirement that all stops be videotaped and audiotaped?

ASSISTANT ATTORNEY GENERAL CRONIN: There's ongoing discussions with the contractor. But the problem is the video -- the audio fading in and out is a problem that is being accompanied by the entire industry. I think it's significant in the monitors' reports that the monitors did not find that there's any indication that there's an intentional -- taken with the MVRs, but there are some technical problems which are not really compliance related.

MS. GLADING: Attorney General Farmer testified that he is reviewing tapes. Have you reviewed tapes of motor vehicle stops?

ASSISTANT ATTORNEY GENERAL CRONIN: Some, yes.

MS. GLADING: Have any led to a recommendation that discipline be pursued?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

MS. GLADING: Have any of those cases been completed?

ASSISTANT ATTORNEY GENERAL CRONIN: No.

MS. GLADING: Okay. So there's been no substantiation, but also no completion of any of those cases?

ASSISTANT ATTORNEY GENERAL CRONIN: That's correct.

MS. GLADING: Just one last question. The Troop D audit-- There was testimony that it was kind of a hot potato that got first kicked down to OAG, then kicked back to State Police, then it was kicked back to OAG after you arrived for your review of those cases. Is that accurate?

ASSISTANT ATTORNEY GENERAL CRONIN: No.

MS. GLADING: So you never reviewed any allegations that grew out of the Troop D audit?

ASSISTANT ATTORNEY GENERAL CRONIN: No. It wasn't-- Your statement was it was a hot potato that got kicked back and forth. It was--

MS. GLADING: Was it referred back to you after Colonel Dunbar took office?

ASSISTANT ATTORNEY GENERAL CRONIN: There was-- My office, as it does with all misconduct investigations, did review some of the investigations involving Troop D. And ultimately, now, they are being processed through the system. There's been at least three that have had charges and specs approved, and they're continuing to go through now.

MS. GLADING: When will those cases be completed?

ASSISTANT ATTORNEY GENERAL CRONIN: Completed in terms of adjudicated?

MS. GLADING: No, when will the investigations be completed?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, the investigations are complete.

MS. GLADING: Are completed in three of the cases.

ASSISTANT ATTORNEY GENERAL CRONIN: In three of the cases, and charges and specs have been approved.

MS. GLADING: When will they be adjudicated?

ASSISTANT ATTORNEY GENERAL CRONIN: Probably within three months.

MS. GLADING: Okay. And these are cases that were identified sometime before June of 1999, right?

ASSISTANT ATTORNEY GENERAL CRONIN: Correct.

MS. GLADING: And are any of the three cases-- We've heard testimony from a couple of witnesses that at least one, if not more, of the cases approximate a level of wrongdoing and records of discrepancy that was identified in the Hogan and Kenna records falsification case. Were any of those three cases in that category?

ASSISTANT ATTORNEY GENERAL CRONIN: No.

MS. GLADING: Thanks.

That's all.

SENATOR GORMLEY: One-- Not that I'm going to limit you to this. We'd appreciate it. Senator Matheussen, then Senator Robertson.

SENATOR MATHEUSSEN: Thank you.

Captain, this is more to you.

I understand, and I appreciate all the new training that's been put in place. And it sounds to me like it's an appropriate and necessary part of either

training new troopers or retraining troopers who have been on the job -- veterans.

But I also strongly believe that people react very well to consequences for their actions. In other words, if you do this, this will happen. I'd like to know, after all the training is done -- weeks, months, whatever it takes, all the retraining is done, all the proper methods of search and seizure are conducted, all of the -- how to make a proper stop, how not to make a stop--

After all that is said and done, does somebody stand up in front of the class, or does somebody stand up in the barracks and get their attention, however they do it, if they slam their hand down on the table, if they stare everyone in the eye and say, "Let me say this: profiling is wrong. Racism is a disease. Neither one of them will be tolerated in the State Police. You will not bring this organization down. It will not be tolerated. If you do it, we will find you, and we will fire you." Does anybody say that?

CAPTAIN LEONARDIS: Senator, Colonel Dunbar said it very clearly, and continues to. One thing that he does is he gets his message out to the rank and file. Every supervision class -- any class that we have down at Sea Girt, trooper coach, whatever it might be, he's usually there stating that type of message. That type of message also has been conveyed through myself and other captains who are delivering the opening remarks for ethics training.

And we discussed that. Even yesterday, I had opening remarks at Princeton Headquarters. And I was there for about an hour and 40 minutes. And those were the kinds of things that we discussed, what won't be tolerated and the importance of not allowing racial profiling to exist.

SENATOR MATHEUSSEN: And there's consequences for not doing it or for doing it.

CAPTAIN LEONARDIS: Yes.

SENATOR MATHEUSSEN: Thank you.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Also for the Captain, since we were talking about training. Do you have any formal system of remedial training?

CAPTAIN LEONARDIS: The only remedial training that we would have is if there's a recommendation that comes down, either through the superintendent's office or the Office of Professional Standards.

What we are in the process of doing, or what we've looked at, was a system similar to what one of the other states are doing, as far as making a referral for remedial-type training if an individual has so many complaints against them. That's never been worked out, as far as I know. But I know that that's something that was taken under consideration.

SENATOR ROBERTSON: Director Cronin, why hasn't something like that been worked out?

ASSISTANT ATTORNEY GENERAL CRONIN: Well, remedial training in a sense of counseling, in response to a specific instance, does occur. That does occur.

SENATOR ROBERTSON: And by counseling, we're talking about, for instance, if supervision takes a look at a videotape, and you said, well, you said reasonable articulable suspicion in this case was the fact that he had a serious cough and his nose was running, and I was worried about him doing coke, and that didn't turn out to be adequate reasonable articulable suspicion, he would be sat down, and he would be talked to, and he would counseled.

ASSISTANT ATTORNEY GENERAL CRONIN: Yes, that flows from the MVR review. There's probably a confusion with the term. That's

counseling that's contemplated with performance notices and other performance-generated interactions with the trooper. There's also training--

SENATOR ROBERTSON: There's something as simple as that done without getting into a whole stack of paperwork.

ASSISTANT ATTORNEY GENERAL CRONIN: Yes.

SENATOR ROBERTSON: All right. Thank you.

ASSISTANT ATTORNEY GENERAL CRONIN: Thank you.

SENATOR GORMLEY: Okay. Well, I just have one question. No, it's not going to be like the last time I said that. (laughter)

First of all, Captain, we would like to schedule that day without -- it wouldn't be too disruptive.

CAPTAIN LEONARDIS: Absolutely.

SENATOR GORMLEY: And the members of the Committee all want the day that you're doing to the longest forced march so they can participate. So, if you could do that, we'd appreciate that.

The issue of discipline-- We've had calls for a special prosecutor permanently seated, a civilian review board, and you currently have a monitor.

In a world where there's only choices, of those three, and let's assume the third could be made permanent in some form with a State monitor, because I don't think it's just a question of monitoring the State Police or monitoring what's happened, it's also having some form of independent review available so that when the State Police are performing as they should be and doing what they should be, which I think is the vast majority of times, there is an entity not from within saying they're doing a good job.

Of those three choices, and I'm not going to give you a fourth, but what do you think works, because I think there's going to have-- I think there

will be something in the future. At the same time, you don't want something that dissipates morale, that makes it impossible to function. But at the same time, I think some independent balance is in the best interest of those who are serving and doing their jobs. What do you think would work?

ASSISTANT ATTORNEY GENERAL CRONIN: I think that if there was a monitor that would come into play after the expiration of the decree that would perform the function presently performed by the court-appointed monitor in assuring or evaluating the integrity of the process, that would be helpful.

SENATOR GORMLEY: But we are not talking-- For the record, we're not talking advisory monitor, we're talking monitor that would have the same wherewithal that would be empowered in such a way that they would have the same impact as the Federal monitor. Is that correct?

ASSISTANT ATTORNEY GENERAL CRONIN: Yes. And the reason for the timing difference is that during the duration of the decree, as I attempted to outline during the testimony, there is that review in place. And with the concern about the length of investigations to impose another level, if you will, of review or supervision, may be disruptive in the short-term progress.

SENATOR GORMLEY: I want to thank you for your testimony. We'll take a half-hour break.

Thank you.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: The next witness will be James J. Fyfe.
Professor, we appreciate--

Well, first of all, I want to thank you for accepting our invitation today.

JAMES J. FYFE, Ph.D.: It's my pleasure, Senator.

SENATOR GORMLEY: --have somebody of your background and your experience in this field to be available to us while we wrestle with very, very difficult and complex questions that you have been wrestling with for a number of years is most appreciated. So we would appreciate your opening statement, and I know there would be a number of questions, especially about consent search.

So we would appreciate your comments at this time.

DR. FYFE: Fine, thanks.

I did prepare a statement, which I distributed to your staff. And I assume you'll get it. I just wanted to quickly run through it and make a few points.

One is that I testified in the *Soto* case in 1996 as the defense police practices expert. And it seemed to me that the Attorney General's Office, at that time, was dissembling, and was very disingenuous. And it was very clear, at that time, that racial profiling was a reality. I mean, it absolutely existed, and it was denied at the time. And I'm glad to see that this Committee, and others, are very interested in addressing that particular problem.

If we get beyond *Soto*, I see three major issues. And I'm going to read a bit of what I wrote.

In most of the American states, the attorney general is a constitutionally elected officer. And I was surprised. This is the third state I've

lived in. I was surprised to find that the attorney general was an appointed official here, and that he carried so much authority. That's not the case in New York, where I lived previously, or in Virginia, or in Florida, where we lived very briefly.

That's the system at the Federal level. And if you look at the Federal system -- attorney general system, you see, over the last generation, there's been quite a bit of discontent with it. And I think a lot of that is because the attorney general is really a creature of the executive. I believe that great advantages follow when the prosecution function is independent of the chief executive.

In most states, the local prosecutors who handle day-to-day criminal matters are elected, not in New Jersey, where they are appointed. In most states, attorneys general are elected constitutional officers who serve independent of the governor and the legislature. This is illustrated by the chart I've prepared here.

The chart, I put together by contacting the National Association of Attorneys General. And 43 of the American states elect attorneys general, 6 appoint them, and 1 state, Maine, chooses an attorney general by an election of the legislative majority.

If you look at the six states that choose attorneys general in the same way that New Jersey does, you find that they're places that have very little in common with us. They're Alaska, Hawaii, Montana, New Hampshire, and Wyoming. They're not diverse. They're not mixed states. They're not states that are urban, suburban, and rural. And when we compare ourselves to other places that are comparable, New York, Connecticut, Delaware, Maryland, Virginia, we find that they all have elected attorneys general. And I think the Legislature really needs to look very seriously about making it elected -- making

the Attorney General's Office an elected constitutional office rather than an appointed office.

And here's why: An elected attorney general would be independent of the governor and would not be faced with the conflicts of interest, real and perceived, that currently plague both the Federal and New Jersey systems. In other states, attorneys general act as a check on executive power. Here, the attorney general is simply a creature of the executive.

The change to an elected attorney general would change the reporting relationship of the police, and I think address a lot of the issues we heard raised this morning. Instead of having to report to the attorney general, the New Jersey State Police would report directly to the governor. They'd be, in effect, a cabinet office. This would flatten the police organizational chart, eliminate an unnecessary middleman, elevate the police to the cabinet status they deserve and hold in most other states, and would make it much easier to assign responsibility for police policy matters.

As I listened to Mr. Cronin, for example, I was surprised that there are two bodies, one in the Attorney General's Office and one in the State Police, that investigate serious allegations. I don't know how you can fix responsibility for resolving those investigations when people are able to play Alphonse and Gaston in that manner.

The change to an elected attorney general would result in the creation of a new form of independent oversight over the New Jersey State Police. This is the case in other states where, often, the attorney general is a member of the opposition party. An independent attorney general could regularly audit and test the integrity of the NJSP, and all other executive

agencies, in ways that are far more credible than is possible under the current system.

In New Jersey, currently, the attorney general also dictates policy for local police agencies. And I know that a lot of police chiefs resent that. They would like to get advice from the attorney general, but they don't want to be micromanaged by the attorney general. An elected, independent attorney general would be an advisor rather than a dictator, and I think that would be welcomed by a lot of the local police.

I know we're painting out of the box here, but I think this is something that we really have to look at. This morning, also, there was a lot of criticism of the inability of Colonel Dunbar to change the culture of the State Police. And I appreciate the problems he's having.

I want you to imagine with me for a minute that President Bush has just been elected to office and promises to make reforms, but has to retain Bill Clinton's cabinet; or that Joe Torre is hired by George Steinbrenner of the Yankees, but has to retain Buck Showalter's coaching staff; or that Christie Todd Whitman is elected Governor of New Jersey and has to retain all of Jim Florio's top aides. That doesn't work, but that's what you're faced with in this police agency, and a lot of others. And it's one of the reasons that the culture does not change.

As I understand it, Colonel Dunbar has virtually no authority to hire or fire, to fill the agency's top policy and operational positions with his vision. Instead, and I say this with no disrespect to Colonel Dunbar, his mere presence is an insult to many of the people closest to him and upon whom he is most dependent. He is the outsider who got the job, to which many of their own aspired. He is charged with carrying down the systems and cultures in which

they have been schooled and in which they rose to the top. Guess where their loyalties lie.

This history of failed police reform shows us that without the authority to hire and fire, Colonel Dunbar is no more likely to produce lasting change in the New Jersey State Police than Willie Williams did in trying to straighten out Daryl Gates's Los Angeles Police Department. If there is to be lasting reform in the New Jersey State Police, indeed, if there is to be any change at all, the person at the top of its organization chart must be a real chief, a person who is trusted completely by the governor to whom he or she reports and who has the authority to put in place those who will meet his or her expectations and to remove those who will not. As I understand it, this is not the case with the New Jersey State Police, and it should be changed.

We talked about how long it takes to change a culture. I was a police officer in New York City for 16 years. And in 1971, I went on a two-year academic leave that began that autumn. And it was coincidentally that autumn that the Knapp Commission hearings were being held. The Knapp Commission was the scandal that involved Frank Serpico and corruption in the police department.

I left the police department in New York in September of '71, and I returned in June of '73. And I can tell you that it was a completely different organization. The culture had changed. Cops did not eat free meals, nobody took free cups of coffee. There was no organized corruption. There was no systematic brutality. It was a completely different organization. And that was accomplished in 20 months, largely because the police commissioner had the authority to change the culture. He was a very gutsy person, Patrick Murphy. He's revered in police circles. But every rank -- every official from captain and

above held office at his pleasure. So the captains understood that they could take a Civil Service exam for that position, but their advancement beyond that level was dependent on performance.

SENATOR GORMLEY: Excuse me. Was he a product of the New York Police Department himself?

DR. FYFE: He was, except that he had done a couple of interesting things. He had been a career New York City cop who was brought down to Washington, D.C., by President Johnson and was the first director of the Law Enforcement Assistance Administration. And he became the public safety director of Washington, D.C., then the police commissioner of Detroit, before he went back to New York City. So he was the best of both worlds. He was a guy who had risen through the ranks, but had seen the rest of the world, as well. But his policy was to produce a 20 percent turnover every year in every rank of captain or above. So you were either up or out. That changed the cause for that department very quickly. People saw his values, understood what he wanted, and they responded to it. And I don't know of any police commissioner who is able to do that when the top brass are locked into office -- when they can only be removed or transferred for cause. That's really not possible. I can't think of any other large-scaled organization -- a 3000-person organization where the chief executive can't name the top 100 or so people who are going to run the place with him.

