
Public Hearing

before

SENATE JUDICIARY COMMITTEE

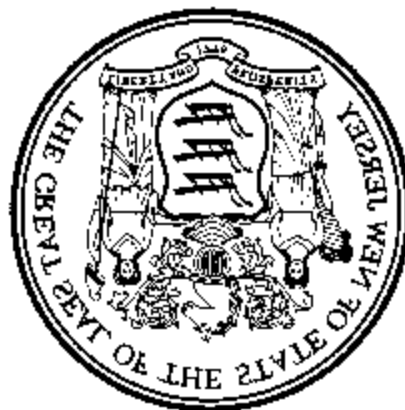
“Review of racial profiling”

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

DATE: April 9, 2001
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator William L. Gormley, Chairman
Senator Robert J. Martin
Senator Norman M. Robertson
Senator Raymond J. Zane
Senator Garry J. Furnari
Senator John A. Girgenti
Senator Edward T. O'Connor Jr.



ALSO PRESENT:

John J. Tumulty
*Office of Legislative Services
Committee Aide*

Christine Shipley, Esq.
*Senate Majority
Staff Counsel*

Jo Astrid Glading, Esq.
*Senate Democratic
Staff Counsel*

Michael Chertoff, Esq.
Special Counsel to the Committee

*Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey*

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

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SENATOR WILLIAM L. GORMLEY (Chairman): I'd ask the Committee members to be seated.

The witnesses have been previously sworn.

Mr. Weber.

MR. WEBER (Assistant Special Counsel to the Committee):
Thank you, Mr. Chairman.

Ms. Stone, we had finished up sometime last week with a discussion about some materials containing data from the State Police, and more -- in particular, stop data that you had received. I'd actually like to bring you back, because I have a few follow-up questions from that. We've placed in front of you three exhibits, F-26, W-30, and Z-3. Why don't we first put F-26 up on the screen, Page 8.

For the record, this is the draft, January 3rd letter to Loretta King, with edits on it from the Attorney General. I'd like to direct your attention to the first full paragraph on Page 8 that states: "I believe the time has come to spend sufficient resources to develop and conduct a trustworthy violators' survey. The State Police report to me that the number of stops involving black motorists on the southern portion of the Turnpike patrolled by troopers assigned to the Moorestown Station remains near the level reported in the *Soto* case."

This is information you had said last week you would have been interested in knowing about at the time, correct?

ASSISTANT ATTORNEY GENERAL DEBRA L. STONE: Yes, that's correct.

MR. WEBER: Because that would have impacted your assessment as to whether or not the *Soto* appeal continued to remain viable, correct?

ASSISTANT ATTORNEY GENERAL STONE: Well, that would have reinforced my opinion.

MR. WEBER: Reinforced your opinion that it was not a viable--

ASSISTANT ATTORNEY GENERAL STONE: It was not a viable appeal.

MR. WEBER: Why would it have reinforced your opinion that it was not a viable appeal?

ASSISTANT ATTORNEY GENERAL STONE: Because it indicates that the level of the stops was similar to that in the *Soto* case. One of the criticisms on appeal, and as below in a trial court, was that the methodology of the defense in doing their study was flawed. And if the numbers coming back from State Police from their own study are the same, it indicates we have a problem.

MR. WEBER: Had you been aware around this period of time, the beginning of 1997, that the State Police had, in fact, conducted some sort of review to ascertain what the stop figures were for the Moorestown Station?

ASSISTANT ATTORNEY GENERAL STONE: No, I was not.

MR. WEBER: And at this point in time, you were the director of appeals, correct?

ASSISTANT ATTORNEY GENERAL STONE: Deputy director for operations, which encompasses appeals, among other things.

MR. WEBER: I take it that as deputy director, that's information that would have been very important for you to know, because it would have impacted one of the appeals that your Division was responsible for.

ASSISTANT ATTORNEY GENERAL STONE: Correct.

MR. WEBER: Let's take a look at--

Actually, before we go off this document, Mr. Susswein, I have a question for you that--

The first sentence here says -- that's crossed out -- "I believe the time has come to spend sufficient resources to develop and conduct a trustworthy violators' survey." This is January of 1997. You became involved in the drafting of the interim report in February of 1999, correct?

ASSISTANT ATTORNEY GENERAL RONALD SUSSWEIN: Either late February or early March.

MR. WEBER: When you became involved in the State Police Review Team and in drafting the interim report, at that point in time, had a violators' survey been conducted by the State?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Not to my knowledge.

MR. WEBER: Let's go to the next document that we have in front of you, Ms. Stone. Actually, it's two documents. And if you could put them next to each other, you have W-30, which is a July 29, 1997 memo from the Executive Assistant Attorney General Alexander Waugh to Attorney General Verniero attaching reports prepared by the State Police. Then I'd ask you to turn to Page 2 of that document.

The other document we have in front of you is Z-3, which is a series of special reports that were put together by Lieutenant Sachetti to Captain Van Tassel in 1998.

I'd ask that you, on Z-3, turn to the page stamped OAG-2074 and 2075. You had identified for us last week that this September 24, 1996 report

in the Lieutenant Sachetti packet Z-3 was the same report that was found in W-30 -- the memo from Executive Assistant Waugh to Attorney General Verniero, correct?

ASSISTANT ATTORNEY GENERAL STONE: It appears to be identical, yes.

MR. WEBER: And this was the Sachetti report -- Z-3 -- was the information that you received in the summer of 1998 that then caused you to go to Mr. Zoubek and say to Mr. Zoubek that the State may want to reconsider maintaining the *Soto* appeal, correct?

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

MR. WEBER: And that's because the stop percentages contained in the Sachetti analysis of September of 1996 show stop figures ranging anywhere from 33.3 percent up to 52.1 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

MR. WEBER: And the stop percentages outlined by the defense in *Soto* range from 35.6 percent to 46.2 percent, correct?

ASSISTANT ATTORNEY GENERAL STONE: That's about right.

MR. WEBER: Now, W-30 is dated July 29, 1997, and it attaches, among other things, this September 1996 report from Lieutenant Hinkle, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: As the individual responsible for the Appeals Division, would you have wanted to know this information back in July of 1997?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: Would that have impacted your position on whether the *Soto* appeal continued to be viable?

ASSISTANT ATTORNEY GENERAL STONE: I think I answered that in that my opinion was the *Soto* appeal was not viable. I was opposed to taking the appeal when this would have simply reinforced it.

MR. WEBER: Okay. Had you received this Lieutenant Hinkle report back in July of 1997 when the Attorney General received the report, what would your recommendation have been?

ASSISTANT ATTORNEY GENERAL STONE: That we drop the *Soto* appeal.

MR. WEBER: And it would have been the same recommendation you made to Mr. Zoubek a little over a year later, or approximately a year later, in the summer of 1998, correct?

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

MR. WEBER: And again, there's nothing in the statistics here about consent to search data. It was strictly based on the stop data that led you to then go to Mr. Zoubek in 1998 and say, "I think we've got a problem with the *Soto* appeal," correct?

ASSISTANT ATTORNEY GENERAL STONE: Yeah, *Soto* was about stop data, not really consent data.

MR. WEBER: And your focus on the appeal was on stop data, because consent data was not an issue in the *Soto* case, correct?

ASSISTANT ATTORNEY GENERAL STONE: Correct.

MR. WEBER: I'd like to move now from these statistics to -- time period in 1999 -- beginning of 1999, when the State Police Review Team was

commissioned. There was a press release February 10, 1999 that announced that the Attorney General's Office was going to conduct a review of the State Police.

Ms. Stone, do you remember that press release?

ASSISTANT ATTORNEY GENERAL STONE: I must have seen it at the time. I don't recall it now.

MR. WEBER: Mr. Susswein, do you remember the announcement February 10 of 1999?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I remember the announcement. I'm not sure when, if ever, I read the press release.

MR. WEBER: Ms. Stone, who asked you to assist in the State Police review?

ASSISTANT ATTORNEY GENERAL STONE: Paul Zoubek.

MR. WEBER: Mr. Susswein, who asked you?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It would have been Paul Zoubek a little bit later. It wasn't when they announced the review team.

MR. WEBER: Ms. Stone, was it explained to you what your role would be in connection with the review team?

ASSISTANT ATTORNEY GENERAL STONE: Initially, not. Later on it was explained that they wanted me to introduce troopers and also compile the memos that I wound up compiling for Paul to use.

MR. WEBER: And what was the purpose of you conducting the interviews of the troopers?

ASSISTANT ATTORNEY GENERAL STONE: To see if we could-
- We had heard anecdotally that, in fact, profiling was occurring. That would have informed our view of the statistics. So my job was to go and ferret that out.

MR. WEBER: Mr. Susswein, what was your role according to this?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, my role changed considerably during the project. Initially, I was being asked to look at law and policy with regard to selective enforcement, racial profiling, to develop some kind of a template for determining whether or not racial profiling was occurring.

MR. WEBER: And ultimately, you became the principal draftperson of the report, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: I'd like to show Ms. Stone an exhibit we've marked as SJC-13. It's titled partial draft of profiling outline. And Ms. Stone, that's put in front of you. I'd like you to take a look at it, and if you could, identify it for the record, please.

ASSISTANT ATTORNEY GENERAL STONE: It looks like a draft I wrote.

MR. WEBER: This would have been one of the first drafts that were put together in connection with the State Police Review Team, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes, that's correct.

MR. WEBER: Now, let me direct your attention down to the bottom of the first page, paragraph -- and I'll read it into the record. "As a starting point, we accept the statistics used by the defendants in *State v. Pedro*

Soto, et. al., of blank percent minority stops is substantively accurate.” Did you write that because you had previously been presented with the Hinkle and Sachetti information back in the summer of 1998?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: It goes on to state, “despite concerns about the methodology used to gather the statistics, subsequent reviews by State Police, which were not revealed to or turned over to counsel from the Attorney General’s Office or the Division of Criminal Justice, indicate the number of minorities stopped at the same -- are the same or higher.” And then in parenthesis it said, “Paul, do we want to attach stats?” I take it Paul is Mr. Zoubek.

ASSISTANT ATTORNEY GENERAL STONE: That’s correct.

MR. WEBER: Let’s step back for a second. This sentence here states that there were statistics not revealed to or turned over to counsel from the Attorney General’s Office. Are the statistics you’re referring to the statistics that we just talked about previously, the ones that you found about in the summer of 1998?

ASSISTANT ATTORNEY GENERAL STONE: Yes, that was my understanding at the time.

MR. WEBER: I take it when you drafted SJC-13, at that time, you did not know that those statistics had previously been presented to Attorney General Verniero in July 1997, correct?

ASSISTANT ATTORNEY GENERAL STONE: I had no clue.

MR. WEBER: When did you find out that those statistics had been presented to Attorney General Verniero in July 1997?

ASSISTANT ATTORNEY GENERAL STONE: Actually, when these hearings began.

MR. WEBER: So, up until the hearings, you didn't know that Attorney General Verniero had the Hinkle reports showing the stop percentages that were on par with the percentages presented by the defense in *Soto*, correct?

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

MR. WEBER: All right. Let's go on.

The significance of 23 percent -- this is now on the second page -- to 34 percent minority stops is somewhat unclear in the absence of an accurate population study of the Turnpike. So again, by this point in time, the State had failed to conduct a population study, correct?

ASSISTANT ATTORNEY GENERAL STONE: It was my understanding, yes. It was conducted later.

MR. WEBER: Approximately when did you draft this document, SJC-13?

ASSISTANT ATTORNEY GENERAL STONE: I don't think there's a date on it. I don't really recall. It was very early on.

MR. WEBER: Would it have been after the announcement of the State Police Review Team in February of 1999?

ASSISTANT ATTORNEY GENERAL STONE: Oh, yes.

MR. WEBER: Because you would have had no reason to put this together before that, right?

ASSISTANT ATTORNEY GENERAL STONE: Exactly.

MR. WEBER: So sometime in -- would you say February to March of 1999? Would that be accurate?

ASSISTANT ATTORNEY GENERAL STONE: Probably early March would be my guess.

MR. WEBER: We'll go on. "Therefore, we reviewed a State Police study of consent searches and interviewed a variety of State Police personnel concerning the practices and procedures." Your reference here to a study of consent searches-- What data are you referring to there? What study are you referring to there?

ASSISTANT ATTORNEY GENERAL STONE: I think that might have been the Gilbert stuff, but I don't really recall. I mean, we were getting in so many documents by that point I can't keep it straight in my own head.

MR. WEBER: Well, there's been much testimony about a March 15 meeting with Sergeant Gilbert, when Sergeant Gilbert turns over what's been referred to as the blue binder--

ASSISTANT ATTORNEY GENERAL STONE: Right.

MR. WEBER: --a copy of which I'm holding in my hand.

There were statistics in this binder that concern consent to search data. Are those-- Is that the study? Are those the studies you're referring to here in the sentence?

ASSISTANT ATTORNEY GENERAL STONE: It probably was.

MR. WEBER: Could the studies you're referring to here have come from Mr. Rover's files? You testified last week that Mr. Rover brought up hand trucks full of documents. Could that information have been contained in what Mr. Rover presented to Mr. Zoubek?

ASSISTANT ATTORNEY GENERAL STONE: As I recall, it was raw data. I don't recall any analysis in Rover's file.

MR. WEBER: Let's show the witness what's been previously marked as G-13, which is the undated Gilbert memo. And I'll ask you to take a look at that and see if that refreshes your recollection as to what study you're referring to in this sense.

ASSISTANT ATTORNEY GENERAL STONE: This was definitely one of the things I was referring to.

MR. WEBER: And G-13 was included in the Gilbert blue binder, correct?

ASSISTANT ATTORNEY GENERAL STONE: I believe so.

MR. WEBER: So, just to try and get the date as precise as possible, the blue binder was turned over on March 15, 1999. This undated Gilbert memo, G-13, was contained in that blue binder. Does that help you date this undated document that we've been looking at -- the partial draft of profiling?

ASSISTANT ATTORNEY GENERAL STONE: It would have had to been after that, but when, I'm not sure.

MR. WEBER: So you state you "therefore reviewed a State Police study of consent searches and interviewed a variety of State Police personnel concerning practices and procedures. The study on consent searches was, quite simply, shocking." Why did you include that language?

ASSISTANT ATTORNEY GENERAL STONE: Because I found it shocking.

MR. WEBER: Why did you find it shocking?

ASSISTANT ATTORNEY GENERAL STONE: Because of the extremely high number. I mean, Cranbury -- 94 percent minorities were searched. That is shocking.

MR. WEBER: When did you, in your own mind, determine that consent to search data would somehow bear upon the issue of whether racial profiling was being conducted on the Turnpike?

ASSISTANT ATTORNEY GENERAL STONE: It was around that time.

MR. WEBER: Around the time the Gilbert information was received.

ASSISTANT ATTORNEY GENERAL STONE: Right.

MR. WEBER: "State Police figures for the New Brunswick-Cranbury and Moorestown Stations for various periods of 1994 to 1996 indicate that of the consent searches made, the overwhelming majority, from 67 percent to 94 percent, were minorities.

"These rates, when coupled with the statistics regarding all stops, indicate that minorities are disproportionately singled out for more aggressive and intrusive law enforcement procedures."

Then you go on. I'll just read the next two sentences. "Anecdotal evidence received from interviews with troopers bears out the message made clear by the statistical data. These interviews reveal that, contrary to expressed written policies, racial profiling is a practice undertaken by a group of aggressive troopers assigned to the New Jersey Turnpike."

Mr. Susswein, did you include this language in the final version of the interim report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, something similar to this. This was-- Deb's was the very, very first draft. All

of my drafts followed that. And these concepts were definitely carried forward. This was the factual basis I was using for many of the statements that I wrote.

MR. WEBER: Well, you would agree with me that there is some pretty strong language here. You know, the sentence “the study of consent searches was, quite simply, shocking” is pretty strong language, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I would agree with that.

MR. WEBER: Did that language make it into the final report, or was it toned down?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That particular phraseology did not make it even into my first draft.

MR. WEBER: Why not?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I simply wrote it a little bit different -- toned down, if you want, but I used somewhat different verbiage.

MR. WEBER: Did you have any discussions with Ms. Stone as to maybe why she used this strong language and maybe why you wouldn't use language as strong in the final report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't think we really did, no.

ASSISTANT ATTORNEY GENERAL STONE: No.

MR. WEBER: Ms. Stone, let's take a look at the last page of this -- I'm sorry, next to last page, Page 2353 -- top of the page. You state, “The failure to accurately communicate legal requirements and to conduct appropriate training has contributed to the misperception that race can be a factor in

determining which cars to stop and search so long as it is not the sole factor.”

What did you base that conclusion on?

ASSISTANT ATTORNEY GENERAL STONE: On a number of the interviews, not just with the troopers, but with some of the higher-ups in the State Police, just talking to them. I asked one of the high-ranking troopers to go through a road stop with me, just take me through it step by step. And once you got to the point where he was considering whether or not to search a vehicle or ask for consent, race became a factor.

MR. WEBER: And why did that lead you to the conclusion that there was a failure to accurately communicate legal requirements and to conduct the appropriate training?

ASSISTANT ATTORNEY GENERAL STONE: Because the people that I spoke with did not understand that race could not be a factor. They thought as long as it wasn't the only factor that they considered that it wasn't racial profiling.

MR. WEBER: Mr. Susswein has been actively involved in in-service training over, probably, the past 15 or 20 years.

Is that correct, Mr. Susswein, at the State Police?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah, closer to 15.

MR. WEBER: What did you teach State Troopers on this issue, as to the permissibility of the use of race in connection with stops?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: What I trained-- And again, mostly those audiences were not troopers. But what I

trained was from the case law in *State versus Kuhn*, which is that race or ethnicity can play no part in the exercise of police discretion.

MR. WEBER: Now these-- Your training was not for road troopers you just said, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, it might have included some. But what I did-- On many, many occasions, I was asked by the State Police to serve as a guest lecturer at courses that they would put on for mostly local police. But there would be troopers there, as well. I don't know whether they were assigned to road patrol or some other duty assignment.

MR. WEBER: Were you asked to perform a similar training or seminars to -- or at any of the State Police academies for the cadets?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: To this day, I have never trained a State Police recruit on any subject.

MR. WEBER: Does the Attorney General's Office get involved at all in the training of cadets at the State Police Academy, as far as you know?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Currently, yes, actively involved.

MR. WEBER: When did that begin?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, this is all part of the State Police affair, as Marty Cronin -- this is in the last year or year and a half or so.

MR. WEBER: Prior to Marty Cronin's shop getting involved in this, were you aware of whether the Attorney General's Office was at all involved in the training of State Police cadets, specifically on the issue of stops and search and seizure?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I'm not aware to what extent they were involved. They may have been, but I wasn't aware of that.

MR. WEBER: We had had some testimony from you last week, Mr. Susswein, in connection with -- and I call it the Littles committee -- the committee that was put together after the *Soto* decision was released in March of 1996. And there was discussion in the series of Gilbert memos about reviewing what was going on with training and doing a half -- at least a half-day training seminar on the issues that were involved in the *Soto* case. And you had testified that to the best of your knowledge, that was never implemented. Do you know if there was any follow-up whatsoever based upon what was discussed with the Littles committee, as far as changing training, either in-service or for cadets, to explain to them when you can and when you cannot use race in connection with a motor vehicle stop?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The only thing that I'm aware of was the involvement of the Search and Seizure Review Board, which again, I very actively participated in. But in terms of the actual training curricula that went either to in-service or to recruits, I wasn't advised of any changes that were made.

MR. WEBER: Do you know if the Attorney General's Office ever offered its assistance to the State Police to say, "Hey, at your academy, we think-- We want to take a look at what you're training the cadets about on the issue of search and seizure. And if we find that what you're training them about is not entirely correct, we're happy to help you tweak the programs," so you'd give them reliable information?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Interesting, the way you're phrasing the question of offering assistance. I think my presence was an offer of assistance, because I would always be available as a guest, at least for in-service training as a guest lecturer. But no, there wasn't, frankly, an environment through most of these years where we were either asked or invited or review or supervise their curricula. They're not even subject to -- training commission.

MR. WEBER: Okay. But as a lawyer, and I mean no disrespect by this question-- As a lawyer, you are uniquely qualified to say to the State Police, "Look, my office has an expertise on search and seizure and motor vehicle stops and what's permissible and what isn't permissible. Let me take a look at your materials and tell you whether you're training the cadets appropriately." Did you ever say that in sum and substance to individuals at the State Police?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, at some point I thought that was what was being discussed at the Littles committee, but it did not evolve to that. My role shifted over to the Search and Seizure Review Board, and I don't know what became of the Littles committee.

MR. WEBER: And ultimately, if evidence were to be suppressed based upon an impermissible stop or an impermissible search and seizure, your office -- the Attorney General's Office, quite frankly, would be the office that would have to deal with the suppression motions, correct, or the county prosecutor?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: And usually the county prosecutor in the first instance, yes.

MR. WEBER: So ultimately, if State Police weren't trained properly on how to conduct a search and a seizure, that could impact negatively upon your ability to prosecute a case or a county prosecutor's ability to prosecute a case, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Absolutely. That's really why I was invited to go to the Littles committee in the first instance, was to talk about the lack of adequate training, not just on 14th Amendment-type issues, but on search and seizure questions, generally.

MR. WEBER: Did you report back to anyone at the Attorney General's Office what was discussed at these Littles committee meetings in 1996?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: In terms of the training that was proposed and in terms of -- that I was going to be invited to the Search and Seizure Review Board, yes.

MR. WEBER: Who did you report that to?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: To Terry Farley.

MR. WEBER: Did Mr. Farley tell you whether he was going to report that up the chain of command or not?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, I do know that at some point in May, I received a formal invitation -- or Terry received a formal invitation letter from Colonel Williams asking me to be the legal advisor for the Search and Seizure Review Board, which Terry Farley then responded that we were very, very glad to do that.

MR. WEBER: Okay. This is May 1996, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, that was during that -- the Littles committee era, yes.

MR. WEBER: Let's go back to the interim report. You both are now on the State Police Review Team sometime in February of 1999.

Mr. Susswein, we know that you're the principal draftsman, ultimately, of the interim report. There are statistics contained in the interim report. And in fact, the only empirical data of racial profiling in the report is found in three charts, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, there's a little English description of them around the charts, but yes.

MR. WEBER: And those are the charts--

If we could put a copy of the interim report in front of Mr. Susswein, please?

I direct your attention to Pages 26, 27, and 29.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: Okay. Now, this report, in total, is 112 pages, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I guess it is.

MR. WEBER: And there are three tables with empirical data that are found in the report: table one, which deals with motor vehicle stops by Cranbury and Moorestown Stations, April of '97 through November '98, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: The second table is searches conducted by Cranbury and Moorestown Stations during various time periods. That's consent searches, correct -- table two?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: And the last table is on Page 29, arrests by Cranbury, Moorestown, and Newark Stations, 1996-1998, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: You originally began to deal with the empirical analysis of racial profiling by bringing on board the team Christine Boyle, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, that was-- Her job was to put together a compiled review of the statistics and come up with tables of this nature.

MR. WEBER: And Ms. Boyle was the chief research and -- the chief of the Research and Evaluation Section at the AG's Office, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: And you had worked with her before on other projects, right?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Oh, yes.

MR. WEBER: What did you tell Ms. Boyle her charge was in connection with her participation in the review team?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Generally, her job was to review all of the information that was coming over from the State Police, to glean out any empirical information, either raw or compiled information, to go through it, check its internal-external validity, and put it

together so that I would have tables like this in a usable, easy to understand format.

MR. WEBER: Now, you engaged Ms. Boyle's assistance on this before Sergeant Gilbert had turned over the Gilbert notebook on March 15th of '99, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: She was working for a while on what could be described as raw data to try to come up with some numbers.

MR. WEBER: Did you tell Ms. Boyle that you were looking to have three charts or she should concentrate on three areas, stops, consent searches, and arrests, or was that something she took upon herself to devise?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, generally, we knew we were talking about three distinct types of law enforcement behavior. I'm not sure when the decision was made that we would have three aggregate tables, but we always knew that those were the three types of behavior for which there would be some empirical evidence.

MR. WEBER: Well, the Gilbert notebook, along with the undated memo -- the G-13 memo, which has the consent to search analysis, that had not yet been turned over, so how did you know that consent searches would be in an area that you should look into if this predated the turning over of the Gilbert report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't know that we could have known, but in my March 1st memorandum is when I outlined to Paul Zoubek the types of information for purposes of an investigation. Given the charge of finding out whether and to what extent racial

profiling was occurring, I had devised a scheme -- an analytical scheme of how we might go about establishing that. Consent searches was one of the areas that I was focusing on -- meant that we were going to have to look for those numbers. At that time, I didn't know that the numbers had been compiled by someone already.

MR. WEBER: This is March 1st of '99.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It was either my March 1st or March 5th memoranda, but I had written a series of memorandum. And I believe in the first one is where I outlined -- I believe I called them indicators of racial profiling and the things that we would want to be looking at empirically.

MR. WEBER: All right. Now, let's step back for a second. The *Soto* decision dealt only with stop data, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe that's certain, yes.

MR. WEBER: And that was in March 1996. You then are involved in the Littles committee throughout most of 1996, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, the two meetings that I attended in April and May.

MR. WEBER: And your focus was primarily on training issues, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's why I was asked to go to the Littles committee.

MR. WEBER: We now fast-forwarded to March 1st, 1999. What led you to believe that consent searches were an area that the Attorney General's

Office should look into in connection whether racial profiling was indeed occurring?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I like to think it was a logical analysis. If you start with the premise that I already had done some research, that this was a question about the influence of racial stereotypes on the exercise and discretion in the context of drug interdiction, that seemed to be one of the driving forces. You'd be looking for police behavior -- discretionary acts where stereotypes could influence police discretion. And the consent to search is obviously directly related to drug interdiction, because searching is the method by which you obtain what an interdicting oriented trooper would want to find.

MR. WEBER: So, based upon your experiences as a prosecutor, looking into consent to search data was a logical area to look into in connection with racial profiling, as far as you were concerned, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: Had you been aware of the Maryland consent order that had been entered into back in 1997, I guess it was?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I did become aware of that as part of the research on the interim report project in 1999.

MR. WEBER: Had you become aware of it before this March 1, 1999 actions memo that you sent to Mr. Zoubek?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It's possible. It's all in the same -- you know, within a week or two.

MR. WEBER: But as far as you were concerned, in order to determine whether racial profiling was indeed a real issue for the State to deal

with, you suggested that the review team look at the stop data, look at the issue of consent searches, because it involves a discretionary aspect of the interaction between the motorist and the law enforcement officer, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: And you also suggested that you look at arrest data, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Actually, I think in my memo I listed a number of different steps, but most of them wouldn't necessarily lead to reports or an ability to actually acquire statistics, but I would be interested in every discretionary act -- who gets ordered out of the vehicle, who is asked questions that are unrelated to the reason for the stop, the mean or median duration of the stop -- since an officer who's digging for drugs would take a longer period of time than one who is merely writing out the ticket or issuing a warning. Those are all factors. Now, most of them would not lead to data in the systems that then existed.

MR. WEBER: Now also, in connection with your involvement with the State Police Review Team, you had considered the State's criticism of the defense's population survey in *Soto*, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. I think that was a major theme in my drafts of the interim report.

MR. WEBER: And did you have a concern that the State itself had never undertaken its own population survey?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. In fairness, looking in hindsight, which is what I was doing in 1999, I thought that we were-- We could no longer react to this problem as litigators. We couldn't

just develop litigation strategies and allow that to drive policy. We had to be stepping back for a moment and trying to figure out what was going on, whether it leads to adverse results or not. And my impression was that the *Soto* litigation was very defensive, meaning we were criticizing. Some of the criticisms were legitimate, but criticizing the methodology that was developed by the public defender rather than taking it upon ourselves to go out and do our own population or violators' survey to find out what was really going on.

MR. WEBER: But that was not a new concept to you, was it, in that the State should stop acting defensively, but it should be more proactive? I mean, you had expressed those sentiments back at the May 16, 1996 Littles meeting, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It reflects my personal professional bias -- not being a trial lawyer in a room right now probably filled with trial lawyers -- is that sometimes you let litigation drive policy instead of doing the right thing from a policy perspective and letting litigation run its own course. So my view is always, as a trainer looking forward, where do we go from here, and if it hurts us in litigation, so be it.

MR. WEBER: But my question is, back in May of 1996 you had expressed these sentiments in connection with the Littles committee meeting, and that you thought -- and I'll read right from the Gilbert memo that we talked about last week -- as AAG Susswein and STAG Fahy noted, "The division would be better served by the production of accurate statistics, as opposed to the defense's utilization of speculative hypothesis and formula." And you also testified that "There was a chink in the armor, the times had now changed," correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Absolutely. Now, that specific reference was to a specific problem that I thought killed us in *Soto* litigation, because of the so-called missing data. And whenever you have, in that case missing data, something as easy to record as the race of the motorist, the failure to comply with the SOP that required it be compiled, I thought could lead a judge to draw an adverse inference for that missing data.

MR. WEBER: Did you report back to Mr. Farley, or anyone else at the Attorney General's Office, your belief or your opinion back in May of 1996 that times have now changed, we need to move forward, we should not take a defensive strategy, but we need to implement changes on a forward-looking basis. Did you ever express that in sum and substance to anyone at the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: With respect to the *Soto* litigation, no, because I wasn't involved in the *Soto* litigation. With the respect to the need for training, that's one of-- I mean, this is almost like a mantra, and I'd probably end up obnoxious in keeping -- emphasizing the need for more training or, as I said in the depositions, what I call positive training, telling people how to do it right and not just running through the case law that says you can't do this, you can't do that.

MR. WEBER: Yeah, but Mr. Susswein, I mean, let's be fair here. Your focus clearly was on training back in 1996, but didn't you feel that you had an obligation as a member of the Attorney General's Office involved in this Little's committee to go back to the chain of command and say, look, maybe my focus is on training here, but I've got some other ideas that may help us address this issue? For instance, let's look forward. Let's not try and defend what we

did in the past, but let's try and implement changes and let's act in a different way going forward so we don't continue to run into this problem.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, I'd like to think that I did do that, but I wasn't doing that in the context of commenting on how to handle the *Soto* appeal. I had been a witness. I was sequestered, and I didn't think that really I should be involved in this.

MR. WEBER: Well, I mean, you had the ability to talk to Mr. Fahy, who, in fact, was a member of the committee, and he was the lawyer who litigated the *Soto* case, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah. I'm not denying that I could have done that, that I was physically there. I'm just saying I did constantly bring back the need to move forward, to do training that ended up with the Search and Seizure Review Board. But I did not; I could have.

MR. WEBER: Okay. But in February of 1999 is when you, I guess, officially made it known that your opinion was let's not adopt a defensive strategy, let's move forward and implement concrete changes to address the issues of racial profiling, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I, for the first time, had an assignment in February or March of 1999 that was ideal to my own perspective, which is how do we get to the bottom of this. And I was asked to do this comprehensively, as opposed to, you know, piecemeal kibitzing.

MR. WEBER: All right. I want to go back to the tables here. As you know, Ms. Boyle testified before the Committee in depositions before the hearings commenced, and her testimony was, and let me know if you agree with this, that her team began to conduct a review of documents they received from

Mike LoGalbo and others at the Attorney General's Office who had been collecting data, patrol logs, consent to search forms from the State Police. She had her entire team working on it for approximately a two-week period, and then the Gilbert binder is produced on March 15th, 1999. Do you agree with that up to that point?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: Okay. She then gets-- You then get the binder along with some others, and within a day or two you produce a copy of the binder to Ms. Boyle and say, basically, hey, take a look at this information here and see whether you can use it and your team can use it in connection with your empirical analysis of the issues, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: She then determines, within a day or two of reviewing that material, that with the exception of the arrest statistics, she basically has all she needs, and she discontinues her team's work on the empirical analysis, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: With my permission, yes.

MR. WEBER: With your permission?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: So she's viewing all these patrol charts, she's looking at the consent to search forms, she now has the Gilbert notebook, which has empirical data in it, she discontinues her team's job, and she basically wholesale accepts the statistics contained within the Gilbert notebook, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. I mean, she-- She told me that she was checking on that again, the internal-external validity, but there was no reason we had to believe that that information was wrong, but we did accept it.