The third lesson-- And I really think that's critical. My friend John Timoney is the Police Commissioner in Philadelphia. He's a very charismatic person. If you're from that end of New Jersey, you know he's been able to make great change. But I have a bet with John that things will go back to just the way

they were two or three years after he's gone, unless he gets the authority to change the culture of that agency by appointing the top brass himself.

So the third point I'd like to make is that uniformed officers have no business trying to get around the Fourth Amendment and into people's pockets and vehicle trunks. And I say this from my experience as a police officer and from my studies of this particular issue.

Uniformed police officers should rarely make arrests for possessory crimes that are not associated with arrests for other offenses. In fact, in lots of progressive police agencies, arrests for purely possessory offenses are regarded as a sign that an officer may be trouble. So a lot of police departments look at -- have early warning systems -- will look at whether an officer has civilian complaints, vehicle accidents, uses force frequently, suffers offensive injuries, injuries to his fist, and whether he makes lots of arrests for drugs that are not related to any other offense. Because the question that arises is, how does a uniformed cop find out that someone is holding a deck of heroin in his pocket if he's honoring the Constitution.

With the rarest exceptions, uniformed officers who follow the law of search and seizure should find their way into citizens' trouser pockets or automobile trunks only when they search these places after making arrests for other offenses. Municipal officers who make arrests for possessory crimes unrelated to other offenses typically testify that they saw their suspect's contraband in plain view often after suspects dropped it to the ground when officers approached. There was a phenomenon in-- That was known in New York as a dropsy case.

State Police officers who find drugs in motorists' trunks often come to court claiming that they had been given consent to search such places. We

should be as skeptical of their testimony as we are of the dropsy testimony. Granting the police consent to search is a waiver of the Fourth Amendment guarantee of freedom against unreasonable search and seizure. Like waivers of the Fifth Amendment guarantee against self-incrimination, such waivers are valid only when they are made voluntarily and intelligently.

Where the Fifth Amendment right against self-incrimination is concerned, we attempt to assure that waivers are voluntary and intelligent by requiring officers to read the *Miranda* advisements to suspects before they attempt to interrogate them and, in responsible police agencies, to document in writing or even on video that they have done so. There is no *Miranda* warning equivalent for consent searches, and troopers who ask motorists for consent to search on the side of lonely roadways must meet no such requirement. Instead, there is only the trooper's claim that, in effect, people who know that their cars contain drugs have, in effect, voluntarily told troopers to, "Go ahead, and look all you want, Officer." I spent nine years patrolling New York City streets and have been studying police all over this country for the last 38 years, and I find that scenario very unlikely.

Instead, I find much more credible the testimony of the scores of people, innocent and otherwise, who have testified in New Jersey over at least the last 12 years about the circumstances in which they underwent consent searches on the side of the Turnpike.

These people generally indicate that they had no idea that they could refuse to undergo a search -- that they were told that if they did not consent to a search, they would be detained at the side of the road for hours while troopers went about the process of obtaining a warrant or even that they and their cars were searched without being asked anything.

Their testimony and statements are consistent with the findings of Illya Lichtenberg, who reported in his 1998 Rutgers University doctoral dissertation that such techniques also were used by the Maryland State Police.

New Jersey should put an end to consent searches. Even if one assumes that all consent searches were valid and constitutional, it would be difficult to justify them as an efficient and effective law enforcement technique. I understand that here in New Jersey consent searches of black people on the highway come up with evidence of crime about 10 percent of the time and that the comparable percentage for whites is about 25 percent. This difference in hit rates speaks volumes about the standards troopers use to search blacks and whites. One would have to do a lot of arguing to convince me that the same standards were being applied to both blacks and whites.

Equally important, these numbers mean that for every black person found in possession of contraband, nine are subjected to the indignity of being asked, or compelled, to undergo a search. Worse, this hit rate tells us nothing about how many people may successfully refuse to undergo consent searches or how many are victimized in ghost stops. Is it one for every one who eventually undergoes a search, two, four, ten? This is important to know, because every request or demand to search an individual and his or her car reflects the trooper's negative assessment of the citizen and his character. It means, my New York Police Department colleagues used to say, that a citizen has failed the honest face testimony.

We should know whether the police are insulting honest citizens in this way 10 times or 50 times or 100 times for every time the police actually find something illegal in these searches. We should also be counting the great

damage this does to the perception of the police as fair and objective defenders of citizens' rights and dignity.

The police in New Jersey should be prohibited from conducting consent searches. And I know that that's a draconian proposal. Other people have made it here. But this has been going on for at least 12 years. And I think the testimony this morning suggests that the disciplinary process doesn't work. The numbers show that it hasn't been corrected. So I don't know-- Twelve years is half of a New Jersey State Police officer's career. And the system is still going on.

Where people are carrying or transporting contraband are concerned, I am hard-pressed to believe that there is any such thing as a valid consent search. What offender voluntarily tells a police officer to search the place where he has stashed drugs or illegal weapons? Further, the false positives in this equation, the non-hits, take a grievous toll on innocent people. We should recognize that every subject of a search that comes up empty is a victim. I do not believe that requiring a supervisor to show up and to approve every consent search is an answer to this problem. All this will accomplish is to lengthen the delays suffered by the people compelled to undergo this indignity and to increase the intimidation they suffer. What does a citizen think when a second police car containing officers with sergeants' stripes shows up to participate in these stops? What do his passengers think?

The tool for prohibiting these searches might be a statute or the decision of a courageous court or the administrative fiat of whoever it is who runs the New Jersey State Police. But it should happen.

And the last comment I'd like to make-- There seems to be a lot of villains in all of this, but one of the courageous New Jerseyans I know is Judge

Francis, who decided the *Soto* case and listened to all its smoke and mirrors for eight months and came down with a decision that I think is really critical. And I think we all owe him a great debt.

I'd like to commend him publicly -- I guess it's not appropriate to do that -- and to commend you.

And I'd be glad to take any questions.

SENATOR GORMLEY: Questions from members of the Committee.

Senator Martin.

SENATOR MARTIN: I agree with-- First of all, I commend you on your testimony. I think it was easy to follow and understand. And I think the recommendations -- most of them I agree with.

The one area-- There-- In the area of sort of political science, New Jersey has been given good grades, because we only have one statewide elected official, as opposed to many of the other states that have a whole series of people who are elected statewide, including judges and to some degree county prosecutors and others.

I found it intriguing that you talked about an independent attorney general. Is there-- I guess my question is, is there-- Your rationale makes sense. I mean, we need somebody, I think, who's independent from the political pressures that could come to bear from the executive, but are there any other alternatives other than selecting -- or electing an attorney which would--

I guess anything right now would probably require a constitutional amendment in New Jersey, so you'd have to sell it to the public. I think they'd be willing to buy into some changes.

Have you given any more thought to--

DR. FYFE: Yes, I have. There was discussion this morning about alternative methods of oversight. And one is that appointment of a special monitor. I said-- I think Mr. Cronin said that he would have no objection to that if it took place at the end of the Federal operation.

New York City had a special prosecutor on corruption in the criminal justice system after the Knapp Commission hearings. One of the recommendations of the Knapp Commission was that the governor appoint a special prosecutor just to deal with corruption in the New York City criminal justice system. And he was independent of the city. I'm not sure that he was totally removed from the political process. He was a Republican who seemed to indict only Democrats. And then to lose the cases at trial--

SENATOR GORMLEY: What was wrong? (laughter)

DR. FYFE: I knew that some people--

SENATOR GORMLEY: I'm sorry, I was confused for a second.

DR. FYFE: I guess the merits to that system depend on where you sit. But a problem I saw with it, independent of the partisan politics, is that when an individual is in that position, he tends to become part of the system himself. So the man who had that job was a guy named Maurice Najari. (phonetic spelling) And I watched a very interesting interview with him on a Sunday morning talk show where he was asked--

He had been in office about three years. And he was asked about the state of and the integrity of the criminal justice system in New York City. And he said, "It's great. I've been on the case for three years now, and everything is rosy." And it was. Actually, I think it was. But one of the things that that made me reflect on is the fact that over time, that independent monitor, who was charged with keeping an eye on the system day-to-day,

becomes part of the system, and he becomes very defensive of any criticism of the system that he's supposed to be monitoring.

SENATOR GORMLEY: Excuse me for interjecting. It reminds me of the annual trooper award. Once your criteria becomes a certain amount of stops or whatever, it seems somewhat parallel.

DR. FYFE: That's right. Absolutely.

I think the Attorney General in New York is someone whom, frankly, the New York cops hate. The New York City cops think that he's always looking over their shoulder. He's a very ambitious member of the opposition to the New York City--

SENATOR MARTIN: Especially in New Jersey, I think-- Some years ago -- maybe 10 years ago, some talk about creating a second elected position, which was, I believe, an auditor at the time -- or might have had multiple functions, but for a state with only one State elected official, this-- It would probably get involved with gubernatorial politics. It would be the -- a logical place for somebody who was positioning himself or herself. So I'm not really interested in that--

DR. FYFE: Right.

SENATOR MARTIN: --in dealing with this problem. But I agree with you, there needs to be some, perhaps, method of trying to strengthen the independence of the AG, and also try to remove that position from the ordinary pressures of politics, especially from the governor's--

DR. FYFE: I think an independent attorney general is, in effect, an independent prosecutor. I think-- I'm not a political scientist, but I think that's certainly something to look at. And when you look at the other states that do not have an elected attorney general, New Jersey sticks out. I don't know what

we have in common with Maine or New Hampshire or Montana. But those are places, it seems to me, where the problems are not nearly as complex as they are here. The populations are not nearly as complex. And the elected attorney general system seems to work in the places that are most like us. And I would suggest that you might want to take a look at it.

SENATOR GORMLEY: Please. I'm not going to interject, but I really--

DR. FYFE: Make you nervous.

SENATOR GORMLEY: Well, that's all we need is the attorney general fund-raising besides us. I know. I've heard some of those other statewide positions. They've been mentioned from time to time.

SENATOR MARTIN: But assuming we-- Regardless of how we choose the attorney general, you would separate the function of the AG from that of the State Police and have the head of the State Police report directly to the governor in a cabinet-level appointment position.

DR. FYFE: I would. And I think that's the way it's done in almost every other state. It's, in a sense, the commander of the State Police who's analogous to the secretary of defense. And that person reports right to the CEO.

SENATOR MARTIN: In your opinion, is it important that that person either be a so-called civilian or-- You referred to Mr. Murphy in New York as coming through the ranks. Should it be a -- somebody who was a law enforcement officer, or would you superimpose somebody who was not on top of him? How do you see that position functioning as a cabinet level-- It would be a law enforcement person.

DR. FYFE: Well, most big cities have commissioners on the top of their police departments, and they're appointed. They're usually people with

great law enforcement backgrounds, but they hold civilian positions. So the police commissioner of New York, the police commissioner of Philadelphia, the police commissioner of Baltimore are all civilian employees of the police department.

SENATOR MARTIN: But as such, it's kind of blurred between the civilian status and that of the police, because if they-- If it really is, in some ways, just a top position in the law enforcement agency, but we're going to call it a commissioner or maybe call it civilian status, but they're still viewed as the top cop, I guess, of the--

DR. FYFE: Absolutely. And I think, whether it's a civilian appointment or whether he holds the rank of colonel-- No matter what rank he holds, he's not going to be out on the Turnpike giving tickets out. So whether he's a civilian employee or holds sworn status, I think, is sort of irrelevant. The important point is that he be an appointee of the governor and that he'd be accountable to the governor, and that he'd have the governor's ear directly.

And I think one of the things that has struck me, as I've watched this Committee, is the whole question of who's in charge. Is it the attorney general, or is it the commander of the State Police? And I think regardless of whether you accept the argument that New Jersey needs an elected attorney general, I think the commander of the State Police should talk right to the governor. The commander of the State Police should be the guy who's in charge and who's accountable.

SENATOR MARTIN: How do you understand these subordinates with high status in the New Jersey State Police to achieve their position if it's not-- I mean, it seems to me they have to, at least, get the approval of the-- and then in our case the AG. I know there's been previous testimony that the AG

signs off on promotions, but apparently, that process is one that you've alluded to -- is not done solely by the AG, it's done by some other kind of process. Do you understand how that works?

DR. FYFE: My understanding-- I don't know all the details of it. My understanding is that when people hold a position in the State Police, they're essentially there and removable only for cause. And that's not the situation-- The attorney general may approve the appointments. And I may be wrong. The attorney general may approve the appointments, but it's very difficult for, as I understand it, the colonel to ask people to leave.

And in New York City, a place with which I'm most familiar, the police commissioner can ask, I guess, about 250 people to leave. He can give them six months to go or demote them to captain. So there is a cap to the level at which they are tenured. And beyond that, they serve at the discretion of the top man in the department.

SENATOR MARTIN: So there's a Civil Service protection in positions up to, presumably, some level like captain. And then beyond that, you entered this world where you can be promoted and removed at the will of the top cop. There's still some civilian protection -- or some civil protection, so you would go back into the ranks of--

DR. FYFE: Right. It's generally-- For example, when William Bratton became the police commissioner in New York when Giuliani was first elected. There are nine three-star chiefs in the police department there. There is a chief of detectives, a chief of patrol, a chief of organized crime control. And one of the very first things that Bratton did was asked for them to leave. And they did. And that created-- He met with everyone, decided that some folks are not on the same bandwagon that I'm on. They were really not political

decisions. They were his decisions, because he had no political base in New York at all. But he asked four of them to leave, and they did. And that put four people in those new positions, and it created a ton of shifts all through the ranks. So that made a big difference. And it really affected his ability to change that department.

SENATOR MARTIN: Last question. You said that things changed -- the culture changed in 20 months in New York City. And you would, if I understood you correctly-- Your accounting of that is based upon the ability of the person at the top can exercise or, at least -- the right person would have the ability to change a culture such as New York City's Police Department or the New Jersey State Police if you had the right person with that amount of discretion you alluded to.

DR. FYFE: I absolutely think so. If you have people who are not able to explain why they're doing things, they shouldn't be in their jobs. And if a police commissioner or a superintendent can tell those folks that, "Well, you've served us honorably and well, now it's time to go -- you have six months or I'll demote you to captain," they'll leave, and new people can be put in place. And that changes the whole rewards system of the organization. It changes the definition of good performance, and it squares the place away.

SENATOR MARTIN: We've heard some suggestions that the culture with our State Troopers is so imbedded -- perhaps going back to the first, Norman Schwarzkopf -- and it was a tradition and a culture -- that if it could be changed at all, it's going to take degrees. And you heard this morning, it's going to be monitored. We're going to look at various checkpoints. And hopefully we should stay patient and things will change. You think it can happen a lot quicker than that.

DR. FYFE: I think it can. I'll give you another for instance in that same place. After the Amadou Diallo -- I'm sorry -- after the Abner Louima disaster, the man who was sodomized, the Police Commissioner found-- The Police Commissioner was an outsider to the department. And he found that a lot of cops told him that they hadn't seen what happened or they weren't around or some lied to him. And that had been something that had been tolerated in that department for a long time. And his rule was, "If you tell me you haven't seen it, and I think you have, I'm going to suspend you for 30 days. And you can sue me or do whatever you like. If you lie to me, you're fired." And that has changed the culture of that department on that score on police officers covering up for other people's misbehavior. There is no code of silence. At least it's not as strong as it was in years past. But he did that by fear. All he had to do was make a few examples, and that changed the culture.

How you cannot sustain-- How you can reconcile the data that shows that racial profiling continues and not sustain allegations of racial profiling seems, to me, to be bizarre.

Another thing that's done in police agencies that are interested in supervising this is not to put new sergeants out on the street. If you put new sergeants out on the road, all they can do is try and reconstruct events that have happened already. The way to determine whether cops are making ghost stops or whether they're mistreating people or whether consent is valid, is to put some young black men out on the road with tape recorders in four- or five-year-old civilian cars and see what happens when they get pulled over. If you do that kind of proactive testing, and you make a few examples of people who may be misbehaving, that goes away real quick. A proactive investigative stance is something that the police follow with everything else. They go out and look for

people who are dealing drugs by sending people out in undercover roles. They go out and look for gamblers in that same way.

If you want to find bad cops, you're not going to do it by trying to reconstruct what happened later. You have to manufacture those incidents and see what happens. And that's been done in New York City and in other places. And it only has to be done a few times, and the culture changes because every trooper knows, "I don't know who this guy is I'm pulling over. He may be reporting directly to the attorney general. He may be reporting to a committee of the State Senate. And I better treat him right." So that changes things very quickly.

The New York City Police Department does 700 stings a year on its officers. And that's one way to make sure that this kind of conduct doesn't occur.

SENATOR MARTIN: All right. I would just note that it's been reported with discrimination in landlord-tenant cases in New York, and other cities have done the same thing -- sending, for example, a young black couple out to certain locations -- apartments where there's been allegations of discrimination, and so they use that same kind of process of, I guess, engaging in sting operations.

Thank you. I'm done.

Thank you, Senator Gormley.

SENATOR GORMLEY: Thank you.

Senator Zane.

SENATOR ZANE: Doctor, we've been told that we are to be out of here by 5:00. That gives us like two hours and 15 minutes. So I'm going to be brief and to the point, I hope.

Two areas that I'd like to talk to you about -- consent searches. Do you have any thoughts about-- Is it the entire concept of consent searches, or are you suggesting that consent searches of motor vehicles is what, I think, you implied, should be eliminated, did you not?

DR. FYFE: Right. Just a conceptual matter, and I teach this in my classes, and I've taught it for years-- As a conceptual matter, I find it hard to believe that anybody who has his head screwed on straight would tell the police, "Yeah, you can look in my car," when he's got a ton of drugs in it. I find it almost impossible to believe that people would voluntarily and intelligently waive their rights to be free from search in places where they're transporting contraband. So I think all consent searches are suspect.

But they haven't been a scandal in most other places. And I think here it's pretty clear they have been a scandal. And when you-- One of the people who testified in the *Soto* case was a man who testified that he had been stopped and searched more than 100 times. I don't think he gave consent to be stopped and searched more than 100 times. I think the State Police have shown that they can't bring it under control. We don't know how often they occur. We only know about the times that the troopers report that it has occurred.

When I was a cop in Brooklyn, we never made any reports out unless we anticipated that the citizen involved would make a complaint about us -- where we wanted a piece of paper on the record to keep us out of trouble.

So I don't know how often this occurs, and it's not reported. I think the way to deal with it is just to say you can't do it. It's not a -- 271 consent searches have produced evidence in what, 12 to 15 percent of the cases. So you're talking about losing 30 arrests in a state this size. And we don't know how much drugs were seized in those arrests, but it doesn't seem to me that it's

making a difference in the quality of life for Jerseyans or the safety of the public. Instead, what it's doing is creating enormous tensions.

SENATOR ZANE: So would you be saying the same thing about residential consent searches?

DR. FYFE: Yeah, absolutely. I would say the same thing about those, as well. In fact, I worked on a case involving the Chicago Housing Authority -- whatever a condition of living in the housing projects in Chicago was at -- you consented to have your apartment searched at the pleasure of the police. So they were conducting mass searches whenever there was a shooting in the neighborhood. Finally, the ACLU struck that.

And the penalty for not consenting, of course, was that you would be evicted. So I think those kinds of consent searches are seedy, and I don't think there's any-- I don't believe that anyone that was dirty consents to be searched unless he is high on whatever it is he is transporting. I mean, it just doesn't happen.

SENATOR GORMLEY: If I may interject for a second.

In Illinois, was that approved by the district attorney of Chicago or the elected attorney general of Illinois?

DR. FYFE: Well, that was Cook County, a very well-known county up--

SENATOR GORMLEY: Oh, election reform, yes.

DR. FYFE: You know that place.

SENATOR GORMLEY: I think of Cook County.

DR. FYFE: There were twice as many votes for the prosecutor in Cook County as there were citizens.

SENATOR GORMLEY: Okay. Well, that's one of the reasons we haven't had an elected attorney general.

I'm sorry. Thank you.

Let's keep going. I'm sorry. I apologize.

SENATOR ZANE: You also indicated that another way of addressing the problem -- you would not permit road troopers to even consider a search or anything else of a criminal nature until they had -- or actually dealing with a motor vehicle violation, one they were going to cite somebody with. Is that correct?

DR. FYFE: As a general rule, I would say that's the case. The job of uniformed police officers, whether they're patrolling here in Newark or on the highway, is to protect the public safety. That would be a visible deterrent. And I think when you start to encourage them to get their hands into people's pockets, you're asking for trouble, because troopers and police officers can't do that without twisting the Fourth Amendment. And I'm a real adherent of the Fourth Amendment. I think the founding fathers were very wise. I see--

I've worked on about 500 civil rights cases. Some of the most egregious civil rights violations with the most tragic consequences come about because a police officer attempts to get around the Fourth Amendment, with the encouragement of their bosses, who are not interested in how they do it, but are only interested in the results. So I think the way to deal with that is to say if you're a State Trooper in New Jersey, "Your primary responsibility is to make sure that the highways are safe. We certainly want you to be a vigorous enforcer of the law. We want you to be properly aggressive. But we don't want you spending your time trying to figure out how to get your hands into people's pockets."

SENATOR ZANE: The last area that I wanted to talk to you about very briefly -- the cultural changes. The only real suggestion that I think that I got is you're saying that whoever's at the top of the State Police in this case needs the tools to be able to have people that report directly to him. And if there's a cultural-type problem -- him to address it in the way he sees fit. Is that sort of what you said?

DR. FYFE: And to hold commanders accountable for what's going on. If you have a barracks where racial profiling is continuing, who's responsible for that? Doesn't-- Shouldn't the boss be called to account for that? If a commander understands that, "My responsibility is to make sure that racial profiling goes away, and if the numbers come out the way they have, I'm going to be relieved of command, and my career will be at a dead end. And I might as well look for another job," I think you start to change the culture then.

I think that training is also a very powerful issue. In a footnote in my paper, I noted that Colonel Dunbar had said that a lot of profiling is unwitting. And I do not buy that. I mean, we all bring prejudices to everything we do. But the job of training and the job of socializing a police officer is to make sure that he does not act out those prejudices.

I worked with cops who were stone racists. And they would say terrible things to me about people of color, but they were guys who knew that if they acted those tendencies out on the street, they would lose their jobs. So I think it's not an excuse to say that profiling or racism is unwitting.

I don't know how it could be unwitting here in New Jersey after all we've been through over the last several years. But the job of training is to make sure that officers understand that that kind of unwitting racism is not tolerated.

SENATOR ZANE: We, obviously, at some point in time, have to legislatively, I guess, do our best to address the problem. Tell me what your thoughts are about-- Let's assume you identify somebody that is a racial profiler -- that very small percentage that we all believe might be there. How would you deal with him? Would you counsel? Would you terminate? And let's assume that it's a serious profiling -- a real history -- a long period of time -- well documented. What would you do?

DR. FYFE: I think he'd be gone. And I think the primary responsibilities of the police are to protect the lives, rights, and dignity of the citizens. And in a place where this has been an issue since that series, I guess, on Channel 9 or Channel 5 in 1989-- The major story -- the major thing for which the New Jersey State Police are known is racial profiling. If I were the boss, anyone who I could document have engaged in that kind of behavior would be gone. And that would send a clear message to everybody else that that behavior would not be tolerated. And I think that if you acted strongly in a few cases like that, the behavior would very quickly change.

SENATOR ZANE: You said you have dealt with police departments, law enforcement agencies, throughout this country for 38 years, I think you said. Have you dealt with this problem before? And the last part of that same question, do you have a thought or feeling about whether or not counseling is something that has any real value and whether or not it's something that should be employed and offered?

DR. FYFE: I think that officers should be counseled when they're recruits. They should understand that when they become police officers, they're going to deal with a variety of people they've never had contact with before. Most of the folks they meet are not going to be happy to see them. People are

never happy to be pulled over by a trooper on the highway, or they're going to deal in tense situations, that there are cultural differences among people. I think it's very important that new officers understand that there are characteristics of African-American culture or Hispanic culture that may be different than they're familiar with -- that that training has to be done on a constant basis.

But I think if you find someone who is acting out some racist beliefs on the highway, he has no place on the job. I mean, this is-- Being a State Trooper in New Jersey is a very nice job. There are a lot of people who want those jobs. I think the agency has to be very demanding. If you want to change the culture, you get rid of those bad apples, and everybody gets the idea that you can't engage in that.

But I think there's a place for counseling earlier on in a trooper's career. And there may be a minor slip of the tongue or something like that could deserve counseling later on, but misbehavior, I don't think, deserves counseling.

SENATOR ZANE: One last question. Do you recommend-- Based upon your experience, would you recommend that racial profiling be not just a civil rights violation as such, but it be raised to the level of a crime?

DR. FYFE: Well, I think it is a civil rights violation. I don't know how you would prove it in a criminal setting. I think you have to prove intent. And I think the proper form for this is administrative.

What you need is a police leader who understands what racial profiling is and who acts on the data, who conducts proactive investigations, and who takes administrative action against officers who engage in that conduct.

SENATOR ZANE: I don't want to later misquote you. So you would not advocate raising it to the level of a crime.

DR. FYFE: I don't know how you would demonstrate it.

SENATOR GORMLEY: If I may, I think what we're-- We might be saying the same thing here. We're saying that under the umbrella of a civil rights legislation, it would -- the -- someone who intentionally discriminated against someone because of their color -- under the color of their title would be liable.

DR. FYFE: Criminally.

SENATOR GORMLEY: Criminally, yes.

We can do it on a--

So we're saying-- When you say civil rights legislation, the-- What we think of profiling, when it crosses the line in intent, would be inclusive in that civil rights legislation. So we are--

SENATOR ZANE: Yeah, but I'm actually looking for him, as the expert, to indicate to us whether or not-- I mean, he teaches this. He knows what a crime is. I'm looking for him to tell us--

DR. FYFE: I think the tools to enforce-- The tools to criminally prosecute officers who engage in racial profiling already exist. And they certainly exist at the Federal level. If an officer deprives a person of a citizen's constitutional rights while acting under color of State law, if he fails to provide him with equal protection, he picks on him because he happens to be a member of a protected class, he certainly created -- committed a Federal crime.

The problem with defining racial profiling in a State statute, and I'm not an attorney, seems, to me, to be one of proof. How do you prove intent.

I'm tinkering with a paper in which I make an argument that abuses of professional discretion, whether they involve the police or medicine or lawyers or doctors, are very, very difficult to prove in a criminal form. And it may be that the appropriate action is administrative.

SENATOR ZANE: Thank you.

DR. FYFE: Thank you.

SENATOR GORMLEY: Senator Robertson, then Senator Furnari.

SENATOR ROBERTSON: Good afternoon, Professor. Thank you for coming up.

DR. FYFE: Thank you, Senator.

SENATOR ROBERTSON: One of the things that was discussed by a former attorney general had a lot to do with the culture of the State Police, and we've had a lot of discussion here. But one of the things that struck me was the extent to which, if any, there is a culture in the State Attorney General's Office or had been.

You were involved in the *Soto* case. It was a very contentious case. It was something that dragged on for quite a period of time. What observations do you have, if any, with respect to the Attorney General's Office at the time that you had been exposed to it?

DR. FYFE: I came away wanting to move back to New York. I thought-- I've testified in perhaps 300 cases. And I never testified in a case in which the other side's attorneys were as sleazy as the attorney general's. I think they concealed evidence. I think they lied. I think Judge Francis felt exactly the same way. So I thought they were really disgraceful. It was not--

I'll give you some examples. One of the first things I asked, when I was asked to testify in that case, was for the data on stops. And it was my sense that any police department who is engaged in a federally supported program would want to show what kind of batting average they had. So the feds are asking us to do this. But we're getting a hit once every 10 times, once every 20 times, once every 50 times.

I had, at the same time, been involved in a couple of other racial profiling cases. One involved the Illinois State Police. And I worked with the ACLU in that case. And we asked for the same data. The data they gave us-- A friend of mine, who is a professor at the University of Wisconsin-Milwaukee, he got the data from the Illinois State Police on stops. They were so big that the University of Wisconsin mainframe computer could not handle it. And I took them to Temple University and tried to load the data onto the computer, and they overloaded the Temple University mainframe. And we finally subcontracted with Vanderbilt University, which has one of the largest computer systems in the world. And they were able to analyze the Illinois State Police data, which were, what I think, inconclusive results. You could not show that there was racial profiling.

The Jersey State Police, and the Attorney General's Office, told us that they kept no data. Now, I did not believe that. One day, when I was sitting on the witness stand, and I mentioned this to Senator Kosco, I was thumbing through a piece of paper -- thumbing through a bunch of exhibits while the attorneys were arguing on the side of the witness stand. And a piece of paper flitted out. And I picked it up to put it back, and it said Operation Pipeline, vehicle stop data entry form. And it was a computerized form for the entry of data related to police vehicle stops. And the deputy attorney general took it away from me. I've never seen it again. So I'm absolutely convinced that they had that data in 1995 and 1996 and that they concealed them from us.

Another thing that they did-- I asked, also, what was the training on the vehicle stops? And by contrast, when I asked that question of the Illinois State Police, I was given the syllabi and the curriculum for all their training related to their part of Operation Pipeline. And they had a videotape of every

training session they ran. Every training session they ran was on videotape, so you could see what the sergeant told the officers.

At that time, the Operation Pipeline training program here was 6000 person days of training. It was the largest in-service training program in the history of the New Jersey State Police. Six thousand person days of training is taking 30 troopers off the road for a year.

I had been a trainer in the police academy in New York for six years, and I know that police departments guard their curriculum, because they could become an issue in civil suits. They become an issue when officers want to transfer. The Attorney General told us that they had no curriculum for this 6000 person day training program, which was the largest training program in the history of the New Jersey State Police, and that it was up to the instructors to decide what the troopers should learn. So if you buy that, I'll take you over to Brooklyn and sell you a bridge. That was absolutely incredible for them to represent that those things were going on. So I was not happy with them at all.

SENATOR ROBERTSON: Understanding that having someone who's strong and straight at the top of any organization is important, but leaving that aside for a moment, is there anything that you think that we can do, as a Legislature, to address the potential problem of a culture of that sort existing within the prosecutorial ranks?

DR. FYFE: Well, again, I think it would help if the attorney general was an elected office. I was mentioning to someone who's closely involved in this, as well, the fact that I was going to talk about an elected attorney general. And he -- Bill Buckman -- William Buckman-- And he said, it really is incestuous. I mean, you have the governor and the State Police and the attorney general. Who investigates who? Who's in charge? So I think that's-- I know

that that's a major step, and you have problems with that. But I think-- It works in 43 other places pretty well. It works in every state that is comparable to New Jersey. So I think that's really the major issue.