MR. WEBER: Well, she testified that she accepted the statistics in whole and did nothing to test the underlying data that was used or the underlying information that was used to collect the statistics. Do you agree with that?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: So she gets the information from Sergeant Gilbert that's in his notebook, and let me ask you to take G-13-- Ms. Stone should have the next-- It's the undated Gilbert memo.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Okay.

MR. WEBER: And open up to Page 27 of the report, the interim report. This is Table 2. It deals with the consent to search data.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: You would agree with me that the Gilbert memo, on the first page, sets forth consent to search data for various time periods, correct? The first page of G-13.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: I'd like you to take a look at G-13 and take a look at Footnote No. 2 on Page 27. Let me just read Footnote No. 2 into the record. This is for the searches conducted by Cranbury and Moorestown stations, various time periods, and the footnote states: "Includes Cranbury searches from

January '94 through March of '94." That's included on G-13, that time period, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: January '96, that's included on G-13, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: March '96 through December '96, that's included on G-13, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe so, yes.

MR. WEBER: April '97 through February '99, that's included on G-13, correct? The first page.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I'm not sure where there's '99.

MR. WEBER: No, April '97 through February of '99, that's actually in the Gilbert notebook. Why don't we put G-33--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I'll accept it.

MR. WEBER: --also in front of the witness? Do you have the CB-4 version? That's CB-4. We're going to put a version in front of you that we had Ms. Boyle put her initials and circle on the bottom of each right-hand page that had the information she relied upon to put the report together.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Okay.

MR. WEBER: If you take a look six pages in--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: This is worse than an SAT.

MR. WEBER: It starts with consent searches at Cranbury Station and it goes on for one, two, three, four, five, six, seven, eight pages, presenting -- and it shows you, up in the right-hand corner, the different dates presenting consent search as well as stop data from various time periods. I'll represent to you that Ms. Boyle testified that for the time period of April '97 through February of '99 she relied on information contained in the Gilbert notebook.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I will certainly accept that.

MR. WEBER: And the same holds true for the Moorestown searches. If you just take a quick look at Footnote No. 2 in G-13, it covers the same time periods -- January '94 through April of '94, December of '94, January of '96, March '96 through December of '96, and then the later time period, April '97 through February of '99. Ms. Boyle testified that those time periods mirrored the time periods in the Gilbert undated memo, G-13, with the exception of the '96 to '97 time period, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I'll accept that.

MR. WEBER: And she relied on -- wholesale relied on Sergeant Gilbert's information to put together Table No. 2 of this report. Do you agree with that?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: As well as Table No. 1, which deals with stop data, she relied on information in the Gilbert notebook to put this table together. Would you agree with that also?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: And those-- Again, those three tables are the only empirical data that are provided in the interim report that are used as evidence to establish racial profiling, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's a fair statement, yes.

MR. WEBER: These-- This empirical data helped you reach the conclusion that racial profiling, to use a phrase in the report, was real and not imagined, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I did write that. The consent numbers especially, I-- The stop numbers are considerably more ambiguous, and the arrest numbers, for the reasons that are set out in an entire section or chapter of the report, I'm not sure that they mean much at all in either direction. But the consent numbers certainly were-- I used the phrase highly probative. At one point, I used the phrase *res ipsa loquitur*, which I guess is the legal equivalent of shocking.

ASSISTANT ATTORNEY GENERAL STONE: Shocking.

SENATOR GORMLEY: I like the way you did that in unison.

MR. WEBER: Well, for the nonlawyers in the house--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That was the difference in our drafts.

ASSISTANT ATTORNEY GENERAL STONE: Right.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: She'd use one word, I'd used three Latin words. It's our style.

MR. WEBER: For the nonlawyers in the house, could you explain what *res ipsa loquitur* is?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah, that's a phrase out of tort law. It means the thing speaks for itself. And in this context, in my view, those numbers would be enough to -- use another lawyer's expression -- shift the burden of production, if not persuasion, to explain them. In the absence of an explanation, it would be hard to see how those numbers would not be the result of race playing some role in the exercise of discretion on who was asked to consent to search.

MR. WEBER: Indeed, it was this empirical data that led you to the conclusion that it was irrefutable that race was playing an aspect in some portion of the interaction between the motorist and the State Police, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't know that I ever used the word irrefutable, because I believe that there are people out there who are trying to refute it, but I had no doubt in my mind that those numbers suggested very strongly that race was playing some role. And given the broad definition of racial profiling that I was using and that became part of the interim report, that would be enough to say that the problem of disparate treatment was real, not imagined.

MR. WEBER: Ms. Stone, so as to not feel uninvolved in the conversation--

ASSISTANT ATTORNEY GENERAL STONE: That's all right.
(laughter)

MR. WEBER: --let me go back to you. There's been a lot of talk about this March 15th, 1999 Gilbert binder or the blue notebook production. You had a conversation with Mr. Zoubek shortly after that binder was produced

concerning Sergeant Gilbert and the production of that information, did you not?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MR. WEBER: And what did you say to Mr. Zoubek and what did Mr. Zoubek say to you about the information that Sergeant Gilbert produced?

ASSISTANT ATTORNEY GENERAL STONE: He was shocked and angry at the information, but we actually had the conversation in the hallway outside of his office or in the doorway of his office. I have looked at some of the things he was pointing out to me, and it was extremely disturbing to see these figures. And I felt that I wished we had had this information earlier, and I wished that some of the suggestions that Sergeant Gilbert had made had been followed in terms of changing some of the procedures within the State Police.

MR. WEBER: And Mr. Zoubek had said to you in substance that nobody -- if people had listened to Tommy Gilbert when he was telling people that there was a problem, you might not be in the particular situation you were in in February or March -- or March of 1999.

ASSISTANT ATTORNEY GENERAL STONE: That was actually my comment to him.

MR. WEBER: And what was his response?

ASSISTANT ATTORNEY GENERAL STONE: He agreed.

MR. WEBER: We've talked about the interim report and what made it into the interim report. I now want to talk to the issue of what didn't make it into the interim report.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Did or did not?

MR. WEBER: Did not.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Did not.

MR. WEBER: Did not. And I'll ask that we put Z-19 in front of the witness, please.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Thank you.

MR. WEBER: Mr. Susswein, in front of you is an exhibit marked Z-19. It contains excerpts from various drafts of the interim report. The first is a draft dated April 7th, 1999, and I'd ask that you turn to the second page, Page 2625.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: Could we put that up on the Elmo, please?

I'll read the paragraph down on the bottom: "We feel constrained to comment that some of the statistical information we relied upon, including particularly revealing data concerning consent searches, were only recently disclosed by the State Police to the Office of the Attorney General. Certain internal studies and audits prepared at the request of the superintendent were not made known to the deputy attorneys general who were representing the State in the *Soto* litigation. This circumstance has seriously compromised the State's litigation posture, and also has needlessly delayed initiating appropriate remedies and reforms." Mr. Susswein, did you draft that language?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, I did.

MR. WEBER: Is this a specific reference to the March 15th Gilbert production?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: Ultimately, that language was significantly toned down, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, it was.

MR. WEBER: Why was it toned down?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, there was a general toning down, but my understanding-- And I have to tell you, Mr. Weber, it's hard sometimes to distinguish what I remember from then and what I know now as a result of these proceedings. But that Paul, who became the, really -- the principal editor of this document and ensuing drafts, Paul Zoubek at some point checked into the accuracy of this statement and directed me to change it.

MR. WEBER: What did he do to check into the accuracy of the statement? Did he explain it to you?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: He did not explain at the time. I'm very familiar, obviously, with the testimony in the last couple of weeks, but at the time, I merely knew that he was checking in, because one of the very strong marching orders was anything in this report had to be dead-on accurate.

MR. WEBER: What have you come to learn was the activity that Mr. Zoubek undertook to check on the accuracy of this statement?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Again, what I came to learn is, if you want-- I mean, I have listed all the testimony here.

MR. WEBER: What testimony informed you what Mr. Zoubek did to then cause him to come back and tone down the language in this paragraph?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe that he either spoke with or looked through George Rover's file and found some of this information in the file.

MR. WEBER: So he found some of this information. You mean, some of the consent to search information -- it's the internal studies and audits that are referred to in this paragraph?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's my understanding of the testimony here, yes.

MR. WEBER: The last sentence in this paragraph: "This circumstance has seriously compromised the State's litigation posture and also has needlessly delayed initiating appropriate remedies and reforms." How did the circumstance seriously compromise the litigation posture? And by litigation posture, I take it you mean the *Soto* case?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The *Soto* case. And this is coming from conversations with Deb, who was very, very concerned about the discovery aspects and other aspects of that litigation.

MR. WEBER: When you say discovery aspects, what do you mean by that?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The State's ongoing discovery responsibilities, as far as *Soto*, that was Deb's -- one of Deb's concerns. She was responsible for, ultimately -- maybe not ultimately, but unultimately supervising the litigation.

MR. WEBER: Ms. Stone, going back to the summer of 1998 when you got a copy of the Sachetti-Hinkle reports that had the stop data that basically mirrored the statistics in the *Soto* case, did you at that point in time

have a concern that, as a result of the State's ongoing discovery obligations, that information should have been turned over to the defense in the *Soto* case?

ASSISTANT ATTORNEY GENERAL STONE: Yes, I did.

MR. WEBER: And that information, again, was produced back in July of 1997. So, under the State's discovery obligations, technically that information should have been shared with the defense going back to July of 1997, correct?

ASSISTANT ATTORNEY GENERAL STONE: That was my feeling, yes.

MR. WEBER: And that's what we're talking about here seriously compromising the State's litigation posture, the failure to produce relevant information that was in the hands of the Attorney General's Office going back to at least July of 1997, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Are you asking me?

MR. WEBER: You or Ms. Stone. Whoever would like it could have it.

ASSISTANT ATTORNEY GENERAL STONE: We could do a yes chorus.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. I think it's a combined yes.

MR. WEBER: Mr. Susswein, if you could flip, still on the April 7th draft, to 2636.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: Yes, put it up on the screen, and I'll read it into the record. There's a paragraph here, in the middle of the paragraph: "In the circumstances, we need not wait for a court to approve the consent order before we take those steps we deem to be necessary and appropriate to ensure strict compliance with all constitutional rights and to enhance the professionalism of the New Jersey State Police. While the positions taken in the recent years by the Attorney General's Office in the course of litigation may have been misunderstood and misinterpreted as turning a blind eye to the problem of disparate treatment of minorities, we think it appropriate now to go well beyond the rulings of courts in New Jersey and other jurisdictions." You knew at this point in time, Mr. Susswein, that a consent decree was part of the ongoing discussions with the Department of Justice, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: By this point, I knew that there were discussions with the Justice Department, so I knew that a consent decree was certainly a possible resolution of that.

MR. WEBER: And who was spearheading the discussions with the Department of Justice at this time?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I assumed that I knew then that it was -- that Paul Zoubek was the spear header. I certainly know that now.

MR. WEBER: And indeed, you've finished the interim report. It goes on out on April 20th, 1999. I think you've testified in your deposition you took a day off and you immediately turned your attention to begin working on the consent decree, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. And if I might clarify, I might have taken liberties after a long day with deposition. I think I said I took the night off, and then on the next day-- I don't believe it actually was the next-- It was the next project within a week or so, and it turned out I didn't take the night off either because of Columbine, but it was my next major assignment.

MR. WEBER: But it was clear to you, at least as of April 7th, 1999, that there were this ongoing discussions with the Department of Justice and that the possibility of a consent decree was something that was on the table at the time, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah. I knew that there was an investigation with the Justice Department. I know enough about the Justice Department to know that that can lead to litigation and that can lead to settlements.

MR. WEBER: And this paragraph or this part of the paragraph that I just read to you which talks about not waiting for a court to approve a consent order, this is taken out of the final report, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. This was, again, my-- Yes. Well, the answer is, yes it was.

MR. WEBER: Why was it taken out of the interim report -- the final version?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That I do not know.

MR. WEBER: Who took it out?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, I took--
Well, just so the record is clear, any edits, I was the draftsman, and my--

MR. WEBER: Who made the substantive decision to take it out
of the report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That would
have been Paul Zoubek.

MR. WEBER: Did he explain to you why he was taking that out
of the report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't believe
he explained why this particular edit was made.

MR. WEBER: Let us turn to the next draft, the April 9th, 1999
draft.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Is that in here
as well?

MR. WEBER: Yes, it's all part of the packet.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Okay. Yes,
sir.

MR. WEBER: It starts on Page 2753.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, I see it.

MR. WEBER: Let me ask you to turn to Page 2773, bottom of the
page, second full paragraph. Again, this language did not make it into the final
report: "So, too, we are especially disturbed by the fact that some troopers have
actually falsified data concerning the race of the occupants of stopped vehicles.
And these two troopers who engaged in this practice were discovered during the
course of an unrelated criminal investigation." It says, "And will be

prosecuted,” but will is crossed out and is changed to “and have been prosecuted. A number of other troopers are currently under investigation for similar misconduct.” That was a reference to Troopers Hogan and Kenna, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: And this is the April 9th, 1999 draft. The indictment of Troopers Hogan and Kenna did not occur until April 19th, 1999. It was not publicly released until April 19th, 1999, correct?

ASSISTANT ATTORNEY GENERAL STONE: That’s correct.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, I’ll accept that, yes.

MR. WEBER: Okay. So 10 days before Troopers Hogan and Kenna are actually indicted and that indictment is released to the public, you’ve got language in here that goes from saying will be prosecuted to have been prosecuted. Who changed that language?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: This actually is Paul Zoubek’s handwriting, these actual edits.

MR. WEBER: So April 9th you’re under the impression that Hogan and Kenna were at a future point in time going to be prosecuted on a falsification issue, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, that’s what I would have written at this point.

MR. WEBER: And Mr. Zoubek, on April 9th, changes it to say that they have been prosecuted, but that wasn’t, in fact, the case on April 9th, was it?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, no, if they--

ASSISTANT ATTORNEY GENERAL STONE: No, it wasn't.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: If they were indicted on the 19th--

MR. WEBER: Did Mr. Zoubek explain to you how he could have possibly looked into the future and known that they had already been prosecuted by the time this report was going to be released?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No.

MR. WEBER: Is that curious at all to you when you got his edits back?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It wasn't at the time. I mean, looking at it now, I can see the -- like with the grammar issue. But at the time, I didn't think of it.

MR. WEBER: This whole paragraph is ultimately not included in the final version of the interim report, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe that's so. There's references to falsification being a very important issue, but I don't believe that this verbiage stayed in the final.

MR. WEBER: Incidentally, on the falsification issue, though there is a discussion of an investigation into allegations of falsification in the final version of the interim report, none of the data contained in the interim report are a result of the investigation conducted into falsification, isn't that true?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I have since heard testimony to that effect. I don't know that for a fact personally.

MR. WEBER: Well, the falsification investigation is what's known as the Troop D audit, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I now know that. I had never heard that phrase before.

MR. WEBER: Okay. Maybe I should ask Ms. Stone this question, because you were involved in the Troop D audit, correct?

ASSISTANT ATTORNEY GENERAL STONE: Peripherally, yes.

MR. WEBER: Peripherally. And the Troop D audit was an investigation into falsification or alleged falsification by several troopers patrolling the Turnpike, correct?

ASSISTANT ATTORNEY GENERAL STONE: As I understood it, it was a look at discrepancies that occurred in reporting by troopers. There were three levels to it, each level narrowing down the number of troopers that it was focused on.

MR. WEBER: It was an investigation into discrepancies, but it was not an investigation into stops or consent searches, correct, as far as the statistical presentation of the percentage of minorities that were stopped or the percentage of minorities that were -- that consented to searches?

ASSISTANT ATTORNEY GENERAL STONE: My understanding was, they were looking specifically at discrepancies to try and determine whether, in fact, other falsifications had occurred.

MR. WEBER: That data, though, was not complete as of the time of the drafting of the interim report. That investigation had not been completed as of the time that the interim report was drafted, correct?

ASSISTANT ATTORNEY GENERAL STONE: I really don't know.

MR. WEBER: Mr. Susswein, is there any data in this interim report that you could point to that is a result of the investigation you conducted in connection with the Troop D audit?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No. I don't think so, no.