SENATOR ROBERTSON: And finally, looking back again at the issue of consent searches, there is a category of search that is conducted sometimes on consent, sometimes on probable cause, not necessitating a warrant either, because it deals with something that's in plain view. Sometimes it's the gun sticking out from under the seat or winds up being seen as sticking out from under the seat or is something else that's in plain view. If we wind up in a situation where we are eliminating consent searches--

DR. FYFE: You're going to have a lot more plain-view searches.

SENATOR ROBERTSON: Well, is it your thinking that we will have more plain-view searches, or even more importantly, in some respects, or just as importantly for the safety of troopers, how do we deal with a situation where there is something in plain view?

DR. FYFE: Well, again, I have a problem with an awful lot of plain-view searches. I was just teaching my class the other day about two early 1980s cases that involved plain-view. They involved drug seizures: one by the New York State Police, and another by the California State Police. And they were both plain-view stops. And the testimony in those cases, and in a lot of other plain-view cases, is always the same. I'm working on a case in Houston where I've been through 600 searches by the police. And the plain-view testimony is always the same. "I pulled them over for a traffic violation, and the big green cloud of marijuana came out. And in the ashtray, in plain view, are these roaches and drug paraphernalia."

I don't know how you disprove that individual cases are plain view. But I think you have to monitor those carefully, as well. And I think that's a job for the superintendent of police. Responsible police administrators should be looking at who is getting civilian complaints. I know that I can't sustain them all, but if some officer's accumulating a lot more than everybody else-- And another question is, who's making all these cases for possessory offenses that are not connected to anything else?

If one officer seems to spot things in plain view or to get consent all the time, and his colleagues don't, I think that raises some questions that might make that officer the focus of some investigation. You might, in those cases, want to put someone out on the highway and see whether what he indicates as plain-view really is.

SENATOR ROBERTSON: This morning, we had a good deal of discussion with the Director over the extent to which reforms had or had not been made to date. There was a lot of talk about the way in which New Jersey was adhering or not adhering to the consent order -- consent decree and the computer installations that are going to be had and that sort of thing. But we also know from testimony in these proceedings that an awful lot was known about consent searches. We now have the 2000 data -- the 271 searches.

Is it your opinion that we really have to wait for computer models to be finished before we can't take some bold steps in some fairly sensible areas?

DR. FYFE: Well, I found the stuff on the data really close to incredible. In the Houston case, I myself entered 600 search -- all the data you would want on 600 cases in two nights. I did that myself.

And New York City, when they were accused of race profiling, the police department, in a month, computerized all the data on *Terry* stops in the

New York City Police Department for two years. They were accused of discrimination in the discipline system. They put onto the computer 10 years' worth of formal disciplinary actions -- 8600 cases in a month. So if this is a priority-- I don't think--

If you assign true, competent people to do it over a weekend, they should be able to do it. And I don't understand how you can argue that it takes this long to put 271 cases into a format where you can analyze them.

SENATOR ROBERTSON: And even apart from the analysis, just knowing that the numbers are out there, or having seen the numbers that have been put together in previous years, do you think it's necessary to have a sophisticated computer system before you actually translate what you've seen into some affirmative action in terms of supervision?

DR. FYFE: No, I think all you need to do is lay a little bar chart and take a look at how many of these things Trooper Jones has done and Trooper Smith and Trooper Thompson and then inquire into the causes of the variation.

Now, why is it-- You look at almost any area of police business, getting civilian complaints, making arrests, questionable searches, injuries on the job, you'll find that a very small number of officers account for it all. So if you can identify those people and look into the reasons that they differ from everybody else, you can solve a problem. And you can do that very quickly. It doesn't take any sophisticated analysis.

SENATOR ROBERTSON: The issue of ghost stops-- Is that something, in your opinion and experience-- Is that something that is always a potential problem in an organization such as this?

DR. FYFE: Sure. After the creation of the stop question and frisk law in New York in 1966, the police department came up with a UF-250. That

was the form for *Terry* stops. And at the time, I was a young officer working in Brooklyn. And the only time we made those out was when we anticipated that a complaint would occur. Subsequently, I made sergeant, and was assigned to the precinct in Times Square. And the first night I worked on the desk, officers came in with dozens of these pieces of paper that I had no idea what they were. "What are these?" "Well, these are 250s." "Gee, we never made them out in Brooklyn."

So I can tell you that in the five years I was a cop in Brooklyn, while that 250 form was active, I'm sure that thousands and thousands of *Terry* stops were made in my precinct and never recorded. So it's always a temptation for officers not to fill out paperwork, and not for any reasons of venality, because it's a nuisance.

SENATOR ROBERTSON: Oh, sure. How do you deal with it?

DR. FYFE: Well, I think one of the ways you deal with it is to engage in that kind of proactive activity. I sound like very parochial, but in the 1950s, there was a corruption scandal in New York involving cops in the highway patrol unit, the old motorcycle units. And they were accepting bribes and letting people go for traffic violations. And the way the police department dealt with that was to put captains out on the highway in unmarked, unidentifiable cars. And they cruised the highway, and they recorded the license plates and locations of any car they saw pulled over by a police officer. And if, at the end of the day, there was not either an accident report or a ticket turned in by that officer, he was gone. He was gone. So you can do very much the same thing here. If you put people out on the highway just to see whether a trooper has a car pulled over at Mile Marker 61, and at 3:00 in the afternoon that

trooper turns in a ticket or a search form, you can start to crack down on the ghost stops.

The sergeant showing up after the fact is not a deterrent to misconduct. What's the deterrent to misconduct is the cop never knowing whether the red Pontiac coming down the highway is someone from Internal Affairs. That's the deterrent.

SENATOR ROBERTSON: How about the swift completion of Internal Affairs investigations? How important is that?

DR. FYFE: Well, justice delayed is justice denied. And I think if you look at the standards that are put out by all the authoritative organizations, the International Association of Chiefs of Police, the various presidential commissions that look at this, they all say that an investigation should be done in 45 or 60 or 75 days. And the problem with delaying these things is that citizens lose interest, especially citizens who are the clientele of the New Jersey State Police. A citizen who is abused by the police here in Newark, usually, is a resident and has something to lose by not filing. He has a beef, and he wants to follow through on it.

But if a citizen from Maryland feels that he's been abused by a State Trooper, and he files a complaint, which is unlikely, because he's not a local-- If he files a complaint, and he doesn't hear, and the investigation dies, he doesn't regard the system as credible. And officers have to understand that if they take improper action, the investigations will be prompt, and corrective actions will also be prompt.

SENATOR ROBERTSON: I have no further questions.

SENATOR GORMLEY: Senator Furnari.

SENATOR FURNARI: I do have, I guess, a couple of comments, and then I have some questions.

The thing that strikes me, and I don't think that maybe you meant this, is it seems that a lot of the recommendations are dealt towards the trooper in the line of duty as where the problem occurs. And quite frankly, it's been my experience that it's not the guy who was in the line of duty, making split-second decisions, so much as people that move up the line. For example, you've talked to me about Fourth Amendment searches and how many cases. It's the same rhetorical thing in the police report about how they -- it was a legal search because it was in obvious plain view of the light.

But in each and every one of those cases, there was an assistant prosecutor who took that before a jury and a supervisor of that assistant prosecutor who said, "You had to take it before a jury," and a Superior Court judge who sat there and said, "It was a good search," and on top of that, an Appellate Division judge. I mean, any attorney who does any criminal law knows that you're much more likely to win at trial before a jury than you ever are in sustaining a search. So if there are issues that related to that, it seems to me that our picture is probably bigger than the -- than some of the mixed messages that we seem to be sending to the guys on the line who are putting their life on the line.

But having said that, you previously testified before the Black and Latino Caucus. And as I understood some of your testimony, it related to the issue of diversity and how important that was in making sure that we left an issue -- or as it relates to racial profiling.

Could you just expand, again, upon that, if you would?

DR. FYFE: Well, I think diversity is critical in a police agency. The clientele of a police agency is everybody. And unless a police agency is representative of everybody, a conflict is built in. Most policing is a white male working-class culture. And I'm a white male from working-class background. And I know what the values of the white male working-class culture are.

When cops only interact with other white working-class males, all those values, and the worst parts of them, become aggravated. When they run into people who are different from themselves-- The people with police officer encounters are people who are really not happy to see the cop. So when officers run into people who are different from themselves, they tend to apply to that whole class the characteristics of the few people they meet under unpleasant circumstances.

So one of the most important parts of diversity, I think, is to put white cops and black cops together in patrol cars, to put males and females together in police cars so that they come to know members of different cultures under pleasant and collegial circumstances. And frankly, the presence of officers of color is also a deterrent to misconduct. But I think it's very critical.

The police, especially when I was a young officer-- The police were always very critical of the media. The media is all these liberal white guys who come from money. So the police themselves could see that the media represented a single slice of the society, and they resented it. But at the same time, they didn't understand that people might resent the fact that the police represented a single slice of the society.

And one of the good questions that I always use in teaching classes, especially on municipal police-- People in inner cities tend to resent all white police departments. James Baldwin, the great black writer, wrote that it wouldn't

matter whether the police officer walked through the hall handing out lollipops, we would still resent him, because he's a member of an occupying army. And I think all most people have to do is to turn that around, to imagine that the police in Bergen County were all black guys who comminuted up there from Newark, and it was young black cops who were coming in to straighten out domestic disputes between 40-year-old white couples, and young black cops who were telling white kids to get off the corner, and I think it would have a lot of the same tensions built in.

So the more a police agency, whether it's a municipal agency or a State Police agency, is representative of the people it serves, then I think the better off we all are.

SENATOR FURNARI: Thank you.

Before, I don't know if you were here, one of the issues that concerned me had to deal with if-- We saw in the reports that there was a real delay in Internal Affairs once a charge was brought -- how unfair to society that it is -- how unfair to the police officer it is. And the secondary question about if there is issues around the racial profiling -- and you're a State Trooper doing your job -- but nobody's been punished for it, nobody's been counseled for it, where is it? Where is it? Where's the direction? And again, it's my focus that sometimes we tend to be looking at guys on the street when -- if there's a problem--

DR. FYFE: It's the leadership. There's no-- If you look at all the police research, that shows that the best predictor of a police officer's conduct is the philosophy and expectations of the boss. And that's more important than any individual characteristic, black, white. Policing is a very strong culture.

People become absorbed into it. And the whole tenor of it is set by the guy at the top.

I'll give you a for instance. I did a study of police shootings in Philadelphia through the 1970s and into the 1980s. And you would expect that the number of police shootings would have something to do with how much crime there was in a community, the more dangerous a community is at a given point in time, the more crime there would be, how many arrests the officers made, how many cops there were. And I loaded the computer up with a lot of data, and the strongest single predictor of the number of police shootings in Philadelphia in the 1970s and 1980s was whether Frank Rizzo was the mayor. And that had nothing to do with crime. And it dwarfed everything else. The year that Mayor Rizzo left office, police shootings in Philadelphia decreased by 67 percent. So the evidence on that is so strong, that it's really the leadership.

SENATOR FURNARI: There has been some suggestion that, when we get back to Internal Affairs, that sometimes, or at least I think it's in one place -- California -- maybe Oakland -- that takes officers and moves them through Internal Affairs organizationally so that the officers who are in Internal Affairs learn where the problems are when they get out on the road and they're working with their other officers -- and, "Oh, wait a second. That's the same problem we've had to deal with before," so that, effectively, it becomes an educational experience.

Do you have any comments on that?

DR. FYFE: Yeah, I think that's a great idea. In most police departments -- you watch *NYPD Blue* -- they talk about Internal Affairs as the rat squad. I worked in a precinct in a building that we shared with the Internal Affairs people, and we all hated them, and vice versa. The sense among a lot of

the cops was that these were guys who really could not cut it on the road. And they went into Internal Affairs.

The one way to change that, and to instill accountability at the top levels, is to make Internal Affairs a career stop in much the same way that a military career path occurs. So a lot of police departments will take every new lieutenant and assign every new lieutenant to Internal Affairs for a couple of years so they don't get locked into the job, they're not volunteers for the job, they're not seen as people who have an agenda. But when they leave it, they have an understanding that there are some real problems. And they go on to command positions and understand the need for accountability.

In New York, no lieutenant can have an investigative position unless he spends two years in IAB. So, if you get a detective sergeant, for example, who wants to go back to the bureau, he has to spend two years in Internal Affairs before he can go to another investigative job. And I think that's terrific, because it means that the cops understand that the people in this unit are us, they're not people who volunteered, they're not cop haters, they're not people who are not capable of doing the job, and because it also instills that sense of accountability at the top level.

And that's the problem, because in a lot of police agencies, commanders and supervisors feel no responsibility at all for integrity. That's IAB's job. We don't deal with that. And I see that in Philadelphia.

One of the causes of big problems in Philadelphia over the years has been just that -- that the captains have not had any responsibility at all for the people who work in the districts for them. They left it all on Internal Affairs' desk.

SENATOR FURNARI: Thank you.

I just have a couple more specific questions just that I want to get your comment on.

You heard the testimony unequivocally before that consent searches don't play -- shouldn't play any part of being involved on the road in a road stop. The question is, do they play any part in any other part of law enforcement? If we're going to come up with-- If we're going to make any kind of modification that deals with that, should we -- should it be exclusively for the road?

DR. FYFE: I don't think so. I think you have to ask yourself a question. Put yourself, and this is strictly hypothetical and, of course, it's not imaginable-- But put yourself in the position of a person who is transporting something illegal, and ask yourself whether a police officer who came to you and said, "Do you mind if I take a look in your suitcase," where you had that something illegal-- Ask yourself if you would say, yes. I think you have to conclude that you wouldn't. So it seems to me that every consent search, especially the ones that produce evidence of guilt, is really questionable. And the contribution that they make to the safety of New Jerseyans, I think, is really minimal. It's a cost benefit question.

On the one hand, I remember watching Colonel Pagano years ago-. He said, "Well, I understand that constitutional rights are important, but getting drugs out of New Jersey is more important."

Well, even if you believed that, which I don't think is defensible-- But even if you believed that, one question is, how much drugs are you getting out of New Jersey by doing this. And the answer is, not much.

SENATOR FURNARI: Finally, the issue -- this issue of ghost stops-- This may sound a little too Big Brother to me, but on the other side of the coin,

doesn't it seem that an easy answer might simply be keeping the camera on -- the camera's always on for every stop? And random reviews of it are--

I'm just trying to get your impressions.

DR. FYFE: Well, I don't know. I think there are reasons that the cameras go off -- that someone-- I read testimony that said, "Well, we can't have everybody look at everybody's videotape all day long. We'd have to double the size of the State Police." I don't think you can possibly monitor that adequately by looking at the cameras.

Think about the difficulty of doing that. If you send a trooper out on the road for nine hours or eight hours, in order to determine whether he had made any ghost stops, someone would have to sit and look at that for eight hours and compare what happens on the tape to the forms that the trooper has put in -- submitted.

So I think, after the fact, it's very, very difficult to supervise that. But I think you can deter it. Again-- I promise this is the last time I'll do this. New York City runs these integrity tests on complaints. When I was a young officer, sergeants were expected to quash citizens' complaints. If someone wanted to come in and complain about you, the sergeant's job was to get rid of them without taking the complaint. And the way the police department put an end to that was to do integrity tests. They would have people from Internal Affairs call in and try and lodge civilian complaints. And if the complaint was not accepted and processed properly, that sergeant was disciplined very severely. And they only had to do that a few times and play the tapes of those telephone conversations at training sessions, and that problem went away.

So it seems to me that you really have to be a little bit proactive. And that might smack of Big Brother, but I don't know-- After the fact-- Cops

are trained that everything you say disappears into the ozone. And nobody can ever put it together again. But if you are not-- If you're a little bit worried about who you're saying it to, your conduct has changed.

And I agree with you, by the way, Senator, that I-- The vast majority of police officers and troopers want to do a good job. Where you run into problems is when the definition of a good job is improper -- when it's laid out by the commissioner or the superintendent. When you define the cop as a warrior -- "Your job is to get the bad guys off the road no matter how you do it. And we're not going to look very carefully at how you do it," you're going to find well-meaning police officers who engage in improper conduct.

SENATOR FURNARI: Thank you. I have no other questions.

SENATOR GORMLEY: I want to thank you for your testimony.

DR. FYFE: Thank you.

SENATOR GORMLEY: It was interesting. We do have our one minor area of disagreement.

DR. FYFE: Well, it's--

SENATOR FURNARI: The indictment of Democrats.

SENATOR MATHEUSSEN: Senator, I have one question.

SENATOR GORMLEY: Oh, I'm sorry.

Senator Matheussen.

SENATOR MATHEUSSEN: Just one question, Professor.

You did a very good comparative of other states that have elected attorney generals, and New Jersey does not. What's your finding with regard to consent searches. Are other states prohibiting consent searches -- or other jurisdictions? And what is the--

DR. FYFE: I don't know of any that are. But there's something different about New Jersey on this score. One of the things that intrigued me in the *Soto* case was Colonel Pagano saying, "We're doing something different than the other states." And at that time, he said that the pipeline that is in question here in New Jersey is Route 95. So presumably, the Route 95 pipeline runs from Miami up to New York or Boston. So to reach New Jersey, people have to drive through eight hours of Florida, through Georgia, through South Carolina, North Carolina, Virginia, Maryland, Delaware, and then they get to Jersey, which is one of the smallest states on that route. But New Jersey was making more arrests than any other state on that pipeline.

So it seems to me that you can't do that unless the police in New Jersey are doing something very different than all those other agencies. And I think it's a particular problem here.

I don't know that it's a problem in other places. I know it's been a problem in northern Florida. But I think it's an issue that has become national. I mean, the whole racial profiling issue comes out of New Jersey.

SENATOR MATHEUSSEN: So you don't know the state that has prohibited consent searches?

DR. FYFE: No, I don't. No.

SENATOR MATHEUSSEN: Thank you.

DR. FYFE: Thank you.

SENATOR GORMLEY: Just in terms of the one issue that we're talking about. My concern, over the years, in terms of those being elected is that you'd have to have a division between politics. And I think it's a credit to New Jersey that there are judges, such as Judge Francis.

DR. FYFE: Right.

SENATOR GORMLEY: And that we don't have an elected judiciary.

DR. FYFE: I absolutely agree.

SENATOR GORMLEY: So I think my feeling in this area is, when you deal with the criminal justice system in toto, and even one of the concerns that we've expressed, I want you to know, on this Committee, is when there was a circumstance of announcing an indictment when it should not have been indicted, because I don't want to see PR or political considerations entering into the system.

So in terms of judiciary, in terms of Attorney General, I think, although we can obviously always point to problems, I think, by and large, I'd like to see that end of the system as clear of politics as possible.

But I do agree with you that what you're calling for is for us to find some way to provide for some independence, so that when decisions have to be made and the politics from the other direction are coming in from the appointing official, that there be some buffer. And I think you do make a good point.

DR. FYFE: Thanks, Senator. Just one point on that. If you look at the role of the Attorney General in most other states, at least in my experience, it doesn't involve as much participation in day-to-day prosecutions as is true here in Jersey. So the Attorney General in New York doesn't prosecute cases. The local DA does. The Attorney General exercises a supervisory and coordinative role over the local district attorneys. He investigates government agencies that may be corrupt.

If you follow *The New York Times*, you know that they were just -- the Attorney General in New York was just in Wallkill, looking at a police

department that appears to have been out of control. They do a lot of work with consumer frauds.

So it's not electing someone who's going to be the statewide prosecutor. The local prosecutor still does the majority of that business.

But I would really urge you to look very carefully at what goes on in other places, because it seems to me that-- You know, we've had, here in Jersey, the same sort of problems between the Attorney General and the Governor as we've seen in Washington, between the Attorney General and the President. And it doesn't seem to me that other states have had that problem. So it may be worth a look.

SENATOR GORMLEY: Well, we can go on forever, but thanks very much for your testimony.

DR. FYFE: Sure. Thanks very much. Thank you.

SENATOR GORMLEY: Thank you very much.

We're going to have a video now, because -- and Senator Martin will make the introduction. We had someone who wanted to testify today, who is severely ill, in effect, testifying from a hospital bed.

And we'll have Senator Martin do the intro. It will be about an eight-minute to nine-minute video. And then we'll go back to the witnesses.

Senator Martin?

SENATOR MARTIN: I don't have much of an introduction, but I did receive a call this morning from the Attorney General -- the nonelected Attorney General of New Jersey, Mr. Farmer -- who wanted us to know that James Fennessy was going to testify today. He is a member of the State Police, and a graduate of Seton Hall Law School, who I knew at least for a short time while he was at the law school.

And as Chairman Gormley has indicated, he did want to testify. He would have been here, but for a medical condition which he suffered last week. He was hospitalized, and because of that, he can't be here in person.

So with that, I think we'd do better hearing from Mr. Fennessy.

(Video begins)

SERGEANT JAMES FENNESSY: Hello. My name is Sergeant Jim Fennessy. I'm a 16-year veteran of the New Jersey State Police. I'm also a summa cum laude graduate of Seton Hall Law School, and I'm very honored to be able to testify before this distinguished panel.

Last week, I was lying in intensive care in Brick Hospital, having just died and been resuscitated by CPR by the fine doctors and nurses on staff there. But for me, the truly amazing thing was that after just being resuscitated, the first time that I look up at the television, the Senate Judiciary Committee hearings are on, and the witness is talking about me.

This testimony about me was rather inconsequential, but it can be found on Page 171 of the April 9th testimony. But what was more important to me is, I believe things happen for a reason. And when I woke up, after having -- after that experience to hear myself being discussed before the Judiciary Committee, I knew that I should be there -- that I should be testifying before this Committee.

I'm very concerned about racial justice, and I hope that my appearance -- I hope that I can help this Committee with its important task.

I was a road trooper for over 14 years, and have been a trooper for over 16. I currently serve in the Attorney General's Office of State Police Affairs, where I've been for the last year and a half. During that time, I have been on committees. I've written many of the protocols that implement the consent

decree, that govern State Police patrol practices, that govern the documentation requirements for recording law enforcement procedures.

During this time period I've also taught these procedures. I've taught constitutional law, arrest, search and seizure, and the consent decree in in-service training at the State Police Academy.

In 1998, while serving as a road trooper in the Fort Dix barracks, I began writing a law review article on racial profiling. I wrote on racial profiling in retail stores. There were several reasons why I wrote about racial profiling in retail stores. First of all, I was detailed to a store where a minority teenager was being falsely accused of being a shoplifter, and I became confident that he was a victim of racial profiling by the store clerk.

The second reason I wrote on this is that one friend in particular from law school, but several of my minority friends from law school, several of my minority friends from other law enforcement agencies and the State Police have told me how they've been harassed in stores, how they've been followed around in stores by store security, how they've been interrogated because somehow people thought maybe they were at a little more risk that they were shoplifters.

And third -- the third reason I wrote about racial profiling in retail stores is, it's really very similar to the racial profiling that this Judiciary Committee is hearing about. It's really just two sides of the same coin.

It's mostly about inadvertent discrimination, unconscious discrimination, as practiced by people who don't even know that they're discriminating, people that would never go out and intentionally discriminate, but yet they let their unconscious beliefs affect the decisions that they make while enforcing the law or while looking for shoplifters.

In 1998, I began writing that article. But I'd also like to talk about my experiences as a road trooper for 14 and a half years, both before and after I wrote this article. In all those years as a road trooper in the State Police, I never saw a racist flyer or a racist poster or any of the racist articles or anything like that that I've heard. I never saw any of that. I never heard troopers using the kind of racist language that I heard in testimony before this Committee. I've never seen that kind of overt racism. As a matter of fact, I've seen less overt racism in the State Police than I've seen in society.

Our problems are much more subtle than that. Our problems are much more difficult than that. Overt racism would be easy.

In 1998 and 1999 while I was writing this article, I left copies of it out in the squad bay in my station -- the Fort Dix station, because I wanted to get feedback from other troopers to help me write a better article. I left it out in the squad bay for other troopers to read. I handed out draft copies to many of the troopers to get feedback on it. And I got a lot of feedback on it, and it did help me.

But there was a second reason that I handed it out: Because I wanted troopers to read what I was writing about, inadvertent discrimination, about subconscious discrimination, and how a decision-maker, trying to do law enforcement or trying to stop shoplifters, could unconsciously discriminate against people and not even know they were doing it.

Troopers are intelligent people. While I wrote about it in the retail context, they'd make the corollaries. They'd make the connection to the racial profiling allegations that our organization was facing then and that we're addressing now.

After my article -- after this article, here -- was published in 1999, I gave out -- I had bought a hundred copies. I gave them all out. I had to go out and buy another hundred copies. I gave them to everybody I knew in the State Police. And to my knowledge, no one in the State Police has ever criticized me or ever retaliated against me in any way for speaking out on racial profiling. To my knowledge, that's never happened. All of the feedback that I've gotten from all the troopers -- from black troopers, from white troopers, from Hispanic troopers, from all of them -- has been positive.

My article did affect my career in other ways, though. My article had 278 footnotes in it. Many of those footnotes were summarizing the work of other authors and other legal scholars. And one of the things I did to make sure I got it right was whenever possible, I called those other authors and told them how I summarized their work and asked them if I'd gotten it right. And one of those legal scholars was John Farmer.

I looked him up in the *Lawyer's Directory*, called him out of the blue, told him who I was and what I was writing about, and I told him how I had summarized his work -- several pages of his work -- into two footnotes. We talked for a long time that day, and he asked me to send him a copy of my article, which I did.

Several months later, he becomes named as the Attorney General for the State of New Jersey, and he winds up calling me up for an interview at his office. After the interview, he writes a name down on a piece of paper, tells me to go to the U.S. Attorney's Office in Newark and talk to a guy named Marty Cronin about the job.

Frankly, I was a little puzzled why I would be going to -- why the U.S. Attorney's Office would be interviewing me about a State Police position,

but that only made the job a little bit more interesting, made the interview a little bit more interesting.

Now I work in the Office of State Police Affairs, and I love my job.

When I graduated from law school, I was recruited by many of the top firms in this State and some outside the State. I was offered substantially more money than I make as a sergeant in the State Police. I was offered other great opportunities. A Federal judge who I truly admired offered me a clerkship working for him. Bill Lann Lee approached me and asked me if I'd consider going to work for the Civil Rights Division in the Department of Justice and working for him. These were great opportunities, and I was honored.

But I stayed with the State Police. I stayed with the reform efforts, because I believe that this is the most important work that I'll ever do in my life. And moreover, I have confidence in the people who are leading these reform efforts. I have confidence in Attorney General Farmer. I have confidence in Marty Cronin and in Colonel Dunbar and all the other fine men and women in the New Jersey State Police.

These leaders that I just mentioned, and many others who have worked tirelessly for civil rights enforcement, to get us through these reforms successfully, work long, hard, tireless hours at it. Their dedication is just incredible.

I work late myself, quite a bit. Many nights I'm sitting there after 9:00 p.m. still working alongside the others who are doing this, and when the phone rings, I'll pick it up -- I'll answer it. And maybe it's Colonel Dunbar, calling for Marty Cronin. Quite often, it's Major Brennan, or it's Captain Dave Leonardis, the Director of our State Police Academy, or it's Randy Richardson, a lieutenant who runs our Planning Bureau, or Captain Holmberg, who runs our

Information Technology, or countless other men and women who work hard, long hours every day because they're committed to these reforms, because they're committed to what we've been doing for the last year and a half.

The State Police is made up of a lot of these fine, dedicated people. The reforms are taking hold. The State Police is a fine organization, and it will come out of this -- it will emerge from this adversity as a shining example of both civil rights integrity and effective law enforcement, because it's got good leadership and it's got good people, and the reforms are sound.

Again, I'd like to thank the Committee for allowing me to testify. Thank you.

(Video ends)

SENATOR GORMLEY: Next we're going to have a panel. I would like to call Chief George Pugh, Detective Andres Lopez, and Lieutenant Carmelo Huertas.

Would you please stand, so we could swear you?

SENATOR MARTIN: Sorry about those chairs. We make it so once you sit, you can't escape, for the students.

SENATOR GORMLEY: Hold on a second. We're getting the oath.

(Oath administered)

SENATOR GORMLEY: Okay. The first to testify will be Chief Pugh, then Detective Lopez, and then Lieutenant Huertas.

G E O R G E D. P U G H: Mr. Chairman, if I may. In the back of the hearing room, we made a pact and set an order of testimony for ourselves.

SENATOR GORMLEY: I'm sorry, I can't hear you.

CHIEF PUGH: We made an agreement to set an order of testimony for ourselves, if it please the Chair.

SENATOR GORMLEY: Well, I don't want to disrupt the order that you agreed to. All right, who's going first?

DETECTIVE ANDRES LOPEZ: Thank you, Mr. Chairman. I will, Detective Andres Lopez, from the New Jersey State Police.

SENATOR GORMLEY: Okay.

DETECTIVE LOPEZ: First of all, I want to wish my fellow trooper a speedy recovery and wish him the best -- thank him for his testimony, and hurry up and get back to work. God only knows, we need all the troopers we can get.

Senators of this Committee, ladies and gentlemen, I want to take a minute to introduce myself. I'm not used to reading statements or testimonies. I'm used to speaking live. And unfortunately, I'm not going to be able to do that here today for the simple reason is that there's so many things I want to say, and there's not enough time here this afternoon to put it all in perspective, unless I wrote down my thoughts and expressed them that way. I want to apologize first of all for that, because I'm not used to doing that.

I'm going to tell you a little bit about myself. My name is Andres Lopez. I'm a 14-and-a-half year veteran of the New Jersey State Police. Before joining the State Police, I was a member of the Franklin Township Police Department. It's a municipal police department in Gloucester County. I did that for approximately two years. Before that, I was in the United States Army in the Military Police Corps.

I want to start these hearings by saying that since I decided to testify, a lot of things have been said. A lot of rumors have gone around. People that I work for in the higher echelons have been wondering what Detective Lopez's testimony is going to be about. People that have testified before this

Committee, who have brought complaints, concerns before this Committee, have wondered what is Detective Andres Lopez going to testify to. I want to start off, Senators, by telling you that I'm not here for anybody in the higher echelon of the New Jersey State Police. I wasn't recruited for that, nor will I ever engage in anything like that.

Second of all, I want to say that I am not here in any way to attack, discredit any of the testimony that has been given before this Committee by my fellow troopers. I implore this Committee to investigate, to listen to those complaints, and allow those complaints to stand on their own merits.

With that, I am going to read you my formal statement.

Distinguished Senators, ladies and gentlemen, citizens of New Jersey, and fellow troopers, I would like to introduce myself. My name is Andres Lopez. I am 39 years old, married and have three children. I am of Puerto Rican descent and a lifelong citizen of the State of New Jersey. Currently my duties consist of being a member of the New Jersey State Police Polygraph Unit.

Today signifies one of the saddest days in my 18-year-plus career in law enforcement. I have little desire and get no pleasure in sitting before this Committee, speaking about the subject of racism within the New Jersey State Police. During the time span that these hearings have been going on, I have had the opportunity to see and hear some of the testimony given. It appears to me that although the main issue of racial profiling was the initial subject at one point, it has shifted to a question of racism within the New Jersey State Police, and that it is a deep rooted problem within the higher echelon of our organization.