MR. WEBER: Let's take a look at the next page in this packet. This is still the April 9th draft, Page 2774. Under the paragraph delineated *B*, stop arrests and search data, it states, "We have reviewed information concerning a total of 9970 stops conducted at various times between 1995 and 1996 for the following State Police stations: Cranbury, Moorestown, Belmar, Netcong, Perryville, and Washington." If you scan down the rest of this page, there's further mention of statistics for Belmar and Netcong.

And the last paragraph, it states, "Information concerning the Washington and Perryville stations is not included in the above table, because the disturbingly high percentage of stops, almost three out of every four -- 73.2 percent -- contain no racial information or information that could not be read by our analysis." Ultimately, this information was not included in the final report, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, that's true.

MR. WEBER: Because ultimately, the final -- and when I say final report, I mean the final version of the interim report -- only addressed Cranbury

and Moorestown, did not address Belmar and Netcong, Perryville and Washington, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's correct.

MR. WEBER: So, and I think we talked about this in the deposition, really a more accurate title for the interim report would be interim report of the Cranbury -- the State Police Review Team regarding allegations of racial profiling by the Cranbury and Moorestown stations, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That would be longer and more precise.

MR. WEBER: You took, or someone took, the information pertaining to Belmar, Netcong, Perryville, and Washington out of the final version of the report so as to not open discovery in other suits that were currently pending by having findings for all of the troops, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe. That's my belief of why that was done. Paul wrote here on his draft, "Define the scope of the report," and a decision was made to limit it, first of all, to the Turnpike, and then specifically, to the two stations at the southern end.

I don't know whether Paul explained the reason or whether I generated it myself, but just as you described, I was thinking in terms of anytime we were going beyond the southern end of the Turnpike, we were creating a potential that the information would be providing a colorable basis for discovery.

MR. WEBER: And just so we're clear here, and I want to sort of break it down to its base, the concern was that the report could be used as an

admission against the State in other litigations that may have dealt with stations other than Moorestown and Cranbury, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah, and you see that throughout the drafts, a recurring theme of, “we acknowledge that this report was making statements that would be deemed to be, and had been deemed to be, admissions in court.”

MR. WEBER: But you wanted the State to be able to take the position in other cases that didn’t deal with Cranbury or Moorestown stations that, “Hey look, judge, you can’t use this report in connection with this case, because this case does not deal with either Cranbury or Moorestown,” and the interim report was specifically tailored to address racial profiling at the Cranbury and Moorestown stations, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That’s right, and specifically racial profiling dealing with drug interdiction, which we thought was one of the underlying -- underlying causes of the problem.

But the answer is, yes, that was my thinking, that it would be better to limit the scope of the report to where we thought the drug interdiction problem was.

MR. WEBER: Let me turn your attention to the next draft in this document. It’s the April 13th draft. It starts at 2882, but I specifically want to address your attention to Page 2941, second full paragraph, the April 13th draft. This--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Wait a minute, I’m sorry, 2941?

MR. WEBER: 2941.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: And which draft is this?

MR. WEBER: This is the April 13th, 1999 draft.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Okay, yes, sir.

MR. WEBER: I will represent to you that this paragraph did not make it into the final version of the interim report.

“Even more troubling, we have also learned of instances where neither the Division of Criminal Justice nor the appropriate county prosecutor were advised when an internal investigation revealed that a trooper had falsified material information in a report. This is a *serious*,” and serious is in italics and underlined, “problem, one that not only directly affects the integrity of the organization, but also implicates the ethical and discovery obligations of prosecutors. The failure to turn over discoverable material in the course of litigation has the very real capacity to lead to unjust results, and at the very least, seriously compromises the State’s litigation position.”

This again alludes to the *Soto* case, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: You know, I don’t -- I don’t know that for a fact.

MR. WEBER: Well, are you aware of there being any other failure to turn over discoverable material in the course of another litigation that dealt with racial profiling?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, but I think that sentence followed the earlier one, that this was a general problem, based on a memo that Deb had written called problems, or something to that effect. It may deal with the *Soto* case.

ASSISTANT ATTORNEY GENERAL STONE: It also may have dealt with the Trooper Burke case. Burke was a witness in a number of fairly high-profile drug cases up in Bergen County at the same time he was under Internal Affairs investigation for shaking down motorists.

MR. WEBER: Well, were you aware in the *Burke* case of there being a failure to turn over discoverable materials by the State?

ASSISTANT ATTORNEY GENERAL STONE: There was-- We found out that there was information that we turned over -- that we subsequently turned over to the Bergen County Prosecutor's Office, yes.

MR. WEBER: Did the Bergen County Prosecutor's Office then, in turn, turn that information over to the defense?

ASSISTANT ATTORNEY GENERAL STONE: I think ultimately all the cases involving Trooper Burke were dismissed.

MR. WEBER: Aside from the *Burke* case and from the *Soto* case, were you referring to any other litigation in which the State failed to comply with its discovery obligations that addressed the issue of racial profiling?

ASSISTANT ATTORNEY GENERAL STONE: Well, I didn't write this, so I wasn't referring to anything. But that's the only thing I could think it referred to were those two cases. Those are the only ones I'm aware of.

MR. WEBER: And Mr. Susswein, I'm sorry, the ball goes back to you. What were you referring to when you wrote these sentences here?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, the "we've learned of instances where neither the Division of Criminal Justice nor the appropriate county prosecutors were advised when an internal investigation," that comes out of Deb's memo on problems, and I don't believe it was limited

to *Soto*. There were other preexisting problems with who investigates the State Police, who investigates shooting incidents, who--

I think you have that document somewhere in the record, so that's the provenance of the sentence.

MR. WEBER: Aside from Ms. Stone's memo that you're referring to, what other information did you have to base your statement that, "the failure to turn over discoverable material in the course of litigation has a very real capacity to lead to unjust results, and at the very least, seriously compromises the State's litigation position."

Aside from that being a generally understood proposition, what other information did you rely upon to come to the conclusion that the State had failed to turn over information pursuant to its continuing discovery obligations?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I -- I would like to go back to the first part of your question; that is a generally true statement. I don't know that I was making a specific reference to any other case that might have been described in the memos that I had.

MR. WEBER: I mean, that's a pretty strong statement to make, talking about the State potentially not complying with its discovery obligations. That didn't just come out of thin air. There had to be some information that you had that would lead you to make that kind of a statement.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe it was Deb's memo.

MR. WEBER: And aside from the *Burke* case and the *Soto* case, is there any other information that you became aware of in the course of your

investigation that led you to be concerned that the State had failed to comply with its discovery obligations?

ASSISTANT ATTORNEY GENERAL STONE: Not in the course of my investigation, no.

MR. WEBER: Let's take a look at the next draft. And again, this paragraph did not make it into the final report. Do you know who took it out?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: When you say the final?

MR. WEBER: The final interim report. The final version of the interim report.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: At Paul's direction-- I took everything that came out, but that was at Paul's direction, because we were told that this was going to be the subject of the "final" report of the review team that was going to deal with the whole Internal Affairs process.

MR. WEBER: Was there a concern discussed between you and Mr. Zoubek or between you and anyone else that including language to this effect in the interim report could substantially compromise the State's litigation posture in other cases going forward, as if it would be deemed an admission?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Not so much that it was an admission, there's always-- There was, throughout this, a general concern about toning down language that might be deemed to be prejudicial out-of-court statements with respect to especially criminal -- criminal-- I'm not saying that this particular language would fall into that category, but there was

a general attempt not to be making out-of-court prejudicial statements about specific criminal cases.

MR. WEBER: You don't think that the language, "the failure to turn over discoverable material in the course of litigation has a very real capacity to lead to unjust results, and at the very least, seriously compromise the State's litigation position," is a serious statement that would warrant concern in other litigations and possibly be deemed as an admission?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: He didn't-- No, I'm not denying that, that's a very serious statement. I'm simply saying that this was a subject that was going to be -- I was told, going to be discussed in a separate report that focused on the entire Internal Affairs process.

MR. WEBER: Was it discussed in the final report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't know that this language was used. I know there was--

MR. WEBER: Was this concept discussed in the final report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I had read the final report, but I don't have-- I wasn't involved in writing it, so I don't have the familiarity with it that I'm sure you have.

MR. WEBER: Why weren't you involved in writing the final report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't know. I was working on other -- other projects.

MR. WEBER: Anyone explain to you, you know, "Hey, Ron, don't take it personally, but we're doing this final report, and we're going to have

somebody else draft it," considering you were the principal drafts person of the interim report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No. I knew there were other people working on it.

MR. WEBER: Take a look at the April 16th version. It starts at 3149, and I want to direct your attention to Page 3185.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: Second paragraph -- we can put it up on the monitor -- "In particular, as outlined more fully below in Section B, we received compilations of statistics from the Moorestown and Cranbury stations that tracked the racial breakdown of stops. This information apparently has been collected at the request of the Superintendent on a weekly basis since April of 1997."

These two sentences are not contained in the final report. Why was it taken out?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't know. Paul directed they be taken out, I'm not sure why.

MR. WEBER: How did you learn that information had apparently been collected at the request of the Superintendent on a weekly basis since April 1997 that dealt with compilations of statistics tracking the racial breakdown of stops?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I seem to recall that as coming out of one of the Gilbert memos. It was a statement to that effect.

MR. WEBER: That was part of the Gilbert binder?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: And Mr. Zoubek took that information out?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I'm sorry, sir?

MR. WEBER: Mr. Zoubek took that information out.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, directed that I edit that out, yes.

MR. WEBER: It is an accurate statement, though, that information apparently had been collected at the request of the Superintendent on a weekly basis since April of 1997, otherwise you wouldn't have put that in the draft, right?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Certainly, right.

MR. WEBER: Let's take a look now, two pages further in the packet, 3189. It's still part of the April 16th draft. We put up on the screen the second paragraph.

"The second source of information regarding motor vehicle stops by personnel assigned to the Moorestown and Cranbury stations comes from data compiled by the Division of State Police in response to a request made by the United States Department of Justice. Table 2 includes information about stops made by Moorestown and Cranbury on 15 dates randomly selected by the Department of Justice for each of two years, 1995 and 1996." And then it starts a table, which continues onto the next page, "Motor Vehicle Stops by Cranbury and Moorestown Stations, 30 Sample Days, 1995 and 1996." The footnote indicates that there is a total of 15 days in each year.

None of this made it into the final report, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's correct.

MR. WEBER: Why?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It was deleted, and I believe the-- I think that I'm the one who ordered this deleted, although there is some indications that that may not be true, because this was repetitive with the subsequent table. And the 15 randomly selected days from 1995, and then from 1996, pales in comparison to the larger database that appeared in Table 3.

MR. WEBER: Well, let's take a look at Page 27 of the interim report, the paragraph down on the bottom.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: You're talking about the April 20th version, the final version?

MR. WEBER: Right.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

MR. WEBER: "In addition, general information about searches conducted on 30 randomly selected sample dates were analyzed. According to this internal State Police audit, a total of 38 searches were conducted by the Cranbury and Moorestown stations during these 30 days -- 15 in 1995 and 15 in 1996. Of these, 31, or 81.6 percent, involved minority persons. More specifically, 20, or 52.6 percent of these 38 searches, involved black persons."

Why wasn't that repetitive?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, I think that's consistent with my recollection. There was no need for a separate table for this.

MR. WEBER: No, but let's-- This deals with stops here, okay? And you've broken it out to give at least some type of information about stops of the 30 randomly selected dates, but there's no mention of the Department of Justice. There's no request -- there's no mention of the request made by the Department of Justice.

Why was that information taken out?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't know. I would have been directed to take that out, but I don't know why.

MR. WEBER: Did you ask Mr. Zoubek why he was taking out references to the Department of Justice?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, I didn't.

MR. WEBER: I will represent to you, and I'm happy to show you if you'd like, but the 30 randomly selected days -- the 30 sample days that are referenced here in this April 16th draft -- were agreed to back in April of 1997. Do you have any reason to disagree with that?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, I'll accept that.

MR. WEBER: Why is it then, that the fact that the Attorney General's Office had negotiated with the Department of Justice and agreed back in April of 1997 to 30 sample days, you didn't find that that information was relevant to put, at least for historical purposes or historical context, into the interim report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I'm sorry, do I find it was?

MR. WEBER: It was inartfully asked. Let me restate the question, and we'll break it down. April of 1997, the Attorney General's Office -- Mr. Rover, representing the Attorney General's Office, and the Department of Justice agree to 30 sample days, 15 in '95 and 15 in '96, agreed?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I've since learned that, yes.

MR. WEBER: You've got your draft now of April 16th, 1999, which makes reference to the Department of Justice investigation, agreed?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: And this paragraph talks about the 15 random dates for 1995 and 1996, agreed?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: And it presents the statistical information that deals with those 30 random dates, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah, absolutely.

MR. WEBER: And that's taken out of the final version of the interim report, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

MR. WEBER: Didn't you feel that, at least for historical context, it was important that the final version of the interim report tell everyone that going back, at least to April of 1997, the Attorney General's Office was negotiating with the Department of Justice over information that would be produced to the Department of Justice that concerned racial profiling?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: To be honest with you, that whole line of thinking hadn't crossed my mind. My only interest was the most effective, efficient way to present the data, not necessarily to present the entire history. I wasn't even aware of all of those -- the 15 sample days, how they were selected, and I know now that that was as a result of negotiations. I don't believe I knew that then.

MR. WEBER: Okay.

You would agree with me that if this information was included in the final version of the interim report, it would have demonstrated to anyone who read that report that the Department of Justice investigation had been under way for at least two years before the interim report was put together, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Judging from today, certainly that would show that.

MR. WEBER: And incidently, you may have testified about this before, but you didn't know about the Department of Justice investigation until you began your work on the interim report in 1999, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Correct.

MR. WEBER: Same for you, Ms. Stone?

ASSISTANT ATTORNEY GENERAL STONE: Yes. When George Rover brought over the boxes, we both found out about it.

MR. WEBER: When you say, "we both found out about it," you mean you and Mr. Susswein?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I think we were there at the same time.

MR. WEBER: Why don't we put in front of the witness a copy of G-25?

And I'll identify it for the record that this is a July 10, 1997 memo from Sergeant Gilbert to Colonel Williams, and it delineates the 30 sample dates in 1995 and 1996 that were requested by the Department of Justice, and it breaks out consent search information, probable cause search information -- on the second page--

There's another report, same date, July 10, '97, which also delineates stop information and consent information for Cranbury and Moorestown. This information was included in the boxes that Mr. Rover turned over to Mr. Zoubek, is that correct, Ms. Stone?

ASSISTANT ATTORNEY GENERAL STONE: I believe that's correct, yes.

MR. WEBER: And this is the information, I take it, Mr. Susswein, that was used to compile the chart in the April 16th version that was ultimately taken out of the final version of the interim report, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe so. I'll accept that, yes.

MR. WEBER: You would agree that the information contained in both of these July 10, 1997 memos is pretty explosive information? On the consent searches, it demonstrates 82 percent of the consent searches were of minorities for the 30 randomly selected dates, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: If by explosive you mean either shocking or res ipsa, yes, I do.

MR. WEBER: Yes.

Well, I like my word better, but we can use your word.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Okay.

MR. WEBER: Second page of the document, it shows stops for Cranbury and Moorestown, 25-24 percent Black, 10 percent-7 percent Hispanics. If you add that together, you're looking at 35 percent stops in the Cranbury Station of minorities; 31 percent for 5/97 of minorities.

I mean, again, these are the high statistics that are sort of in line with the Hinkle and Sachetti reports that you received in the summer of '98, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yeah, they're very similar.

MR. WEBER: And again, no indication in the final report of this information, that this information was collected as far back as July of 1997, and that it was shared with the Attorney General's Office, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I think that's a fair statement, yes.

MR. WEBER: Let me bring you, now, to a final topic. There has been much discussion among all the witnesses about the issue of consent searches, and I'd like to know if--

We'll start with you, Ms. Stone. What opinion or what recommendation you would have for the Committee regarding the utility of consent searches and whether the State Police should continue with the practice

of consent searches, whether it should be modified, discontinued, what's your opinion on that?

ASSISTANT ATTORNEY GENERAL STONE: Well, consent searches serve a very important law enforcement function. They're used primarily in detective work -- child abuse cases, homicides, they're routinely used, consent searches. Motor vehicle stops, their utility is less, but that doesn't mean they should be abolished altogether.

I would prefer that the Committee consider that the Appellate Division has done a very good job of limiting what State Police can and cannot do in terms of consent searches. In June of last year, Judge Pressler's panel came out with *State versus Carty*, and in that case, they restricted consent searches to those where there is reasonable suspicion to believe that there is criminal activity.

They've also, in recent years, restricted the questioning that can occur of passengers in a motor vehicle. A lot of what has gone on-- A lot of the intrusions are made, because the police officers go further than simply checking and making sure you have all of your credentials: license, registration, insurance. Even if you have all of those credentials, they'll start asking a bunch of other questions, and there has been case law within the last couple of years that restricts their ability to do that. It has to be relevant to the credentials and to the motor vehicle stop.

MR. WEBER: Now, *State versus Carty* came out in what year?

ASSISTANT ATTORNEY GENERAL STONE: It was 2000, June of 2000.

MR. WEBER: You -- you weren't physically present, but you know that the Attorney General testified -- Attorney General Farmer testified last week and briefed the Committee on new statistics and new information on stops and consent searches, correct?

ASSISTANT ATTORNEY GENERAL STONE: Yes, I heard about it.

MR. WEBER: And the numbers were -- were not good, correct?

ASSISTANT ATTORNEY GENERAL STONE: That's an understatement.

MR. WEBER: Do you feel that *State v. Carty* -- that the message and the precedent established in *State v. Carty* has had any effect on how troopers go about conducting consent searches?

ASSISTANT ATTORNEY GENERAL STONE: I think it's-- Well, it takes a while for these cases to go through the system. I mean, we're now starting to lose a number of cases at the trial level because of that, and that goes back to the trooper, but you have to couple anything like that with some sort of internal discipline. Unless it impacts on you directly, you may not know or care that your case gets thrown out two years later.

MR. WEBER: Do you have any recommendations as to what form of internal discipline could be put in place to deal with the consent to search issue?

ASSISTANT ATTORNEY GENERAL STONE: I believe that's more properly Marty Cronin's province than mine. I litigate criminal cases.

MR. WEBER: Well, based upon your many years of prosecutorial experience and your involvement with the State Police Review Team, your

involvement in the *Soto* appeal, and your overall understanding of the issues that the Committee is dealing with, do you have any recommendations, aside from bringing to the Committee's attention the *State v. Carty* case, as to what this Committee can do to address the issue of consent searches?

ASSISTANT ATTORNEY GENERAL STONE: Well, I think that State Police has to do something to address the issue in terms of, if they have troopers who are failing to follow SOPs -- not just the SOP on consent searches, but there's a problem with following *State versus Johnson* and a number of other cases -- that the first time that happens the trooper needs to be sent for, for lack of a better word, reeducation, although that makes it sound like a Communist labor camp, to make sure that they understand the precepts of the Constitution and the law that they're supposed to be enforcing.

And then I would think some sort of escalating scale of discipline if they continue to violate. But to me, that's an early warning sign that you've got a problem with that trooper.

MR. WEBER: Mr. Chairman, I have no further questions.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Thank you.

I'm interested, very much, in the topics you've just been talking about. We're charged, as you well know, with trying to lessen the likelihood of racial profiling by the State Police, and certainly, this area of consent searches, stops, and training -- all of which you've been talking about, both of you -- are topics, I think, that -- and areas -- where we may come up with some specific recommendations or legislation. So let me just go over some of the issues you've just been talking about.

First of all, Ms. Stone, would you say *Carty* now is the most recent expression of the law dealing with consent searches as established in New Jersey?

ASSISTANT ATTORNEY GENERAL STONE: Yeah, I think that's accurate. It's pending in the Supreme Court.

SENATOR MARTIN: And we've talked about this before, but it strikes me that, at least the law as I knew it constitutionally -- or know it now, maybe I'll be reeducated-- There's really three different levels of dealing with the consent searches. There's the probable cause standard, the so-called *Terry* standard, or reasonable or articulable suspicion, and then what might otherwise be called a pure consent search, where there is not necessarily a suspicion, but rather just an intuitive feeling among a trooper to ask somebody to agree to a search.

What you seem to be saying with *Carty* is that the court has blended a pure consent into the *Terry* standard in saying that you can't or shouldn't have -- that the trooper shouldn't ask for a search unless he or she has an articulable suspicion. Is that what *Carty* says?

ASSISTANT ATTORNEY GENERAL STONE: Well, I don't know that it blends the pure consent, which was the law in New Jersey -- you just asked randomly-- What I think *Carty* was designed to do is make them focus on specific articulable facts that they have to be able to recite to show why they reasonably believed that criminal activity was afoot.

SENATOR MARTIN: So, if I understand you correctly, then what *Carty* would say is we're actually eliminating a pure consent search, and although we may still call it a consent search, what we're really doing is

upgrading it to the so-called *Terry* standard from *Terry v. Ohio*, that case of many years ago from the U.S. Supreme Court. Is that what we're saying?

ASSISTANT ATTORNEY GENERAL STONE: Limited to roadside stops, yes.

SENATOR MARTIN: Okay.

And the identification of those-- So, when you say you still think that consent searches are appropriate, you don't mean just a sort of instinctive consent search, but rather a search that would meet the -- some type of a *Terry*, articulable suspicion standard. Is that what you--

ASSISTANT ATTORNEY GENERAL STONE: If we're talking strictly about roadside stops, Senator Martin, then I agree.

SENATOR MARTIN: That's what I'm talking about.

ASSISTANT ATTORNEY GENERAL STONE: Okay.

SENATOR MARTIN: Strictly roadside.

ASSISTANT ATTORNEY GENERAL STONE: Strictly roadside stops, not talking about any type of investigative consent search.

SENATOR MARTIN: Domestic violence--

ASSISTANT ATTORNEY GENERAL STONE: Right.

SENATOR MARTIN: I'm not concerned about that. I'm talking about racial profiling is known by -- on the Turnpike and other involvement with the State Police on State highways.

There's been various-- In trying to understand what articulable suspicion should be, I've heard various types of indicators: a single key, Burger King wrappers, loose clothing in the back seat--

ASSISTANT ATTORNEY GENERAL STONE: By that standard, my car would be searched on a regular basis. (laughter)

SENATOR MARTIN: Yeah, I switched to McDonald's, but I'm not sure that's going to help me. (laughter)

It would be hard to sort of just come out with some kind of, I guess, a menu -- using McDonald language -- or just some kind of list of benchmarks, I guess, that would reach that level?

ASSISTANT ATTORNEY GENERAL STONE: Yeah, I think it's hard to do that, because each case turns on its own facts. I think the one thing you can make absolutely clear is that race and ethnicity is never an appropriate factor to consider.

SENATOR MARTIN: And part of it would have to be combined with the more recent -- I say recent, it's been in place for some time -- but it would have to be expressed by some written statement by the trooper at the time of the stop--

ASSISTANT ATTORNEY GENERAL STONE: Yes.

SENATOR MARTIN: --so that it wouldn't only be articulable in one's mind, but would actually be captured as a way of later being able to justify, if necessary, the reason why one went forward with the search.

ASSISTANT ATTORNEY GENERAL STONE: Absolutely.

SENATOR MARTIN: Is there some feeling there should be-- I guess it's hard to specify, but should there be more than one indicator or just-- Is there any way we can narrow this into something more than an articulable suspicion?

ASSISTANT ATTORNEY GENERAL STONE: By its terms, as you know -- you're a law professor -- a probable cause and reasonable suspicion are -- they're very flexible terms, and they vary from situation to situation. It's easier to say what you can't consider than to actually give a laundry list of what you can consider.

SENATOR MARTIN: But I assume in training, you could probably come up with examples--

ASSISTANT ATTORNEY GENERAL STONE: Hypotheticals.

SENATOR MARTIN: --based upon case law, and maybe past practices could indicate some areas where your experience would indicate it was acceptable, because of certain things that happened, as opposed to some cases where it may appear to be rather flimsy.

ASSISTANT ATTORNEY GENERAL STONE: Right.

SENATOR MARTIN: With an imprimatur, always, that race could not be one of the benchmarks used in the process.

ASSISTANT ATTORNEY GENERAL STONE: Correct.

SENATOR MARTIN: We've talked about going further than that, as you know. And I think that was what Scott was sort of suggesting, the possibility of eliminating consent searches in their entirety. But your position is, if we had a strong understanding of something less than probable cause, but rising to at least the so-called *Terry* standard, that would probably serve both law enforcement and diminish the possibility of racial profiling?

ASSISTANT ATTORNEY GENERAL STONE: Yes, I believe it would. I think we should at least try that. *Carty's* only been in place, as I said,

since June of last year. And I think we need to see how it works. I'd hate to throw the baby out with the bathwater.

SENATOR MARTIN: All right. We'll -- I want to get to training in a second, but I'd like to go over to the area of stops. And assuming that some of that data which we really don't have from the State Police's perspective about the percentage of various minorities as a fraction of the total population driving on the Turnpike, but assuming that the stops have tilted toward minorities, I'm curious about ways in which we could try to prevent selective enforcement of minorities, recognizing that there's a high number of persons who are committing so-called minor offenses on the Turnpike. The most, I think, obvious one is speeding, where the Turnpike, I believe at various spots, is either 55 or 65.

ASSISTANT ATTORNEY GENERAL STONE: Right.

SENATOR MARTIN: And I think there was testimony here that well over 90 percent of motorists -- this may not be so, but at least it was -- this was a shocking figure to me, that well over 90 percent, at least by one study, seemed to suggest that people were committing violations. Which then meant that troopers had virtually unlimited discretion to select among those violators whom they wanted to choose.

With that as a backdrop, could either one of you recommend some ways in which, without engaging in racial profiling, the troopers may be able to select some -- or follow some kind of standard? What I'm getting at is, we have a *Terry* standard perhaps that could be a model for consent searches. Is there some kind of standard?

My sense is maybe there should be a priority of motor vehicle violations that troopers, having discretion, would have to abide by. This may be difficult to monitor, but nevertheless it seems to me like the persons who travel the fastest, who weave the greatest, who tailgate the closest -- like the gentleman who was following me on Route 287 this morning-- (laughter) That those are the types of persons that should be selected, as opposed to just some random, or lining up parallel and looking, you know, and the possibility of highlighting somebody's racial complexion.

ASSISTANT ATTORNEY GENERAL STONE: I think that's probably true. Any violation which endangers public welfare, health, and safety should obviously be a priority, more than, you know, a chip in the windshield or a crack in the taillight or something hanging from your mirror. Those are obviously -- I would characterize probably uncharitably -- as a cheap pinch, as opposed to a speeding stop or weaving or tailgating, which actually endanger people's lives.

SENATOR MARTIN: So, perhaps in reviewing stops on the Turnpike, if a trooper gave summonses to somebody who was doing 68 or 69 or 71, they might, by some kind of review, one might ask, "Why select those persons, as opposed to a potential set of persons who had committed more egregious wrongdoing on the Turnpike -- or motor vehicle violations."

ASSISTANT ATTORNEY GENERAL STONE: Well, you have to be careful doing that, because if you raise the bar like that, people are going to think it's okay to speed, up to 71.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: As opposed to what they do now.

ASSISTANT ATTORNEY GENERAL STONE: As opposed to what they do now.

SENATOR MARTIN: All right. So we have the corresponding problem, if we only select the highest, everybody thinks that they can skirt underneath that. Do you have any suggestions how we could accomplish the goal of -- perhaps, would it be based on a percentage, or some kind of, you know, "Among those that you stop, if three out of four were high-level, high-speed violators," some kind of-- Isn't that what the IRS supposedly does. They sort of go after the real glaring ones, but also will select at least some kind of random sample of the others?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I'm not sure you can ever reduce this to a mathematical formula, unless you go with photo radar, and you take away discretion altogether, which some places have done. Actually, it's illegal in New Jersey to do that.

I think there's several different ways to approach that. One of them, just from a legal perspective, is that it might be time for us to recognize that a motor vehicle stop is a motor vehicle stop. We, to this day, continue to think of this as a *Terry* stop, as a criminal suspicion stop. And *Terry vs. Ohio* was a pedestrian stop involving some people who were casing a burglary. And most motor vehicle stops on the highway are, in fact, motor vehicle stops, as opposed to be on the lookout for a criminal suspect.

And I think that what we need is -- again, I kept referring to it in the depositions as positive training. "This is what we expect you to do." Because, frankly, troopers are very frustrated now, and they have a right to be, that we don't tell them exactly what we want them to do and how to do it. And then,

if they deviate from that, it's sort of like the Navy regs, they better have, as Captain Queeg said, five darn good reasons for doing that.

But we have a responsibility to tell them what the priorities are and how to do this. And one of the things in my earlier memos, those March memos, is I keep referring back to the *Batson vs. Kentucky*. This idea, as trial lawyers, you know that when you go and you pick a jury, if there's an issue that arises later over whether or not race impermissibly affected your discretion in knocking off a juror peremptorily, you have to keep notes explaining why, because you'll never remember two years from now why you knocked Juror No. 21 out of the box.

And I think that we need a system, Senator, similar to what you've described, which may be not a mathematical formula on who to pick, but some way of recording why you picked that person from the universe of persons who could be lawfully stopped for speeding or any other violation.

SENATOR MARTIN: Could there not be, perhaps, two parallel procedures or practices -- practices, I guess is the better word -- one which would be to select those who commit the most egregious offenses, but also have some type of random sampling of others, where you -- but it's systematic, so that it's, let's say one out of every -- from a certain point you pick the fifth car that's speeding, when you're in that mode to select somebody for that type of violation. So what I'm trying to come up with is some more enlightened ways of preventing selective enforcement, but could be justified as capturing both the universe of those who violate at low levels, and also those who violate at high levels, without engaging in picking the car that has the -- something, some

bumper sticker that you don't like, or more offensively selecting a car because of its particular occupants.

Do you think some kind of practice like that could be put in place at some point, an alternation. I don't mean necessarily in the same -- I don't know how it could be structured, but just generally systematic random sampling, and also a priority list, based upon high offenses, as opposed to low offenses?

ASSISTANT ATTORNEY GENERAL STONE: You're really talking about doing something along the lines of the way we do roadblocks for DWI. You stop every third car.

SENATOR MARTIN: I think those would be relatively easy to train people on. I mean, you know, at a certain -- you're instructed to go out and pick somebody. If you see somebody going at a tremendously high rate of speed, that would become a high priority. Absent that, you could be in a mode, if you're on a speed detail, of selecting every 10th vehicle from when you set up your particular location -- something like that.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: To some extent, there is some evidence that justifies an approach -- I'm not saying a mathematical formula, necessarily, or a grid. But we know from experience -- and this came out during the *Soto* litigation -- it was a very interesting hypothesis that was pursued by the Public Defender's Office, that where there is more discretion, there seems to be, as a general proposition, more opportunity to misuse or abuse the discretion. And so, if someone were to focus on the more serious violations -- apparently we saw that between the Tactical Pac Unit and some other radar unit, which was focused -- they were being measured, their performance was being measured on how many serious stops they had made in

terms of speeding or weaving. And the problem seemed to be -- at least the Public Defender presented pretty compelling statistics -- the problem seemed to be abated.

So I think there is something to be done. I don't know that we'll ever get to the point that it will be a formula. I think the key is to lay out exactly-- You see, right now we know what the illegitimate criteria are. And we can train on them. And that's all well and good, for us as lawyers to go to cops and give them the negative, "You can't consider this." And that has to be done.

What we have not done to this point is, again, what I call the positive training. "These are the criteria that we want you to consider. This is what we want you to do." It's not enough to just tell them what's prohibited. You have to do that, obviously, but I think we can be doing more.

And I think that's true not just of the stop, but going back to what I was saying before, I think, as a general proposition, if a motorist is stopped for a motor vehicle violation, they should not be treated under suspicion of criminal activity. An officer -- and this is true of local police as well as State Police -- should not transform a stop into a criminal suspicion stop without some factual basis for doing that.

ASSISTANT ATTORNEY GENERAL STONE: Right.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: So it's one thing, you're always going to ask for credentials. That's the normal thing that would happen during a stop. But in terms of posing the additional questions that might provide inconsistencies that could lead to a criminal suspicion, well, you don't have one yet. And the question is: Why would you subject a citizen whose only offense is a motor vehicle violation to the potential humiliation of

accusatory questions, or even asking the same questions of a passenger, when there's no reason to believe that the driver has lied to the officer?