It has also been suggested that the only way to correct the problem would be to dismantle our organization above the rank of lieutenant and start

all over. A radical plan such as this would suggest that the State Police is an organized, well-structured, racist organization. Senators and citizens of our State, I am here with other concerned New Jersey State Troopers to assure you that that is not so.

Are there issues of discrimination and racism within our organization? Yes, there is, but to say and lead the people of our State to believe that the New Jersey State Police is a structured racist organization is wrong and simply not true.

We feel that it is important to clarify this issue, important to ourselves, our families, the members of this Committee, and the citizens of our State.

Senators, there is not a day that goes by that we are not feeling dishonored, disgusted, and ashamed of what is being said about us and our organization. Make no mistake about it, I am proud to be a New Jersey State Trooper, but I am not naive or unreasonable. It has been made crystal clear that within our organization, problems do exist concerning the issues of racial profiling, discrimination, and racism

It has also been made clear, through these hearings, that some of the problems, complaints, and concerns have not been addressed in a timely and decisive manner. For this, there is no excuse. I am saddened, disappointed, and frustrated. I truly believe that if my fellow troopers' complaints, problems, concerns were attended to by all responsible parties, we would not be having these hearings here today.

We are not a structured racist organization, but we have failed all our members as an organization. We have allowed problems within our family to sit and fester and become more and more complicated. We may have heard

the complaints, but were not listening. We may have wanted to act, but took no actions. We may know who has done wrong, but have not held them accountable. And for all of this, I am ashamed and embarrassed for our organization that I consider part of my family.

Senators on this Committee, I implore you to utilize your influence within the Legislature and take the information and testimony that has been provided to you and bring about changes that will lead us in the right direction in a timely manner so we may again have a sense of vision and pride in our organization.

In closing here today, we thought it was important for you, Senators and the citizens of New Jersey, to know and make one thing clear: The New Jersey State Police can and will discharge all its duties in a fair and unbiased manner for all the citizens of our State and the United States of America, so help us God.

Senators, that is my formal statement here today. I feel strong about it, as do, I believe, the majority of your New Jersey State Troopers.

I've talked to many of them. I even had the opportunity to talk to a person that I consider a friend, who has made complaints, expressed concerns, about our organization in the past, whose report has been referred to in these hearings. I spoke to him yesterday. I worked for him when I was on the road, and he was my supervisor, my senior man, at the Port Norris barracks. I read him my statement, and he, too -- although he has complaints and concerns -- he, too, expressed to me that he feels those exact words that I just read to you.

I will not utilize his name, because I did not discuss it with him, about using his name. But I can tell you unequivocally, that I believe strongly that 90 -- I almost made a mistake there. People are utilizing numbers, statistics.

I will tell you this: The majority of the New Jersey State Police are good, hardworking people.

I'd like to recognize some of the troopers that agreed with this statement, concerned New Jersey State Troopers. Their names are: Lieutenant Carmelo Huertas, Lieutenant Ricardo Pina, Detective Sergeant First Class Roseanne Manghisi, Detective Sergeant Kathy Devlin, Detective Sergeant Christopher Pukenas, Detective Andres Lopez, Detective Victor Sherman, Detective Darren Talavera, Detective Kevin DiPatri, Detective Miguel Cartagena, Detective Ramon Ortiz, Detective Rick Nuel, Detective Paul Valles, Trooper Kevin McGrattan, Trooper Dwight Payne, Detective Sergeant First Class Vincent Desantis.

Ladies and gentlemen, I am not the State Police. Andres Lopez is not the State Police. Not one individual member is the State Police. These names I just read out consist of females, Hispanics, black members. We are the New Jersey State Police, the organization.

I'm going to turn over the mike to my respected colleague, Lieutenant Carmelo Huertas.

LIEUTENANT CARMELO V. HUERTAS JR.: Thank you, Andres.

Members of the Committee, Mr. Chairman, I thank you for this opportunity to speak today. I will preface my remarks by saying that I was not directed or encouraged to be here by any member of the Division of State Police. I am in full agreement with Andres Lopez -- Detective Lopez's statement.

My name is Carmelo Huertas. I am a member of the Division of State Police. I graduated from the 93rd class on April 21st, 1978. During my 23-year tenure with the Division, I've been assigned to various stations in Troop C;

the New Jersey Turnpike, Moorestown Station from 1980 to 1982; the State Police Academy; the State Governmental Security Bureau, where I supervised the State House Complex Security Unit for nearly five years. I am currently the Acting Bureau Chief for the Operational Dispatch Bureau, where I supervise over 200 individuals.

I graduated from Seton Hall Law, with a JD degree, and received my Masters in Education from Seton Hall University. I received my BS from the University of the State of New York. I earned these degrees while a member of the Division of State Police.

Additionally, I have received specialized training in areas ranging from physical fitness to firearms, basic police practice and procedures to emergency vehicle operation and video production.

For 13 years I supervised and taught recruits and seasoned law enforcement officers while assigned to the State Police Academy. I also developed and implemented new training courses and teaching strategies for basic and advanced training.

I have listened to your hearings on racial profiling, read the testimony, and I am shamed by what has been done to the minority community and to our own members. I am shamed as a member of the State Police and as a human being. Laws should not be enforced based on skin color, but on facts and actions that warrant enforcement.

As a minority trooper, I have felt the sting of racism within the Division. I have also felt the same sting from society, from my own class. Regardless of race, each of us should treat others as we would want to be treated. Dignity demands it.

The testimony before this Committee has painted the Division of State Police as an organization fraught with racism; an organization out of control, where superiors and supervisors encouraged and condoned this type of behavior; where the placing of racially insulting signs was commonplace; where a conspiracy existed to keep minorities out of specialist positions and from being promoted; where every racist was rewarded with a promotion; an organization without faces, hell-bent on destroying a segment of society; an organization whose motto, Honor, Duty, Fidelity, was corrupted.

I do not believe this to be so. I do not deny that certain members of the organization engaged in this type of behavior. To my knowledge, there was no conspiracy to keep minorities out of specialist positions or from being promoted. The vast majority of promotions were based on performance, not as rewards for wrongdoing. The placing of racially insulting signs was not commonplace and was not endorsed or condoned by the State Police. Dignity demands the entire story be told.

I am not blind to the reality that leadership, from within and outside the organization, should have taken proactive steps to stop this inappropriate behavior. I am also not blind to the reality that most members of this organization are honest, hardworking individuals. Dignity demands that they should be recognized.

It is these members who put their lives on the line each day, troopers in whose veins flow the blue and gold colors of the State Police; troopers who each day don their work gear, not knowing if they will ever see their families again; troopers who, when responding to a scene, don't ask for the color of the complainant's skin, but arrive to provide assistance, support, and comfort; troopers with tough, take control attitudes, who cry when they see mothers,

fathers, and children seriously injured or dead; troopers tasked with making death notifications, a job no one ever wants to perform; troopers who are proud of what they do and how they do it; troopers who live by the motto, Honor, Duty, Fidelity, each and every day. Dignity demands that this Committee not characterize all troopers as being part of the problem.

It is these troopers who do their jobs day-in and day-out, who are never recognized, who deserve better. They carry the organization during good times as well as bad; troopers who don't care about the color of my skin, but only see the colors blue and gold. A broad stroke of the brush has tainted both minority and nonminority members, and in doing so, it has also tainted me.

It is these troopers who find themselves in a dilemma. Will this stop lead to a complaint? Will I lose my job? Can I do my job effectively? If I hesitate, will I be going home tonight?

They need your support, your assurance that you stand with them. They need to know that as long as they treat our citizens with dignity and respect, act in good faith, and enforce the laws fairly, they will be supported. These honorable members of the organization must know this if they are to do their jobs with confidence. They also need to know that those who fail to live by this standard will be dealt with swiftly and decisively.

Discrimination has no place in our organization, just as it should have no place in our society. The organization must root this problem out. It owes it to its members and the community. Tough times demand tough measures. Supervisors need to hold subordinates accountable for what is said, as well as what is done. Disparate treatment cannot be justified or tolerated and must not be condoned. This message must be clear, uniform, and strictly enforced.

Mentoring programs must be put in place to help develop competent minority and nonminority members who will excel as they advance into positions of management. This will create a management team that is competent, effective, and reflects the makeup of the organization, a team sensitive to the needs of troopers and the State it serves.

The organization must also reward those troopers who do the everyday job, with emphasis being placed on recognizing service, not numbers. Troopers should be held accountable so that an honest day's pay produces an honest day's work. Productivity, however, should not be the result of disparate treatment. Measures should be in place for supervisors to expediently and accurately retrieve and review a trooper's activities to identify possible problems.

I say to this Committee, to the citizens of New Jersey, that the vast majority of troopers are not racist. They live and work by the motto Honor, Duty, Fidelity. You should support them, as their plight has become lost in this conflict. No member of the organization should advance or be denied advancement based on the color of his or her skin. They should advance because they possess the tools necessary to do the job correctly and are fair to all.

The time for healing is now. No one should profit from racism. If this is a matter of what is morally and ethically right, then I submit to those who have legal action, and those representing them, to give whatever compensation is gained to nonprofit organizations. This type of behavior can be prevented and should not reoccur in the State Police. I extend my hand to those who have been wronged, and I am sure that the vast majority of troopers do likewise, so that we may move forward, in unison, helping each other.

Racism is not an issue that will be resolved today or tomorrow. It is an issue which must be addressed with care and sensitivity to ensure fairness to all.

The State Police is proud of its heritage. Many troopers have given their lives in the line of duty, such as Werner Foerster, Anthony Lukis, Phillip Lamonaco, Marvin McCloud, Francis Bellaran, Carlos Negron, William Carroll, Theodore Moos, Thomas Hanratty, and Scott Gonzalez. They cry out to restore the reputation of the Division. I know that each of them would say that the principles of Honor, Duty, and Fidelity should guide us in dealing with each other and those we serve.

I thank the Committee for this opportunity to address you today.

CHIEF PUGH: Mr. Chairman, members of the Committee, my name is George D. Pugh. I retired from the positions of Chief of Police and Director of Public Safety. I am pleased to be here today, and I want to thank you for giving me this opportunity to appear before you.

I would hope that the transparency of these hearings would lead to significant and substantive changes in law enforcement policies and practices as they relate to the racial profiling of minority motorists in this State.

My career in public safety-law enforcement spans more than 36 years. I served 31 years with the City of Camden Police Department, rising through the ranks from patrolman to the position of Chief of Police. Throughout my career, I've had the opportunity to receive extensive training and experience in the law enforcement profession. Upon my retirement, I was hired by the mayor of Atlantic City to serve as its Director of Public Safety. I served the City of Atlantic City for three years and six months. Currently, I'm a

consultant with the Police Foundation, which is located in Washington, D.C. They provide research and technical assistance to law enforcement agencies.

I have served in an executive capacity with the following law enforcement associations: Regional Vice President of the National Organization of Black Law Enforcement Executives, more commonly known as NOBLE; President of the New Jersey Police Administrator's Association; and the President of the South Jersey Chapter of the National Organization of Black Law Enforcement Executives.

The New Jersey Police Administration Association is made up of Directors of Public Safety throughout the State of New Jersey.

My initial start as a patrol officer, in the Uniform Division of the Camden Police Department, gave me the opportunity to confront the numerous challenges of enforcing the laws, keeping the community safe, and reducing crime.

As my career advanced, I moved over to the administrative side of the department. This allowed me to view law enforcement efforts from a policy setting and implementation side. As the Chief of Police, I had the opportunity to develop policies and procedures, establish guidelines, draft training initiatives, and interact with other law enforcement agencies on a continual basis. I know the realities of setting a law enforcement agenda, and the challenges of its implementation.

I have seen the profiling issue from top to bottom.

Mr. Chairman, I am not here to denounce the New Jersey State Police as an organization for the behavior of its members. However, the practice of racially profiling minority drivers by members of the New Jersey State Police, which these hearings were convened to address, is long overdue.

I believe by now it has thoroughly crystallized in the minds of most, if not all, that the New Jersey State Police, on the highways and byways of this State, presumably in an attempt to apprehend drug dealers, routinely stopped motorists based on the color of their skin.

I am here today out of a concern that the New Jersey State Police may possibly be considered as the sole source of the pattern and practice of racial profiling in New Jersey. While it is mandatory that those individuals in the State Police who were/are stopping motorists -- minority motorists without just cause be held accountable for their behavior, the practice of racial profiling in New Jersey is much more extensive than that which has been attributed to the New Jersey State Police.

The fact is, racial profiling is practiced by other law enforcement agencies within this State and throughout the nation. At present there are numerous ongoing attempts to aggressively address this problem. Allow me to point out just a few media reports obtained from the American Civil Liberties Union, which clearly demonstrate that this is a much more extensive problem.

“The American Civil Liberties Union and civil rights groups today heralded the introduction of a piece of legislation that will move California forward in an effort to curb the pernicious practice of racial profiling in traffic stops, an issue that persists throughout California. ‘California is one of the most diverse states in the nation,’ said Robert Chang, an ACLU Southern California Board member. ‘Yet every day, we Californians suffer the effects of racially biased policing. It is hypocritical for a state that has outlawed the use of race in the context of public education, employment, and contracting to sit quietly and allow the use of race by police for traffic stops and searches,’ added Chang.”

That appeared in *The Los Angeles Times* on Wednesday, February 28th, 2001.

Washington, D.C. -- Ashcroft Deplores Racial Profiling, March 2nd, 2001:

“Attorney General John Ashcroft, calling racial profiling by police a tragedy with really human consequences, is asking Congress to pass legislation authorizing a government study of how often the practice occurs during local traffic stops, the Associated Press reported.”

Austin, Texas, Monday, March 5th, 2001:

“The American Civil Liberties Union of Texas and a host of other civil liberties organizations in the state announced today that two state representatives have agreed to sponsor bills that would prohibit racial profiling by police officers.”

Clackamas, Oregon, March 5th:

“A jury has decided in favor of a black patrol deputy that had been fired when he claimed that the county sheriff’s department, where he worked, regularly engaged in racial profiling, *The New York Times* reported.

“According to *The Times*, Carl Bell said that deputies regularly dispensed stereotypes about the types of crimes that certain ethnic groups were most likely to commit. The jurors unanimously ordered the county to pay \$850,000 in damages to Mr. Bell for his 1998 firing, and then took the highly unusual step of finding Sheriff Detloff, and his deputies who testified, personally liable for the dismissal. The jurors said the officers had all violated his civil rights. They told Mr. Detloff to pay \$250,000 to Mr. Bell, and the deputies to each pay \$52,446, the jury’s calculation of his lost wages.”

Maryland -- Taking Aim at Profiling, Friday, March 30th, 2001:

“Lawmakers have made it clear that Maryland is serious about eliminating the practice of racial profiling. The state Senate unanimously passed a bill, earlier approved by the House, that will require police departments across the state to adopt policies against race-based traffic stops. The new law also requires that officers record whom they stopped and why, providing data that can be used to make sure minorities are not being unfairly targeted. These are meaningful and welcome steps.”

As you can see, the practice of racial profiling and the responses to it are much more pervasive than some have been willing to admit. There are very few minorities who have not been touched in some manner by the practice of racial profiling.

I speak from personal experience. My professional titles nor positions were enough to keep me from personally experiencing the humiliation of being stopped on several occasions, still vivid in my mind today, for no other reason than the color of my skin.