And I think that's what we have to do, is to distinguish between a criminal suspicion stop, where people are treated under the suspicion of criminal activity, and the much more common *Delaware vs. Prouse* stop, a motor vehicle stop, where a person is treated under suspicion of being a motor vehicle violator, possibly a drunk driver, you know, if that's the scenario.

And I think we have to make that analytical distinction legally, and then train on that as a practical matter, for both State and local police officers.

SENATOR MARTIN: Is one of the indicators -- you have to educate me on this. Is one of the permissible indicators the type of vehicle? I mean, we've been told that certain types of vehicles are more likely to have drugs than others.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That is one of the most frustrating things. When you look at the stop-- I toned it down a little bit in the interim report, and I shouldn't use words like crap under oath, but some of the intelligence information, the 10 most commonly used vehicles by drug couriers, which coincidentally happens to be the 10 most commonly used vehicles by nondrug couriers.

ASSISTANT ATTORNEY GENERAL STONE: By anyone.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: And it's not useful in filtering out possible suspects from nonsuspects. And frankly, in the prestop decisions, there really are no useful -- other than going to commercial rigs, where we do have intelligence that indicates the bulk of the drugs are coming in through commercial vehicles, rather than passenger vehicles.

There may have been a time, 15 years ago, and that time has passed, when there was some meaningful correlation between rental vehicles. The problem is, Florida has long since done away with the Z plates.

ASSISTANT ATTORNEY GENERAL STONE: Right.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It is not knowable in the beginning, so if you can't know it, it's not useful, it's not relevant, it shouldn't be considered.

SENATOR MARTIN: Florida did away with those plates because those people became victims--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Targets.

SENATOR MARTIN: --oftentimes when they had rental cars.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's right. That's right, it had nothing to do with the drug issue.

But the bottom line is, you can't know that at this point, so it's not a useful fact to have in one's arsenal.

SENATOR MARTIN: There was some indication here that among drug dealers riding the Turnpike, it was sort of the sophisticated -- and there was some reference that they could engage in a cat and mouse game. They'd be more apt to be able to conceal their drugs, as opposed to, I guess, those who are not as experienced and as professional in this type of activity. And if that's the case, we've also heard, anecdotally, the fact that if you're going to be doing this for a living, and there's high stakes, that you could have severe prison sentences, it strikes me that those who do would actually go against the common grain of thought of what type of vehicles and what sort of indicators are out there. So I mean, you could hypothesize -- I won't use myself -- and just say, a person,

if they were professional in this, they might well get a van that looks like -- with a "Baby on Board" sticker, and that kind of thing, to actually look as sort of nonsuspicious as possible. Is that what you're finding?

ASSISTANT ATTORNEY GENERAL STONE: That's exactly right. That's why a lot of those criteria are, as Ron so succinctly put it, crap.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Sophisticated drug dealers, and again, there is a huge self-selection bias on the people that we catch. I know this Committee has raised very serious concerns, as have the courts, skepticism of why would a person give consent when there are drugs, and it is not an intelligent thing to do that. The sophisticated drug dealers do not get stopped, because they don't engage in conduct that makes them vulnerable to being stopped. They certainly are not going to give consent to search or have the drugs scattered on their trunk, after they've given -- along the trunk, after they've given a consent.

So there's no question that-- And it plays into the whole issue of the utility of the consent doctrine. It's not just how often we catch people. I mean, there's a lot been said about the find rate on consent searches. You would expect the find rate to be low, precisely because people know -- who know that there would be drugs in the car would not give consent. So there's an inherent self-selection bias towards people who think you would not find drugs, presumably because there aren't any drugs there.

That's one of the reasons the find rate would always be low. But if that's the technique we're going to use, the people we catch are frankly -- if the standard is knowing, intelligent, and voluntary, it may be voluntary, and hopefully it's knowing under *Johnson*, but it sure as heck is not going to have

been intelligent to give consent. We're not catching the sophisticated drug dealers who ride along the Turnpike. They're invulnerable to that technique.

SENATOR MARTIN: And the ones that you do catch, they tend to be unsophisticated? I assume they would also be not the drug kingpins, to use a phrase that's been out there--

ASSISTANT ATTORNEY GENERAL STONE: No, they're mules.

SENATOR MARTIN: --for some time.

ASSISTANT ATTORNEY GENERAL STONE: They're mules.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Or not even, or just very small time--

ASSISTANT ATTORNEY GENERAL STONE: Or it's personal use.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I mean, a mule could be a professional and could be quite sophisticated, especially if someone is holding his family hostage.

SENATOR MARTIN: Just so I'm clear, a mule is somebody who--

ASSISTANT ATTORNEY GENERAL STONE: Who carries drugs from one location to another. And they may or may not know that there are drugs in there. They probably suspect there are drugs in there, and they're paid an amount to drive from X location to Y location.

SENATOR MARTIN: Would that include -- this raises another issue. I know there's college kids and other unemployed people. They have -- that's one of the jobs you can sort of do as a temporary job, to take a vehicle from X to Y. Is that -- are those people who would also be engaged in that?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: With all due respect to some of the myths that are out there, which is one of the things we have to rebut, drug couriering is an equal opportunity employer, and there are people of all races, genders, and education levels who can make some pretty darn good money doing that.

SENATOR MARTIN: That being the case, what you've just described is-- The other thing, among those that you do find, if they're not drug kingpins, is the amount of drugs that are caught when you do -- when you are successful with this -- when I say you, I don't mean -- the experience with the State Police. Is it that they, when they do make an arrest, based upon a seizure of CDS, that it's a low amount typically, or does it vary a great deal?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: If I can respond to that, because you used the word successful, which begs one of the most important questions the Committee has to think about in terms of the appropriate role of highway drug interdiction. Whatever utility there is of highway interdiction, and I'm not now drawing, in terms of its costs and its benefits -- it has very, very little to do with restricting the supply of drugs.

Anyone -- and I still, to this day, get irked when someone says, "Arrests are down, and therefore, the drugs are flowing into our cities," as if they ever were not flowing, or as if the arrests we were making -- the good arrests, the lawful arrests-- The only utility of drug interdiction -- and this is laid out in our 1988 action plan, but I think a lot of people sort of glossed over it, was to make cases going up the chain -- taking these mules and going up through their superiors -- that would allow for more significant prosecution of more culpable offenders, that might even rise to the level of Federal prosecution criteria. And

there have been cases referred to the United States Attorney's Office. There is some value in that, although that has to be weighed, obviously, against all of the costs and risks that we've seen manifest throughout the racial profiling controversy.

SENATOR MARTIN: So just on a couple of points related then. So what you're saying is that some of these people who get stopped and arrested could eventually lead you up the drug chain toward--

ASSISTANT ATTORNEY GENERAL STONE: Potentially, theoretically, and it's a very small percentage that work out that way.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It's a very small percentage. Although most of the major cases the State Police have done can trace their origins to that, in fact it usually doesn't go in that direction.

But one of the things we said in the interim report, when we dropped a footnote, and it irked some people, is that on the consent find rates, we record a find as a hit -- as an arrest resulting from the search. That doesn't mean it was a first-degree crime. There was no attempt, in that report, to do a qualitative assessment of the value of the cases. And I think that that has to be built in in this very sophisticated question of the cost and the benefits of the consent doctrine, of highway interdiction, and its appropriate role in a larger drug enforcement strategy.

SENATOR MARTIN: I assume among the more sophisticated, they probably don't have an easily identifiable chain. They don't reveal the higher level people, and then have as much disconnect as possible for those who are merely doing the transporting.

ASSISTANT ATTORNEY GENERAL STONE: It depends on how the organization is set up. But, yes, in a lot of instances, the mule may only know one person, the person who paid them. He may not even know their last name.

SENATOR MARTIN: Mr. Susswein, have you seen the movie, *Traffic*?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I have held off seeing that until after -- it's still playing.

SENATOR GORMLEY: After you testified?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: What's that?

SENATOR GORMLEY: After you testified? (laughter)

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I didn't write the script for *Traffic*, by the way, so that's one thing I can't be blamed for.

SENATOR MARTIN: Well, I saw it. I thought one of its points being made was that the ability to stop, interdiction, was by making stops along such things as the New Jersey Turnpike -- although that was not a part of the film -- was not really going to curb the market in drugs. And they seemed to be alluding to, unless you really are able to convince people not to use drugs, that that would be at least the much more effective way of eventually dealing with the problem.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Even aside from the larger issue of demand versus supply, and my heart is into the demand side even more than the supply side, but even from the law enforcement perspective, even in the 1988 action plan, we recognized that you could not curtail the flow of drugs. The line I have used in interdiction training to cops,

who are risking their lives doing drug interdiction was, “We don’t seem to be able to keep drugs from flowing into prisons. How can we expect to keep drugs from flowing across interstate highways?” There’s a role to be played, and that role has to be balanced against the risks and the potentials for abuse.

But the notion that the so-called war on drugs is dependent upon highway interdiction is actually -- has always been incorrect, and you can trace that right to the original action plan where it says that.

SENATOR MARTIN: Just so I understand you correctly, this effort that was made in the late 1980s to stop the flow of drugs on Route 95, including the Turnpike, even if we were successful in making some kind of dent in stopping the flow of drugs on that roadway, we would not, at least from what you’ve been able to discern, make some kind of market impact about the amount of drugs coming into our cities in the New York metropolitan area?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: We know that, because after some of our really major seizures, I would then ask county commanders in the affected areas, “Was there even a temporary, local disruption of supply or increase in prices?” And that’s especially true when you consider that New York City is an enormous place, and that’s where the drugs are heading to. That’s an enormous filter that diffuses the effectiveness of any particular seizure.

SENATOR MARTIN: Did the State Police ever do any kind of review of the possibility of alternate routes? You’ve got Route 95 -- when I say Route 95, you’ve got a Route 95 that runs along through Philadelphia up the Pa. side. You’ve got 295 that runs along the Delaware, that parallels the

Turnpike. It would be very easy to circumvent the southern portion of the Turnpike by taking alternate routes that get to New York almost as fast.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: And I-78. Yeah, I don't-- But I don't think anyone ever, I hope -- I'd like to think that no one in the law enforcement community, anyone who was thinking about what they were doing, thought that they were really restricting the supply. They may have been developing a cadre of informants that were useful from a prosecution perspective, and that was the utility, was to make cases, not in any significant way to curtail the actual supply.

That has to be done where dealers are vulnerable, which is where they're exposed to the public, where they can't hide, because they have to be able to reach their customers and be exposed to their customers. That's where they're vulnerable.

SENATOR MARTIN: So, if we think about recommendations involving stops and consent searches after motor vehicle stops, the utility I guess we should look to, as far as drug interdiction, may be just the informants, but not really having some impact on the market. But that's still enough, Ms. Stone, from what your perspective is to continue to have consent searches?

ASSISTANT ATTORNEY GENERAL STONE: In terms of not throwing them out entirely, yes. I think that there's some sufficient benefit, as long as you control the discretion.

SENATOR MARTIN: Let me ask you a few questions about training. I guess that would be directed to you, Mr. Susswein. You indicated you don't usually -- your training has not been directed to State Troopers. It's directed to whom?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Most of the training that I had done, over the last 15 years, even if it was for courses that were administered by the State Police, would be courses that they run for local -- experienced local police officers, although some troopers would be involved.

I have recently just done eight weeks of training on the entire trooper coach problem. That was just for troopers.

So I've had different audiences over different periods of time. These issues are the same for local police -- the constitutional issues are the same.

SENATOR MARTIN: Now they get some training on these issues at the academy, I assume.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, the recruits, they get the basic course, which includes search and seizure training, and now an emphasis on Paragraph 26 of the consent decree.

SENATOR MARTIN: Is there some kind of annual or more frequent updates that are given to the road troopers?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The State Police do an annual in-service, to their credit. Many departments in this State do not, and they're not required to by statute or administered regulation. They do an annual in-service, but the topics would vary, year to year.

We're working, right now, on the coming-- By in-service, that means every trooper -- every one -- would get the same course of instruction. We're not just talking about a seminar made available to 50 or 100 people once or twice a year.

SENATOR MARTIN: Do the road troopers get any special instruction?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: In terms of special, I don't know what additional. I know there are people who know that. I certainly may not be the one to answer that.

SENATOR MARTIN: Who conducts that type of training?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The State Police Training Bureau would conduct that.

SENATOR MARTIN: So some sergeant or lieutenant, typically, would provide these lectures, or would they call in attorneys?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: You mean the instructors?

SENATOR MARTIN: Yes. Who does the instruction?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: My understanding is that they are usually troopers. Sometimes they will be troopers who have become attorneys.

I know for the course -- it's a decision I have to make in the next few days -- to do the in-service training, to give you an idea of the magnitude, if I were to do the in-service training on search and seizure issues and these issues for the State Police coming up next month, that would -- if I did half of them, that would be four hours a day, 44 days in a row, to give you an idea of how enormous that organization is and how many people have to go through the in-service training.

So they have a number of instructors. (tape machine malfunction, a few words of testimony lost)

SENATOR MARTIN: How much training, in terms of search and seizure type issues, dealing with roadside stops, do troopers get on an annual basis.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: You're talking about the basic recruits, or the in-service?

SENATOR MARTIN: The in-service.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, one of the things that was in my deposition, unless the in-service talks about search and seizure issues, the answer could be none, which is the problem -- that's why I was attending the Littles committee, which was during the last recession, there were no new classes coming in. And there were road troopers out on the road for a long time, many years, because there were no classes behind them to backfill them, so they could move on to other assignments.

And at the same time, and as Deb knows well, the courts were very active in the early '90s on search and seizure issues, so a lot of new rules were coming out to troopers who may have had excellent basic training when they were in the academy. But now they're out on the road. They were not getting in-service instruction. And that is a recipe for disaster when you don't keep up with the rules as they evolve, and they were evolving rapidly.

SENATOR MARTIN: Well, we talked about *State versus Carty* -- the year 2000 -- last June, I think you said.

ASSISTANT ATTORNEY GENERAL STONE: Right.

SENATOR MARTIN: So that's less than a year old -- has enormous implications, as I understand it, because it identifies the procedures

that could be used involving a consent search. Has that been taught in any systematic way to road troopers?

ASSISTANT ATTORNEY GENERAL STONE: I don't know. I know that we-- I have, for years, provided case updates to the State Police. I do them for all my deputies and for the 21 county prosecutors. We do a synopsis monthly of all the recent cases, including search and seizure cases. And those are routinely sent over to the colonel, whoever the colonel was, and his legal assistant there, who was normally a trooper who happened to be a lawyer.

SENATOR MARTIN: My minimal experience as a prosecutor in two municipalities -- it's typically, when you have these shifts, which I know the State Police engage in, that they have some kind of little meeting. It's also been shown on television shows, so--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Roll call.

ASSISTANT ATTORNEY GENERAL STONE: Roll call.

SENATOR MARTIN: We'll call it a roll call. Is that the likely time that information about some kind of legal case with implications would be provided to these troopers?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It could be. And there have been some roll call training tapes that have been done. With respect to this recent decision, one of the things we just completed doing was a weeklong, very sophisticated, and monitored by the Federal monitors course of instruction for the trooper coaches. And that is a terribly important population, because these are the experienced road troopers who are going to get the new recruits. They become what are called probationary troopers. And this is literally their first exposure to the real world. This is where they're going to learn

the ropes. And so one of the parts of the ongoing reforms is to make certain that those trooper coaches are not only carefully selected to be the right people to be coaches, but that they know these rules cold, not just the legal rules, but the documentation rules and all the rules designed to make certain that the rules are followed, as it were. And that has been ongoing. We just finished eight weeks of that course -- eight weeks in a row of trooper coach training.

SENATOR MARTIN: My sense from previous witnesses in some of the depositions is that the Attorney General's Office has been reluctant to get involved directly with training out of a long-standing respect that the State Police are best able to teach their own. Is that a fair representation of it?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It's a darn polite way of saying it.

ASSISTANT ATTORNEY GENERAL STONE: I don't know that that's entirely accurate. We were never asked to get involved--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Until--

ASSISTANT ATTORNEY GENERAL STONE: --until recently.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: --recently. I mean, now, it's a whole new relationship.

SENATOR MARTIN: And the State Police had no, then, ongoing practice of consulting attorneys, either through your office or through outside consultants or even their own attorneys. And I do know that there are some, as you suggested, because I've taught a couple who have graduated from law school and still remain in the State Police. But as far as you know, there's no ongoing effort to utilize their expertise in law.