On one particular occasion, while driving to work through a neighboring community, I was in my unmarked police vehicle, dressed in my chief’s uniform, including my hat, and was pulled over by an officer who had been traveling in the opposite direction, but turned around to stop me. I had been the third vehicle in line, traveling behind a passenger car, which was first, a pickup truck, which was second.

I got out of my car when stopped so the officer could see that I was a police officer, and to reduce any apprehension he may have had with regard to approaching my vehicle. I asked him why he stopped me, and after hesitating, he yelled, “Get back in that car.” The officer’s attitude, coupled with the fact that there was no legitimate justification for his stopping me, was difficult to

handle. I was upset that he stopped me and incensed that he yelled for me to get back in that car.

If it were not for the timely arrival of his supervisor, the situation may have escalated out of control, as the officer could not give me a reason for stopping me, and I had no intentions of getting back in that car. When the sergeant drove up, he recognized me -- we recognized each other, and as he approached, he asked, "What's going on?" The officer responded first, saying, "I pulled him over."

The sergeant walked over and spoke to his patrolman and then returned to me and said, "Chief, there's no problem. Everything is okay."

I asked the sergeant, "Why did the officer pull me over?" And the sergeant said he would take care of it.

Racial profiling is a concept based on the false premise that most, if not all, minorities are predisposed to criminal behavior. That assumption is untrue; however, it becomes a self-fulfilling prophecy when minorities are targeted based on the faulty premise.

The discriminatory practice of racially profiling minority motorists is being denounced nationwide through legislative sanctions. Similar legislation to eliminate racial profiling must be passed here in New Jersey, and it should not be limited to the actions of the State Police. It must encompass the actions of law enforcement officers statewide.

Most enforcement executives believe that everyone is entitled to the same privileges, opportunities, and respect without regard to race, gender, disability, or age. This fundamental belief has led to changes in their administrative practices, primarily relating to recruitment, training, and retention of employees who reflect the community served.

There are individuals in law enforcement agencies, however, that will take advantage of every opportunity to invoke their biases and prejudices to their enforcement duties and responsibilities. It is unreasonable to conclude that an individual's beliefs, values, or norms can be legislated out of existence. And it is equally illogical to assume that those biases, practices, and behaviors traceable to those beliefs, values, and norms can be managed into existence.

The hard truth is stereotyping and preconceived ideas about a person based on race or cultural origin, which manifests itself in the form of discriminatory behavior, is extremely difficult to detect or eliminate. Accordingly, when this type of behavior is detected, a response should be swift and inflexible.

Mr. Chairman, very early I learned that when trying to correct a situation, it is critical to ensure that you have identified the real problem. My experience tells me that policies and practices such as racial profiling flourish from a lack of accountability and diversity, particularly in the middle management and command level positions of a law enforcement agency.

My experience also has shown me that it is not enough to want diversity. You have to take steps to make it happen. Unique and innovative initiatives must be explored to develop new methods of attaining a diversified police force. Effective service demands that law enforcement agencies have a collective mixture of individuals that have differences, as well as similarities.

Further, it is essential that every professional law enforcement officer possess at least two convictions: First, because the law allows something does not mean that performing it in that manner is right or commendable; and second, rejection of the belief that because others do something, it sets an acceptable standard of performance and behavior for others. These two

convictions are indispensable safeguards against the tendencies of police officers to disrespect others.

I trust that there is no law enforcement executive or officer who would not support legislation banning a law enforcement policy, practice, or procedure that discriminates against any citizen. Further, I do not believe an officially recognized fraternal police organization or officially endorsed police union within the State of New Jersey would knowingly endorse any initiative or practice that violated the rights of citizens.

While there's no simple answer to this long-standing and complicated issue, the situation mandates that a strong, clear, concise, and unequivocal statement be made by this Committee that this type of behavior will no longer be tolerated. Mr. Chairman, I have several recommendations that I would like to submit to the Committee for consideration to help make that statement.

Move to immediately enact legislation prohibiting the practice of racial profiling statewide. Move to immediately enact legislation requiring police departments to adopt policies prohibiting the practice of racial profiling, and recording information on whom they stop and why. Move to immediately enact legislation requiring that the police executive of the municipality, when making new policies, make those policies available to the public. Move immediately to task the Attorney General with creating a statewide policy requiring that municipal police supervisors be notified immediately upon a motor vehicle stop. Move immediately to task the Attorney General with revamping the internal complaint process of municipal police departments. Move immediately to task the Attorney General to remove the secrecy that surrounds the internal affairs complaint process, and require that the police executive appear at city council

meetings on a quarterly basis or upon a specific request from council and provide a public report of, but not limited to, the following: the number and type of complaints filed against any member of the department; the type and role, if any, that supervisory personnel played in that matter; whether or not the complaints were sustained; what, if any, corrective action was taken. Also, move to immediately establish a task force to explore creating a comprehensive, lateral entry program for municipal, county, and state law enforcement.

In conclusion, many will hesitate in admitting that they were forced to openly confront the problem of racial profiling, which now includes the embarrassing fact that they failed in the past to address or acknowledge that the problem of racial profiling even existed. However, the opportunity now exists for this Committee to sound the death knell on racial profiling and develop practices which recognize the civil rights of all citizens.

Mr. Chairman, I deeply appreciate having the opportunity to address this Committee, and I'm available to respond to any questions you may have.

SENATOR GORMLEY: Questions from members of the Committee? (no response)

Thank you for testifying.

DETECTIVE LOPEZ: Senator, I'd like a minute. I won't hold you up too much, but I'd like a minute.

SENATOR GORMLEY: All right, 55 seconds.

DETECTIVE LOPEZ: You got it, sir.

SENATOR GORMLEY: Go ahead, I'm--

DETECTIVE LOPEZ: Thank you, Mr. Chairman.

I've heard a lot of testimony throughout these hearings, and I know they're winding down. And I just wanted to close with this.

I think our organization needs this. I know I need it, so I'm going to let it come out. For my fellow troopers that have been wronged, I apologize. For the citizens of this State, or anyone that has ever come in contact with a New Jersey State Trooper that has been wronged, I apologize. I don't apologize as Andres Lopez. I apologize as a member of the New Jersey State Police -- our organization.

I'd like to leave my fellow troopers with this thought. Fellow troopers, family members, friends, citizens of this State, don't lose faith in the New Jersey State Police. We will get over this hump, and we will come out of this. And I think that what will happen is you'll see the New Jersey State Police once again be the lead, premier law enforcement agency, not only in the State of New Jersey, but in the United States.

Thank you very much, now, for your time, Senator. I'd like to thank the distinguished Senator Matheussen for inviting me to testify for this Committee, as well as the Chairman, who I know he was in contact with to obtain permission for me to testify.

Thank you, gentlemen.

SENATOR GORMLEY: Thank you. Thank you all very much for taking the time.

The next witness will be Trooper Ed Lennon.

(Oath administered)

TROOPER EDWARD H. LENNON: Mr. Chairman and members of the Committee, thank you for allowing me to testify today. I am Ed Lennon, President of the State Troopers Fraternal Association of New Jersey.

I have no personal axe to grind with the State Police. I do not stand to realize any personal gain for being here today. I am here today to voice the feelings and concerns of our more than 2000 dedicated and professional New Jersey State Troopers. I believe these historic hearings have gone a long way to bring to light the issues surrounding the racial profiling controversy in the State. The STFA has followed these hearings with great concern, and of even greater interest to us is what you will recommend we do next.

I would first like to repeat to you that the STFA does not support anyone who violates the law or breaks his or her oath as a State Trooper. We will not, however, allow the entire State Police to be branded as racists and profilers. I am sure you would agree that the vast majority of our State Troopers face tremendous pressures and dangers in performing their duty. Some are true heroes. We are empowered and entrusted to make critical decisions. I know that State Troopers do their jobs in a manner that would make you proud.

I said a few weeks ago that I did not believe that troopers were targeting motorists because of their race. I would have to be simply naive to believe that this has never occurred; however, I would be astounded to find out that anyone is doing that in today's day and age. I am not aware of any trooper who has been called off the road or disciplined as a result of the evidence that Attorney General Farmer announced he has that racial profiling continues. If such evidence actually exists, then those troopers should have been called in for counseling, further training, or discipline. Troopers should not be assumed guilty, however, based upon accusations or statistics.

I also recognize that you have seen statistics and heard testimony that may indicate the opposite of what I've just said. I would like to comment on that, if I may.

Statistics should not be allowed to stand on their own, without a more detailed personal analysis. Rather than immediately condemn troopers as racists after viewing the various statistics mentioned here, I believe we need to carefully review this data and examine the reasons why a trooper made a stop or conducted a search.

I will point out that the State Troopers Fraternal Association will not allow false accusations against our members to go unchallenged. As you are aware, we have filed civil complaints in the past, based upon review of the videotapes from troop cars, and we have been successful in those cases. We will continue to insist that the Attorney General's Office follow through on proper charges in those cases where witnesses have been found to lie under oath or cause false reports based upon unfounded accusations against troopers. We will pursue civil action, if necessary.

I would also like to briefly comment on the testimony I heard last week, from troopers and the public, who believed they were profiled or were censured on account of their race. As you know, there are at least two sides to every story. I do not wish to debate accusations at this hearing, because it does not serve the needs of this Committee, and it will not enhance the effectiveness of the State Police. However, I cannot allow all of the testimony that I was able to hear go unchallenged.

I must say that much of what you heard was secondhand, innuendo, out of context, and ancient history. I'm not here to say that the State Police is perfect, but I can assure you that we are not what we were portrayed to be last week. The notion that troopers would force someone to do a tap dance in order to get out of a ticket is beyond belief. However, I can relay a circumstance which may be parallel to that story.

A motorist was stopped for weaving in the lane. He was asked to step out of his vehicle in order to ascertain if he was under the influence of alcohol. Several psycho-physical tests were performed, and a determination was made that he was not under the influence. He was asked to perform one more test, walk a straight line, heel to toe. The driver stated proudly that not only could he walk the straight line, but that he could do it on his hands. Since the determination was already made that he was probably not going to be arrested, he was told to go ahead and do it then. He did walk a straight line on his hands, and was subsequently let go.

Was this a proper thing to do? Certainly not. However, that stop was conducted over 20 years ago. Although it was the driver who volunteered to perform this unusual act, I don't believe it would ever happen today. First of all, we now have video cameras in the troop cars. We are under scrutiny now as we have never been before. We also have supervisors and Federal monitors reviewing the videotapes of stops. Those videotapes serve to vindicate troopers who have been accused of racial profiling. The thought that troopers are making so-called ghost stops, without calling them in or turning on the video recorder, defies all logic. If that was ever proven, then that trooper will stand alone and suffer the consequences. The STFPA does not condone such behavior, and we would be hard-pressed to try to defend anyone who would do it.

I ask that you keep in mind that no one likes to negatively encounter a police officer. Troopers are therefore subject to being accused of every kind of injustice. However, as the videotapes in our troop cars have shown recently, despite the accusations, I believe that we overwhelmingly do our job impartially and properly.

You have also heard testimony regarding a posting on the STFA bulletin board. I recall the membership meeting, several years ago, where the topic of a black trooper videotaping white troopers on stops was brought up on the floor. No trooper's name was mentioned during that discussion. The minutes which were posted were not official minutes from the STFA, but the handwritten notes taken by the station rep from that station. The STFA gives guidance to the station reps as to what materials should be posted at each station. That guidance is taken directly from our contract. An exact copy is attached at the end of this statement, for your review.

I also heard testimony regarding a Web site entitled "the NJSP Phantom." This Web site was begun back in 1999 as a forum for troopers and others to post their concerns and opinions. This was an anonymous forum, not sanctioned by the Division of State Police, and as such, allowed anyone to say anything without retribution. Some of the postings were total nonsense and baseless rumor. Others were factual and well-placed.

Since taking over as the President of the STFA in 1999, I have authorized an official STFA Web site where troopers can communicate with the union and with each other through a bulletin board, and learn information directly from the STFA without relying on false rumors. We do have control over what is allowed to be posted, and we do restrict postings that do not meet the requirements of our site. Offensive postings or postings with profanity have been, and will be, removed. The copy of the requirements for that site are also attached at the end of the statement.

I also heard about a 10 percent shirt, and/or flag. Apparently it was reported last week that I was displaying a 10 percent flag in my office. I do not have a 10 percent flag, and the first time I've ever seen a 10 percent shirt was last

week, outside the hearing room. I did have, at one time, a pirate flag hanging over my desk. This was placed there as a joke, by one of the STFA officers, after Colonel Dunbar chose to call a certain group of troopers pirates. And I will show you that flag right now.

(Witness displays flag)

SENATOR MARTIN: Is that a Seton Hall Pirate?

SENATOR GORMLEY: It's a Seton Hall--

TROOPER LENNON: You're right. That flag was left there, without even giving it further thought, once it was posted up there on the wall. It has since been removed. I had to dig it out of a box in the corner. It was removed months ago.

I do not consider myself or the STFA representatives to be pirates. I view us as part of the solution to problems, rather than the cause of them.

I would note that it is ironic that we are here today at the home of the Seton Hall Pirates. Even more ironic is the fact that I saw one of Colonel Dunbar's sons wearing a Seton Hall Pirate jacket recently. Perhaps his use of the term was one of endearment rather than anything else.

I know that the next step for this Committee and the State Police is to consider where to go when these hearings conclude. I would like to make a few suggestions, on behalf of the State Troopers, that I believe are reasonable.

I understand that there's an overwhelming pressure to write new laws prohibiting racial profiling, to limit the authority of the State Police, and to create different layers of bureaucracy over troopers. I urge you not to assume that troopers cannot be trusted to do our jobs justly. The United States and the New Jersey constitutions guarantee certain freedoms that Federal and State law

currently supports. There are various civil rights statutes that currently give legal protections to those that have been mistreated.

The State Police is also under a Federal consent decree. We have new internal rules and regulations on how we conduct ourselves. We have video cameras, stop reports, and Federal monitors to oversee how we conduct roadside stops.

We also take an oath, when we become troopers, to uphold the laws of this State. A trooper who cannot meet that solemn commitment should, as I have said before, step aside.

However, writing new laws is not the way to prevent racial profiling. Let's enforce the laws we already have, and not succumb to the pressure of drafting reams of regulations when we have the framework to do the job right now.

I also propose that good trooper performance begins with good leadership. The people at the top of our organization need to be surrounded by the best and brightest available. The State Police have a unique ability to rally together. I believe that if we have faith in our superiors and our morale is high, then there is no better law enforcement organization in America.

I would also suggest that you would permit consent searches to continue. There is relevant case law and regulations on the right and wrong way to conduct such a search. We need to be allowed to continue to use our judgment and intuition to find serious criminals before they get into your neighborhoods. There are many instances where a good hunch by a trooper has cracked a major case or stopped a crime before it happened.

I encourage you to let us do good police work and not allow anecdotes about bad troopers to keep the rest of us from meeting our mission.

I also suggest that we should stop throwing out cases against individuals who have been caught with drugs or in other violations of our laws. There has been nothing more frustrating to us recently than when the Attorney General dropped charges in 77 cases, including one motor vehicle violation, found by troopers to be in violation of our laws. What kind of message do you think that action sent to us?

Unfortunately, it destroys our confidence and makes us second-guess ourselves. It also dilutes legitimate complaints by citizens by allowing anyone who cries wolf to get off without their day in court.

I ask that you support us in this matter and allow the criminal justice system to do what it is intended.