ASSISTANT ATTORNEY GENERAL STONE: Not on-- On road troopers, are you talking about -- because individual units -- some of them do work with Division of Criminal Justice Attorneys, and they would have attorneys available for legal advice.

SENATOR MARTIN: When you say individual units, is there discretion among the units to conduct their training their way, or is it really highly paramilitary and everything comes down from the top, and they're all taught -- like McDonald's was originally taught to grill all their burgers the same way with -- the McDonald's school of--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The training is a little bit different than-- Legal advice is important -- to have someone to be available to answer questions as they arise.

In terms of the training, that usually would be coordinated through their training bureau. And frankly, in terms of attorney general solicitation or involvement -- the hit or miss-- I was asked on many, many, many occasions to serve as a guest lecturer. And that was an honor and a privilege and something I very much wanted to do. That's not the same as reviewing their curricula. That was something that was not invited.

SENATOR MARTIN: Is a Troop D curricula the same as the other troops, or-- Is it uniform?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I do believe that there is some in-service difference, obviously, based on duty assignment. I don't know exactly whether it's by Troop D, as opposed to other troops assigned to road patrol. Obviously, when you move on to specialized units--

I know, for example, when the State Police were invited into

Camden, we put on special training, because we had road troopers that were now going to be dealing with pedestrian encounters. And it's a different world with different laws that they never were responsible for knowing before, or at least it wasn't nearly as important to their central mission. So there is some flexibility based on their assignment.

SENATOR MARTIN: And currently, from what you know of the way procedures are done to the State Police, there could be some marked difference in emphasis based upon the commander of the various troops, as far as whether the degree of importance and the degree of emphasis they place on this type of training.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Or on the instructor. I know during all those years, when I was training, in terms of *State versus Kuhn*-- I do not know. And obviously I was only training a fraction of the State Police membership. I don't know. I wish someone-- I wish I had explored that. But I don't know what other people were training.

What we learned was that people did not understand that rule, and who believed that race could play a part, at least after the stop, if there were other factors, which we disagree with as a matter of State constitutional law. But again, there wasn't the kind of uniformity and the training instructors, as evidenced by the fact that people, to this day, or at least until recently, would get different answers as to what they thought the law was.

SENATOR MARTIN: In many educational institutions, they have review of instruction, such as my classes. There's no monitoring on a regular basis by the Attorney General of the instruction by State Police of these various courses that deal with legal issues.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: There is today. I mean, this is all part of the reforms -- part of Marty Cronin's Office of State Police Affairs.

SENATOR MARTIN: So every instructor does get monitored on some kind of basis?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah, I want to be clear because I'm not sure exactly what is done, so what that means, in terms of what they're monitored-- I know that there are procedures in place and that they are a far cry better and more intensive than the -- whatever procedures they just did before. I'm not saying that there's a monitor in every classroom at every class session. I don't think that's--

SENATOR MARTIN: Just a couple more questions.

Usually, people learn better when there's some kind of an assessment that's done which has some type of -- I won't call it high stakes, but at least some kind of stakes attached to it. As far as you know, these instructional courses -- there's no test at the end of them?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: There is now.

SENATOR MARTIN: There is now.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: There is now. There is a test, and there are pass and fail rates. And that is a serious-- It's all part of the consent decree and part of the reforms that had been initiated. But for trooper coach training and for the in-service they're talking about now, there is a test.

SENATOR MARTIN: What happens if you fail a class -- course?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: You know, I'm not sure. It's not a good thing. I'm not sure exactly what the remedial steps are.

SENATOR MARTIN: I assume that part of it would be, you would have to repeat the course, at least at some point, to try to see if you would be able to learn the material.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, at a minimum. Yes.

SENATOR MARTIN: Just one other thing for Ms. Stone. You referred to, I think -- to the fact that there weren't-- Let me put it this way: In order to change practice, typically, unless you get into the area where there are disincentives for troopers, oftentimes they don't have that much of an incentive to follow proper practices. I think you were sort of suggesting that. The idea that there -- that even though there may be a case out there, some may continue to ignore or not observe it because there's no direct effect upon their livelihood, as far as promotions, their ongoing sort of efforts, and there's no real connection, necessarily, between what the court finds and how that impacts a trooper's regular work schedule. Is that--

ASSISTANT ATTORNEY GENERAL STONE: I like to think that's a very small number of them, but yes.

SENATOR MARTIN: In order to make it more relevant, it would probably be best to have some type of informational connection that would at least go to their supervisor if not their personnel record. I mean, there's some kind of assessment.

What I'm getting at-- The administrative law text that I had years ago suggested that it's-- When we first came up with Miranda, one of the

approaches that we could have taken alternatively was instead of throwing out the case, or the baby with the bathwater, as you suggested before, one of the more effective ways of actually changing performance is to have some kind of negative consequence to those who are engaging in unconstitutional search and seizure activity.

It's not-- Maybe we shouldn't necessarily deal with the first problem-- I'm not suggesting here that we should allow evidence from illegal searches to be used, but the idea of punishing those, in some way, who conduct unconstitutional activity is short of a 1983 action -- a civil rights violation. There could be some kind of actions taken. Has there been any thought in the AG's Office to try to make that sort of connect?

ASSISTANT ATTORNEY GENERAL STONE: I don't know. I do know that with the police-- I mean, you have to be careful. Anyone can make a mistake on a search and seizure issue, because the law is very fluid, and it changes. I think I'm more concerned with those who engage in a pattern of unconstitutional searches.

SENATOR MARTIN: Is there any data-- And I agree with you. Is there any data kept on the number of cases in which a trooper loses a case because of certain types of actions?

ASSISTANT ATTORNEY GENERAL STONE: I believe that data is starting to be kept now as part of the consent decree.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That's all part of the management awareness program.

SENATOR MARTIN: I mean, I saw it with local police. Some local police officers were much better than others. Some could lose cases at a relatively high percentage, and it didn't seem to bother them.

ASSISTANT ATTORNEY GENERAL STONE: Right.

SENATOR MARTIN: And the message wasn't always conveyed from the municipal court to the practice of the officer. With the State Police, I think they're-- It's a more serious-- Well, I don't need to make that comment. But I would think that the concern would be similar in the sense that if there are certain officers, based upon a pattern of continuing instances, where their cases were dismissed or not guilty pleas were successful because of evidence that was tainted, that we should keep that kind of data available. And if not -- either to educate them or perhaps use it as some kind of means of punishing them, at least in terms of their ability to get promotions and pay increases and things like that.

Is that your feeling, as well?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Next, we'll go to questions by Senator Girgenti. Following his questions, we'll take a break, and then we'll return to questions from Senator Robertson.

SENATOR GIRGENTI: The light's not going on. (referring to PA microphone)

SENATOR GORMLEY: The light's not going on. I'll turn my light off.

Turn your lights off.

SENATOR GIRGENTI: Thank you, Mr. Chairman.

Good afternoon.

ASSISTANT ATTORNEY GENERAL STONE: Hi.

SENATOR GIRGENTI: Hopefully, it's not going to be evening soon. (laughter)

ASSISTANT ATTORNEY GENERAL STONE: Gosh, I hope not.

SENATOR GIRGENTI: Let me just start with Mr. Susswein. I just have a few questions for each of you, and I'll start with you.

It's evident from the testimony you gave in your deposition, when I read over it, that you are a proponent of the use of drug courier profiles in drug interdiction.

And following up on Senator Martin's questions, what are the characteristics that may be used in a race-neutral courier profile today?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Sir, is that to me?

SENATOR GIRGENTI: Yes, please.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Actually, what I wrote in 1988, which I still believe is true, is that race-neutral drug courier profiles are not unlawful, and the case law has set that. Some of them tend not to be particularly useful, as it turns out, but they're not unlawful.

I have no problem with taking control of the issue. What I was concerned about then and now is that if we don't instruct law enforcement officers, trooper or any other police officer on the methods of operations of criminals, if we don't provide the instructions, if we don't compile that information, we leave them on their own -- and they will do that on their own.

And that creates a far greater potential for relying on hunches, inarticulable suspicions, or things that the Supreme Court of New Jersey -- Supreme Court of the *State versus Demeter* would have referred to as an unregularized profile.

So what I think we ought to be to doing is training officers positively on how to do it rather than leaving it to their own devices to figure out how to do it.

SENATOR GIRGENTI: In 9/16/88 -- 1988, you testified-- It says: "As an extreme and prudent necessary use available law enforcement resource, I believe that the development, updating, refinement, implementation of courier profiles and training programs is an essential component of any cost-effective patrol and interdiction initiative on our State roadways and especially the Turnpike." Do you still believe that today?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, in the sense that if there's going to be any effectiveness or efficiency in drug interdiction-- And again, that was clearly referring -- to put that in context -- to race-neutral.

SENATOR GIRGENTI: Right.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I mean, I actually went into gory detail explaining how race can -- cannot be involved, that certainly we should be figuring out what the methods of operation are and to the extent that we can figure out what the indicators are. We should be telling police what they are rather than not telling them and having them make it up as they go along.

SENATOR GIRGENTI: All right. Is it your feeling that the use of these profiles, without probable cause to stop or search a motorist, is constitutional?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, the use-- As a matter of constitutional law, a race-neutral profile neither adds to nor detracts from the equation. In terms of the stop, you need -- observe motor vehicle violation and reasonable articulable suspicion of criminal activity. The profile characteristics, by themselves, would not provide that. That doesn't mean that they're irrelevant, it simply means that they're not going to provide, by themselves, reasonable articulable suspicion.

SENATOR GIRGENTI: Again, reading your deposition, in your capacity as a lecturer, you had lectured for a number of years at the academy. Would you characterize the overall understanding of the State Police -- troops regarding the role of race in stop, search and seizure -- was it good, acceptable, poor when you had-- Did you delve into this area in your training with these policemen?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, I know what I trained. I also know, from having worked on the interim report-- I think the answer to the question is, the overriding lack of -- or the overriding understanding was not adequate by any means. Obviously, many, many troopers -- I'm not sure who trained them or didn't train them-- It's pretty obvious that many troopers believed, and maybe following Federal law this may even be true -- under Federal law -- but that race can play a role. I know what I trained. But I have to point out, most of my audiences were not troopers, and

I probably have only actually trained a tiny fraction of State Police troopers over the last 15 years.

SENATOR GIRGENTI: Okay. When you were part of the Littles committee, post-*Soto*, you had suggested further training, as was mentioned here before, in terms of police-- But you went on to say that that was never fully implemented. Is that accurate?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, the specific training that was discussed, and is discussed in Tommy Gilbert's memo, which was an in-service -- it's a term of art in the State Police which means every trooper's going to get it within a four- or five-week period as opposed to a seminar available to 50 or 100 guys once a year -- that did not occur. I don't know why it didn't occur, but it didn't.

SENATOR GIRGENTI: And you were still visiting the academy periodically -- or Sea Girt, wherever you were doing this. Did you never question that or wonder why wasn't this being implemented because of the discussions you had, or what was your-- Did you take this to anybody, or--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, other than my role changed to being on the search and seizure review committee, which I did a lot of work for them, but to be honest with you, had they done the in-service, they might not have-- I probably would not have been the one to do it. I don't think any one person can do all the training for 2000 people, because they like to do it in 30 or 40 guys at a time. So we're talking about 40 or 50 sessions. But I did not ask, if that's the question.

SENATOR GIRGENTI: Okay. And in your courses, now, I know you say you didn't deal strictly with State Police, you just had some-- Had you

encountered troopers who had raised questions or concerns regarding the use of race or who seemed confused that your lecture seemed contrary to some other training they received?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No. And all the questions I would get back, and sometimes all the arguments during class or breaks or something, I would say that they either didn't agree with or didn't like. At no time, and maybe because of the way I do it, someone wasn't going to come up to me and challenge me when I say it's illegal to use race or ethnicity. And maybe, if someone thought otherwise, they didn't think it was a good idea to go up to an Assistant Attorney General and challenge them on that, but--

I learned what their opinions were as an organization, basically, during the interim report, and from Deb's interviews, would show that most people thought you could consider race and ethnicity.

SENATOR GIRGENTI: You seem to indicate that you felt there needed more to be done, but there was a resistance in terms of the State Police implementing some kind of program like this. Is that accurate -- what you were saying, that you would have liked to have done more, in terms of education, but there was a built-in resistance there? Is that an accurate reading of it?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Are you talking about during the Littles committee period?

SENATOR GIRGENTI: Yeah, and beyond, when you were at the academy.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, actually, there was never-- I mean, they never would do as much training as I would have, because I'd probably pull them off the road and train them all day.

That's just my bias as a trainer. But there was really no resistance. The Littles committee was extremely cordial.

SENATOR GIRGENTI: No, I mean in the academy with the-- You were giving courses at the time. You felt there was -- there could be a lack there. But you said that there didn't seem to be a desire to have more in terms of your specific training.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, in terms of the in-service.

SENATOR GIRGENTI: Right.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I mean, I always got along really well with the guys who ran the courses they invited me to, so there was never any friction between us.

SENATOR GIRGENTI: Okay.

Ms. Stone, when you were made aware of the statistics collected by Gilbert and Rover, you actively called for dropping the *Soto* appeal.

ASSISTANT ATTORNEY GENERAL STONE: Yes, that's correct.

SENATOR GIRGENTI: And that was a-- Had you been opposed to it prior to that, or that was a -- really a clincher in your mind in terms of--

ASSISTANT ATTORNEY GENERAL STONE: I had been opposed to taking the *Soto* appeal in the first place.

SENATOR GIRGENTI: And you had communicated that to Paul Zoubek at the time, when you had this data.

ASSISTANT ATTORNEY GENERAL STONE: Yes.

SENATOR GIRGENTI: And when did you first bring your concerns to Zoubek?

ASSISTANT ATTORNEY GENERAL STONE: It's when I received that document in the Hogan and Kenna investigation. It would have been late May, early June, around there.

SENATOR GIRGENTI: And what was his reaction?

ASSISTANT ATTORNEY GENERAL STONE: He was shocked at the statistics, and he understood my concerns, and he wanted to look further into the matter.

SENATOR GIRGENTI: Did he explain why he would continue to pursue the appeal?

ASSISTANT ATTORNEY GENERAL STONE: I think what he wanted to do was see what else was out there in terms of what we were finding in Hogan and Kenna and just deal with it all at once rather than in bits and pieces.

SENATOR GIRGENTI: And what was your position with respect to the State's decision to file a motion to delay the *Soto* appeal in early '99?

ASSISTANT ATTORNEY GENERAL STONE: My position at that point was, we had to either drop the appeal or turn over everything we had in discovery. And I said I was not sending my deputy into court at this point. I would go myself and take the stuff in. He wanted to, I guess, deal with the Attorney General and straighten out some other things, and so he asked if we could put off the oral argument on it.

SENATOR GIRGENTI: And it was his decision, really, to seek the delay in the--

ASSISTANT ATTORNEY GENERAL STONE: I don't know whether it was his or the Attorney General's. I don't know. It was not mine.

SENATOR GIRGENTI: And did you discuss that decision with Zoubek at the time?

ASSISTANT ATTORNEY GENERAL STONE: I thought the Appellate Division would not be terribly receptive to that since the appeal had been pending since '97.

SENATOR GIRGENTI: And what was his rationale for seeking the delay?

ASSISTANT ATTORNEY GENERAL STONE: He did not give me a detailed rationale.

SENATOR GIRGENTI: When you were involved in the meetings -- in discussions within the Office of the Attorney General regarding whether or not to seek the indictment of Hogan-Kenna for records falsification prior to the completion of the shooting investigation-- Were you involved in those meetings?

ASSISTANT ATTORNEY GENERAL STONE: There was one meeting, yes.

SENATOR GIRGENTI: And is that the meeting where the falsification indictment was discussed?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

SENATOR GIRGENTI: And what were your concerns about seeking that?

ASSISTANT ATTORNEY GENERAL STONE: My concerns were twofold. While it's not uncommon for multiple indictments against particular defendants to be released simultaneously within a week of each other, within a month of each other -- not at all unusual, in a high-profile case like this, I

wanted to minimize the risks of litigation and also minimize any taint of the now sitting grand jury on the shooting indictment.

SENATOR GIRGENTI: And to whom did you articulate your concerns at that point?