Finally, the Committee should not allow the poor judgment or political ambitions of others to impugn our entire force. The State Police is under the constant watch of the Federal government, and we have new reporting requirements within the State Attorney General's Office. I would ask that you allow these mechanisms the opportunity to continue.

The State Police is in the process of change now, and I hope that you'll give us time to let them work. Neither the troopers nor the public would be served if the rules under which we work are going to constantly shift.

I would like to close with a personal comment. When we find drugs or guns or stop a crime in action, everyone, black and white in New Jersey, wins. I know that the people of this State believe in us and support us for the good work we do. We are doing our best to serve now, under difficult circumstances. I urge you not to tie our hands. I look forward to working with all of you in the future in resolving this important issue.

And before I end my -- that is the end of my prepared statement before I came here today, and I would just like to go through a couple of observations that I made during today's hearing.

There was a question about pressure for arrests. There really is not too much pressure or emphasis placed on arrests. However, there is a lot of pressure placed on numbers of summonses. The pressure is inherent and thinly veiled, especially when it comes to promotion and specialist selection.

Ghost stops are interpreted as the issuing of a summons or warning when no stop was ever made. Making a stop and not calling it in would not constitute a ghost stop, unless that information was used on a subsequent day to fill in a patrol chart. Troopers, in the past, have been identified and disciplined for such violations.

Colonel Dunbar's statement that he would like the authority to fire 20 troopers: He already has the authority. However, troopers have a right to due process. Charges must be brought, and a hearing afforded to that trooper. In September of 1999, I met with then Special Agent Dunbar, now Colonel Dunbar, in his FBI office in New York City for three and a half hours. During that conversation, Colonel Dunbar advised me of his philosophy of 10-80-10. In any organization you have 10 percent at the top that are the top performers, 80 percent in the middle that do the majority of the work, and 10 percent that try to bring the organization down. His philosophy that 10-80-10 exists in any organization came over here as a preconceived notion with him. I don't believe that 10-80-10 fits in the New Jersey State Police.

Certainly, we do have people at the bottom who are trying to bring us down. But to say that out of 2700 -- 10 percent is 270 people fit that category, I believe is way out of proportion.

What is the Division doing to change the culture within the Division? I believe the consent decree has given us the direction. We have in-service training, MAPS committee, which is putting together the MAPS evaluation system which will identify problem individuals, and we have the video cameras in the car that record our stops.

Racial profiling is a term of art. In 1987 we were given the zero tolerance on drugs by Attorney General Cary Edwards. Part of the plan was for the Division of State Police to create a profile of criminals and drug dealers and couriers.

Is racial profiling continuing today? Also, in this vein, this morning's testimony, the question was, fair representation of the population when it comes to stops and statistics. I think the problem with that is that there's the fair representation of the population, for example, on the Turnpike, makes an assumption that there's a nexus between the known minority population and violations. I don't know if we have a valid survey, and I don't believe we have a valid survey, that tells us what the known population of minority drivers is. And we certainly have no survey to tell us what the percentage of violators are, minority versus nonminority. I think if you want answers in that area, we must do more surveys and more scientific studies.

I heard Mr. Fyfe testify earlier this afternoon regarding consent searches that he finds it hard to believe that a criminal carrying drugs would give consent to search for them. It happened all the time, and it still happens. You have to get into the criminal mind. That driver may be stalling or calling the trooper's bluff, or have it hidden somewhere in the car and just hope that you don't find it.

Consent searches are not taken lightly, and requests are not made indiscriminately. Consent is signed off with the knowledge that they have the right to refuse.

Mr. Fyfe also attempted to draw a parallel with this Committee and the Knapp Commission. How dare he? We are not talking about rogue cops and corruption. We were given our orders by an Attorney General. You can make no connection between the two.

Mr. Fyfe also talked about undercover cops recording stops. It's been done here. It's been done in New Jersey. We've had a group of black police officers from out of state come in and videotape troopers on stops and also in stations when they come in to make complaints. The worst case scenario they came up with was when a trooper told them to leave the station because they were taking up too much of his time, and they refused to answer his legitimate questions.

We welcome the notion, and we're not afraid of it.

The idea of contraband or weapons being in plain view: That happens all the time, too. People open a glove compartment, there's guns in there, there's marijuana or cocaine or whatever -- paraphernalia in there. I'm not sure how much exposure Mr. Fyfe had to those type of scenarios on the highway, making stops, but they happen all the time out there.

One area that I agree with Mr. Fyfe is that justice delayed is justice denied. We agree with that notion. That is why we believe we need the so-called 45-day rule, which is called for in the consent decree, and which the local police officers already have. I would hope to be back before this Committee in the very near future to talk about the 45-day rule legislation.

I thank you for your time, Mr. Chairman and Committee, and I'll answer any questions, if you have any.

SENATOR GORMLEY: Senator Martin, and Senator Robertson.

SENATOR MARTIN: I have just a couple of questions, Trooper Lennon. Your testimony was well presented. I appreciate that.

First of all, I'm going to show my ignorance. The 45-day rule is some kind of due process procedure. Maybe you can just explain it.

TROOPER LENNON: Yes, sir. Once the Division knows of an allegation against a trooper, they have 45 days to investigate it and bring charges, except in the case of criminal accusations. The criminal case takes precedent first, and then an administrative case can follow.

Beyond the 45 days, if the -- it's more or less like a statute of limitations. They can't go any further after 45 days. And all local police officers enjoy that in New Jersey.

SENATOR MARTIN: Do they have that now by statute or--

TROOPER LENNON: Yes.

SENATOR MARTIN: But it's not been applied to the State Police?

TROOPER LENNON: We're excluded from that.

SENATOR MARTIN: You mentioned before that there was some existing amount of pressure regarding the amount of summonses that, I guess, road troopers are expected to produce. I'm not clear where that pressure comes from. Are you suggesting does it come from higher up in the State Police, the Attorney General's Office? Can you enlighten me anymore as to that?

TROOPER LENNON: Well, it's from within the State Police as far as I know. I don't know if it comes from the Attorney General's Office. Quite frankly, I doubt it. But although the message has always been to us that there

is no quota, and certainly nobody so far has said that you have to write *X* number of summonses, at the end of the month, the squad supervisor does a report for his squad and tallies up the activities for that month of his squad. And on the back of that report he would single out troopers that were below average or -- and also troopers that are above average, and give them an acclimation instead of a negative remark on there.

SENATOR MARTIN: One last question. You indicated that there had been some out-of-state, I guess, minority troopers who would engage in some type of activity that they took on without anybody's permission, I would assume, to sort of test the State Police. I guess that was their -- the experience that you were referring to. Earlier, Professor Fyfe said that one of the best ways to ensure that troopers wouldn't engage in any wrongdoing is to have -- he referred to it as sting operations, which are some kind of, I guess, persons assigned to engage in some kind of activity where they would be likely to be pulled over to check the troopers.

If, in fact, you want to continue with consent searches, would it be your position that that means of allowing for some kind of random sampling of trooper activity would be permissible in the State? How do you feel about that kind of a way to monitor State Police activity?

TROOPER LENNON: We have no problem with that. That's why I said before, we're not afraid of it, and we welcome the notion. If somebody wanted to put a program like that into place, if a trooper was caught or exposed as doing something wrong, then shame on him, and he should be disciplined for it, and depending on the degree of the violation, he could be terminated for it.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Good afternoon, Trooper.

TROOPER LENNON: Good afternoon.

SENATOR ROBERTSON: I'll keep this short.

First of all, I'd like to ask your opinion on a couple of things that have come before us. In the area of consent searches, you've told us that you think they can still be a very good, useful tool, and so forth, and don't tie our hands. Given the allegations, at least that have been made with respect to the abuse of consent searches, what do you think the supervision procedure should be in order to give assurances to the public that consent search discretion is not being abused?

TROOPER LENNON: Well, first of all, any consent search currently would have to include a stop report, which we never had before. That's one of the new changes that we had out of the consent decree. Reviews of those consent searches and counseling or discipline, where it's found to be improperly done, I believe would suffice, along with continuous in-service training and given parameters as to when a consent search is warranted.

Certainly nobody should be out there, just asking everybody indiscriminately, "Can I search your car." And I don't believe that's what's taking place.

SENATOR ROBERTSON: Well, out of tens of thousands of stops, there were only 271 consent searches anyway--

TROOPER LENNON: Right

SENATOR ROBERTSON: --in Troop D.

TROOPER LENNON: And I would have to say that some of those, I'm sure, were done with probable cause, and troopers were just second-guessing themselves and doing a consent search anyway.

SENATOR ROBERTSON: Is there ever an occasion that you know of, or how frequent is it that you have a search that's conducted pursuant to a warrant?

TROOPER LENNON: On a motor vehicle stop?

SENATOR ROBERTSON: Yes, incidental to a motor vehicle stop.

TROOPER LENNON: I don't have that information. I don't know.

SENATOR ROBERTSON: And you've already mentioned that the issue of ghost stops could be addressed by sting operations. You folks have no problem with that.

Do you think it's worthwhile at all to -- and I know you've already created the bulletin board and so forth. But do you think it's a good idea to at least take a look at the possibility of having some outside agency or something where troopers can be called in on a random basis and just asked their opinions on a no-name basis as to what's going on out there, what problems they have, what can be done to help, what concerns they have with what's going on at the barracks with superiors or anything else? Do you think that's the sort of thing that would be trusted enough by the troopers to be effective?

TROOPER LENNON: I'm not sure if that would be trusted enough. I'm not sure what scenario you're trying to lay out. Would it be a civilian? Would it be some other office that we would report to?

SENATOR ROBERTSON: So it would depend on what it looks like, really?

TROOPER LENNON: Yeah. It may be something worthwhile looking into, but I heard Mr. Cronin mention the Office of the Ombudsman. I think that's a good outlet for troopers to call, and I know they've called. The

problem is, the ombudsman is very busy, and I guess he gets swamped sometimes with the amount of work that comes into that office.

SENATOR ROBERTSON: And then finally, can I ask you a question that I've asked a few other people during the course of the hearings, including Colonel Dunbar, and Colonel Williams, for that matter?

We now have the data on consent searches for the year 2000 -- 271 searches that we talked about. And we have find rates associated with those searches. And we have what I've been calling suspicion rates. And suspicion rates are fairly high in the minority community, and the find rates are not and don't seem to support the suspicion rates. How does that data strike you? How do you explain that?

TROOPER LENNON: I think that's one of the areas where you can't just rely on the statistics. You would have to look at each consent search, and find out why the trooper asked for the consent to search that car, what raised his suspicion to think that there may be something in there. And certainly, it could be a long-standing part of our culture that if a minority motorist didn't have the right paperwork or didn't have the right answers to your questions, you may make the assumption -- or troopers may make an assumption that there's something more to it than meets the eye. And that's something that will have to be untaught, if you will, or something that will probably take time to straighten out.

SENATOR ROBERTSON: Good answer.

Thank you, Mr. Chairman.

SENATOR GORMLEY: Any other questions? (no response)

Thank you for your testimony.

TROOPER LENNON: Thank you, Mr. Chairman.

SENATOR GORMLEY: Now that we've concluded the witnesses for today, I'd like to make a brief statement at this time.

First of all, I want to thank the members of the Committee. We have now had our ninth hearing dealing with the issue of racial profiling. And if I may, I'd like to recap a little bit. Over two years ago, this Committee conducted two hearings on racial profiling. Approximately six or seven months ago, it became apparent that there were about 100,000 documents that were coming out that would supplement the record.

In a nonpartisan fashion, this Committee came together -- Republicans and Democrats -- authorized by Acting Governor Don DiFrancesco, to thoroughly review those documents for the purpose of looking at the issue of racial profiling so that at the end of the day, we could make recommendations for reforms to hopefully make a difference for New Jersey.

I think I'm reflecting -- I know I'm reflecting how the Committee feels at the end of that process, and I hope I can articulate it on their behalf. And also to say thank you to certain people.

First of all, in terms of the New Jersey State Police, when I hear a Detective Lopez, a Staff Sergeant Gilbert, a Lieutenant Huertas, or a Jim Fennessy, I know we've got a great organization. There were some problems. There were some errors committed along the way, but there is a core of people there who want to see New Jersey come together, who want to do their jobs as police officers, and at the same time they want to make sure that everyone is treated fairly under the law.

So there's a great core of good there, and the vast majority of people who serve the New Jersey State Police serve it well. But we still have to look at overall reform.

When I hear a Felix Morka or a Laila Maher, or anyone else who's ever been the victim of profiling, I know we have to effectuate change. And those same troopers who I mentioned earlier would feel the same way. This is a process about bringing New Jersey together, about finding a common ground. We'll make recommendations, and I believe we'll make a difference. We'll tackle the issue of consent search, accountability, and civil rights for profiling legislation, no matter how you might want to characterize it.

But beyond whatever legislation we recommend, it's going to fall on the quality of the people. And one thing I've noted, the vast majority of individuals we've come in contact with, whether it be John Farmer or Paul Zoubek, two fine, career professionals who really care about law enforcement; whether it be our special counsel, Mike Chertoff and Scott Weber -- who made their services available at the rate we like, nothing; whether it be Jo Glading or Doug Wheeler, who weren't really on the minority side because there was no minority or majority side; or Christine Shipley; or whether it be somebody who is not known to many people in New Jersey, but he's a great asset, and he's the Executive Director of Legislative Services, Albert Porroni; they came together with our counsel, John Tumulty, to put together a set of hearings that are historic.

I can't tell you the number of people that stopped me and said, "I was looking at those hearings." And what meant a lot is that so many people who are members of the minority community said, "I really paid attention. They're finally airing the issue."

That was our first function, to get all the facts on the table and air the issue, not for the purpose of blaming any one person, because this issue is larger than any one person, and far more complex than any one person, but for

the purpose of making the recommendations that hopefully, whether it be on consent search or whether it be on accountability, makes a difference.

The message is, there's far more good in this State than those who would tear the State down. The message is, there's a lot more potential for good. And now what we've got to do is take these hearings as a basis, because I think we've got a lot of facts out on the table now, a lot of opinions, and a lot of ideas. We're going to work as hard as any committee has ever worked to make sure that we come up with a set of recommendations that continue that tenor and make a difference for the State.

And again, I want to express my pride in this Committee. At no time during the 60 hours of questioning, the 160 hours of depositions, did somebody point at another member of the Committee and say, in any way, shape, or form, "You're the opposite party." There was no partisanship.

Now, we're going to go back to the budget soon, and we'll get partisan again. Don't worry about that. But for right now, this legislative Committee, of which I am lucky enough to be the Chairman, rose above everyday politics and looked at an issue that is so difficult and so complex. I am lucky, and I am proud to be their Chairman.

I am also lucky to happen to be a senator in a State with many fine people, who I've mentioned, who want to make a difference for everybody.

So to everybody involved in this process, thank you. To the people who put all the hours in to make it possible, thank you.

And as I said, we are working and will be working on that report. Hopefully we'll have it done in the very near future. We're at least going to get a large portion out in the next couple of weeks, as we've promised. And what I think we all have to look to is to go beyond the report.

It comes down to the quality of the people who are appointed. It comes down to the quality of people who are serving. And what we've got to do is let a message go out. If you're good, we really want you in the New Jersey State Police. If you're good, we really want you to serve in the Attorney General's Office of New Jersey.

This is a great State with a great Constitution, because for all the flaws we might have, we were able to have an open process such as this, and look at every single fact, and that's the start of building something that is special and that will continue to make this State a very special state to live in.

This hearing is concluded, and it's daylight, and I'm very happy about that. (laughter) Thank you very much.

(HEARING CONCLUDED)