ASSISTANT ATTORNEY GENERAL STONE: To the Attorney General.

SENATOR GIRGENTI: And what was his reaction?

ASSISTANT ATTORNEY GENERAL STONE: He was concerned about public reaction to the fact that the investigation into the shooting indictment was taking so long.

SENATOR GIRGENTI: And so it's safe to say the decision to seek the falsification indictment was made over your objections.

ASSISTANT ATTORNEY GENERAL STONE: The timing was over my objection.

SENATOR GIRGENTI: Right, because -- and also the fact that it could taint the shooting indictment.

ASSISTANT ATTORNEY GENERAL STONE: Release-- I thought release of it publicly, prior to completion of the shooting case, had that potential for spilling over and causing us to lose grand jurors, which would set us back even further.

SENATOR GIRGENTI: Right. And I think you answered already, but were you given any rationale for why that decision was made -- just the anniversary? Was there anything else that was told to you -- why they would -- why that would be proceeded with immediately?

ASSISTANT ATTORNEY GENERAL STONE: It was concern about public perception that we were not taking the case seriously, not moving the case forward. That was all I was told.

SENATOR GIRGENTI: Okay. Thank you very much.

ASSISTANT ATTORNEY GENERAL STONE: You're welcome.

SENATOR GORMLEY: We're going to take a break now.

Just for those who might not have been informed, the reason for Senator Lynch's absence is that he underwent surgery on Thursday, and he is recuperating. And obviously, we all wish him well.

So we will come back in a half-hour.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: Senator Robertson.

SENATOR ROBERTSON: Thank you, Mr. Chairman.

Good afternoon.

ASSISTANT ATTORNEY GENERAL STONE: Good afternoon.

SENATOR ROBERTSON: Mr. Susswein--

SENATOR GORMLEY: Excuse me. Is a radio on somewhere?

SENATOR ROBERTSON: I think it's the headset.

SENATOR GORMLEY: It's the headset. Here he comes, okay. Thank you. Okay. The cameras are rolling now, you're okay. (laughter) Go ahead, I'm sorry. Sorry, I was wrong, the camera wasn't on.

Senator Robertson.

SENATOR ROBERTSON: Again, thank you.

Mr. Susswein, first, you had mentioned during the course of your testimony that you serve on the Search and Seizure Review Board. Could you tell us a little bit about what that is?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah. I'm not sure how it originated. I think that may go back a long time. But back in 1996, as a result of the Val Littles committee, they revived the Search and Seizure Review Board. And basically, their job is to come out with a publication, a legal publication, that goes out to all State Police members explaining recent developments in the case law -- mostly search and seizure, but also Miranda and 14th Amendment issues.

SENATOR ROBERTSON: And who is on that -- what is it composed of generically?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I believe-- It's a fairly formal board. It's made up of the Commandant of the Academy, the captain in charge of the academy is always the chairman, and that's changed over time. And it's made up of people of various ranks that either have the legal background or there's always a couple of young troopers, road troopers. And again, the job is to figure out what the case law is, but figure out a way to explain it in a cogent and consistent way in this publication that goes out to all members and to others, too. I think they send copies to the local police chiefs and other law enforcement agencies.

SENATOR ROBERTSON: Also, during your testimony, you had made -- you were asked several questions about different changes that you had made to the drafts, or at least what your initial drafting had been with the

interim report. And one of the questions I had been meaning to ask any number of witnesses but had to do with document production for the purposes of these proceedings, did you have a file or something that you -- were you asked to produce documents for purposes of this proceeding?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. In all of the drafts that come from my file, I think I was probably the only one to have kept.

SENATOR ROBERTSON: So you have like a-- Describe your file.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Large box.

SENATOR ROBERTSON: So you have a box of documents on racial--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I had. I turned it over to the Division of Law.

SENATOR ROBERTSON: That had everything to do with racial profiling, generally?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. Actually, that was for, I think, discovery in a civil matter. It was long before this committee was constituted.

SENATOR ROBERTSON: Were you asked for any documents particularly for this Committee, as well, or had you already given everything?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, but I had already turned over everything that I had. I've already turned--

SENATOR ROBERTSON: But that was subsequent to the interim report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Oh, yes. This was the *Baez* case, I believe, which was last November or--

SENATOR ROBERTSON: I always wondered about that. I have a question about some of the statistics pointed not only to a large number of minority drivers or the large percentage of minority drivers who were asked to consent to searches, but also out-of-state drivers, which is not an unusual thing. And I made a comment once to Senator Matheussen that if we were a congressional committee, we would also be focusing on the extent to which out-of-state drivers were being targeted or not targeted. Is there any case law in which, at the Federal level, for instance, concern has been expressed about the targeting of out-of-state drivers by the State Police forces?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: We did a lot of research on that. Frankly, I was looking to find a case to prohibit that practice and there isn't. There's no question you cannot stop a vehicle based solely that it's out of state. That would violate *Delaware versus Prouse*. As you can see from some of my earlier memoranda, I would have liked to have seen that not be a factor that could be considered, but we were not able to find any case, either under equal protection principles or interstate travel principles, that dealt with that or that said that you couldn't do it. They all said or implied that you could do it if there was some other reason for the stop.

SENATOR ROBERTSON: And what is your opinion with, and I know this was the subject of some discussion, but your brief opinion about the -- whether or not consent searches should be abandoned as a technique?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I think you'd probably accept that I'm telling you the truth that if I were asked to write a

memo weighing the pluses, mine would be a 30-page memo. This is a very sophisticated issue. The bottom line is, I believe that State Troopers with appropriate SOPs, training, and review systems can and should be entrusted. I'm not saying that there haven't been abuses and I'm not saying that we've even identified all of the steps necessary -- the intermediate steps in terms of banning it. But I am concerned that if, during the course of a lawful encounter, a State Police member does develop a reasonable articulable suspicion of criminal activity, I personally do not like the idea of ordering them not to pursue that.

Having said that, I believe that there are some safeguards, including some beyond that we're doing at the moment. I mentioned a couple. I think the problem of dealing with stereotypes begins earlier in the stop. And I think that in terms of trying to identify the abuses and not to use -- not to throw out the baby with the bathwater, I think there are things that we can do even earlier in the stop to guide police discretion that would make it less likely that the authority to ask for a consent would be abused.

SENATOR ROBERTSON: Now, would one of the considerations in those 30 pages be the extent to which folks who are not transporting contraband are being subjected to a consent search regardless of their race?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, actually, I mean the find rate is clearly relevant. There's several numbers-- First of all, you have to keep-- The numbers are fairly small to start with. One of the key numbers in the interim report, I don't think it's changed dramatically, is less than one-half of 1 percent, or approximately, we want to have 1 percent of all stops lead to a consent search. So it is not-- And that cuts both ways in terms

of its costs and its benefits. The find rate is a matter of concern. But as I pointed out earlier, you have to have a reasonable benchmark for a find rate.

The concerns that have been expressed by a number of senators at these Committee hearings mirror those of judges and many of us in law enforcement, that why would a person, knowing that there are drugs in the vehicle that would be discovered, why would they give a voluntary consent? Now, the answer could be that it wasn't voluntary. The answer could be they just made a mistake, and sometimes criminals do that. But there is a strong inherent subselection bias that the people who are giving permission to search believe that the officer will not find something. Presumably, because they know that there's nothing there to find. And so you wouldn't expect a high find rate given the consent doctrine if we're doing it right, which means that people really are free to refuse, and that the refusal would be respected.

SENATOR ROBERTSON: Now, I believe the -- Attorney General Farmer came in the other day and indicated that there were 271 consent searches during the year 2000.

ASSISTANT ATTORNEY GENERAL STONE: I think that's overused.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: On Troop D.

SENATOR ROBERTSON: Oh, okay.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I think that was Troop D.

ASSISTANT ATTORNEY GENERAL STONE: Right. It's the Turnpike.

SENATOR ROBERTSON: Given the fact that we're dealing with a reasonably manageable number and certainly given the total number of stops, I have a question concerning our reporting under the Department of Justice consent order. Are you still involved in that?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes. It varies. Maybe not officially, but many of my assignments do carry me in and out of that issue.

SENATOR ROBERTSON: Okay. I noticed in the newspaper today there were reports that we were late in turning over data or updating them on reports, progress reports, during the year 2000. Do you have any idea why that was?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I wasn't even aware of that.

SENATOR ROBERTSON: Yeah. It was in today's paper. I was just curious if you knew.

Ms. Stone, you're familiar, are you not, with testimony that Mr. Fahy was being briefed periodically by Sergeant Gilbert about the nature of numbers that he was seeing -- that Sergeant Gilbert was seeing?

ASSISTANT ATTORNEY GENERAL STONE: At least Sergeant Gilbert testified to that. I believe that's correct.

SENATOR ROBERTSON: Well, I believe Mr. Fahy also indicated that at some point he knew that the numbers were similar to the numbers that were being seen in *Soto*. And at another juncture, there was some concern about the degree to which our numbers were similar to Maryland's numbers on consent searches and so forth. Did Mr. Fahy report to you during this period--

ASSISTANT ATTORNEY GENERAL STONE: No.

SENATOR ROBERTSON: --with respect to the *Soto* case?

ASSISTANT ATTORNEY GENERAL STONE: No. His involvement was that of simply to make his file available to the Appellate lawyer who was assigned to the case and answer any specific questions that that lawyer might have.

SENATOR ROBERTSON: Are you troubled by the fact that Mr. Fahy did not tell the Appellate Section about the existence of some numbers that he was hearing about that were being compiled by the State Police?

ASSISTANT ATTORNEY GENERAL STONE: My understanding was he didn't get specific numbers, that he heard some generalities regarding the numbers were the same or they're running about the same. I didn't know-- I don't know whether he realized the significance. I honestly don't know, but he did not give that information to us.

SENATOR ROBERTSON: If you had--

ASSISTANT ATTORNEY GENERAL STONE: Well--

SENATOR ROBERTSON: The instant that you heard that information, even in general terms, it became a concern to you, did it not?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, I saw the information. I actually saw it laid out in black and white. I saw that there had been studies done and numbers had been kept. Yes, it caused a concern when I saw it.

SENATOR ROBERTSON: Don't you think it's appropriate to inquire about the existence of specific numbers if you hear in general that there

are numbers that lead to the conclusion that they're similar to those in *Soto* or that there's a problem with Maryland, similar to Maryland?

ASSISTANT ATTORNEY GENERAL STONE: Yeah. I don't really know the circumstances of how Jack was involved, so it's difficult for me to say several years down the pike what would have been appropriate then.

SENATOR ROBERTSON: Mr. Susswein, you indicated earlier, I believe, that during the period of time that you were drafting the initial drafts of the interim report, at the same time there was going on a negotiation with the Department of Justice with respect to a consent order, is that correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I knew that there was something going on. I wasn't personally involved, but I was aware that there was an investigation. I think the public was aware, too, and I think it was in the newspaper as well.

SENATOR ROBERTSON: And ultimately, you got involved in some role with respect to the development of a consent order, is that correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

SENATOR ROBERTSON: And at what point did you get involved and what were you asked to do?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Once the interim report was completed, and it wasn't the next day, but it was within the time frame, maybe a week or two weeks, I became part of -- I don't know how to describe it -- an informal negotiating team with Al Ramey and Paul Zoubek. And actually we went down to Washington one time. The representatives from Justice came up to Trenton once or twice.

SENATOR ROBERTSON: Now, had Justice already issued its letter to the Attorney General at that point?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I really-- do you know when the-- I mean, I never really saw the letter, was that -- do you know the date?

SENATOR ROBERTSON: Well, we had our racial profiling hearings on April 26th, 1999. The letter from DOJ to the then Attorney General was also dated April 26th, '99, and was received at 20 minutes after 5:00 in the afternoon.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: My involvement would have begun around that time period, because April 20th was the interim report. I know that next week actually was related to a lot of Columbine, because one of my other concerns is school safety and violence issues, and it was a very -- it was a difficult week. So I don't know whether it was a week later or two weeks later that I got involved with the negotiations.

SENATOR ROBERTSON: Well, during the course of your deposition testimony, you had indicated that you knew that there were negotiations going on with the Justice Department "at that time," is the words that were used. And then when the time frame was talked about, it appeared to be March or April of that year, and you were being asked about one of the passages in your April 7th draft. I believe it was the same passage you were asked about today. You indicated that you were asked -- were you involved at this point with the consent decree negotiations, and you indicated, "Well, this, meaning writing the interim report, was my assignment. So this was a pretty

full-time thing, but I was certainly aware that there were negotiations going on at the Justice Department.”

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yeah. I think that’s fair. I know that Paul had discussions -- maybe negotiations is the right or wrong word, but I knew that there was some interaction with the Justice Department.

SENATOR ROBERTSON: Yeah. Because you were asked, you know, were those negotiations about the possibility of a consent decree. You indicated yes.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, I was aware-- And again, whether someone specifically told me or I simply inferred knowing that when you’re dealing with the Justice Department and they have an investigation that can lead in several directions, and I know what those directions are.

SENATOR ROBERTSON: Now, are you familiar with the Justice Department’s -- what the Justice Department’s discretion is with respect to bringing or not bringing civil suits? Are you familiar with that law, that statute at all?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Their practices and procedures?

SENATOR ROBERTSON: Yes.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I’m not-- Their pattern and practice--

ASSISTANT ATTORNEY GENERAL STONE: Pattern and practices.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, yeah, I'm fairly familiar with -- that's an analogue to 1983 actions that gives the Justice Department specific power to get equitable relief.

SENATOR ROBERTSON: And that would be done through a lawsuit?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

SENATOR ROBERTSON: At any time during their interplay with a given state, or any potential defendant for that matter, are they free to enter into a consent decree?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I remember, and this is now coming up a little later, that there were discussions on whether or not you had to have a lawsuit prior to the entry of a consent decree or exactly what is a consent decree. And I think the answer was, according to their standing operating procedures, is that the only way to get Federal district court jurisdiction was to have a lawsuit -- that you had to somehow get the matter to a judge so that the judge could, you know, would have jurisdiction to enforce a consent decree.

SENATOR ROBERTSON: Has there been a lawsuit filed to date?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: My understanding was that that was all done simultaneously. I might be wrong on this, but that there was an action filed and a proposed settlement through the consent decree subject to judicial approval.

SENATOR ROBERTSON: I see. So that there was a--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The court has to have--

SENATOR ROBERTSON: --file motion.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: --an action and controversy before it can sign off on a consent decree. That was my understanding.

SENATOR ROBERTSON: And Ms. Stone, do you have any knowledge about the existence or nonexistence of negotiations for a consent decree prior to the issuance of the interim report?

ASSISTANT ATTORNEY GENERAL STONE: I knew there were some negotiations going on, but I was not involved with them at all.

SENATOR ROBERTSON: And how did you know there was some negotiations involved?

ASSISTANT ATTORNEY GENERAL STONE: I think Paul mentioned it in passing -- Paul Zoubek.

SENATOR ROBERTSON: And this was prior to the issuance of the interim report?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: It was around that time. I can't put a time frame on it exactly.

SENATOR ROBERTSON: I have no further questions, Mr. Chairman.

SENATOR GORMLEY: Thank you.

Senator Furnari.

SENATOR FURNARI: Thank you.

Ms. Stone, you were at the meeting on March 10th with then Attorney General Verniero--

SENATOR GORMLEY: Is your light on? (referring to PA microphone) Just want to help.

SENATOR FURNARI: Thank you.

Did you hear what I said so far?

ASSISTANT ATTORNEY GENERAL STONE: Yes. You were talking about the March 10th meeting.

SENATOR FURNARI: You were at that meeting with General Verniero, Prosecutor Gerrow--

ASSISTANT ATTORNEY GENERAL STONE: Correct.

SENATOR FURNARI: --Mr. Zoubek.

ASSISTANT ATTORNEY GENERAL STONE: Uh-huh.

SENATOR FURNARI: And if I may, basically, the Attorney General decided that he wanted to empower a second grand jury to indict on the falsification indictment and leave the already existing grand jury that had previously been impaneled to sit there and consider in the future the shooting indictment, is that right?

ASSISTANT ATTORNEY GENERAL STONE: It's a little inaccurate. We had decided in January, at my urging, to use a second, a separate grand jury for whatever happened in terms of the falsifications. I didn't want the same grand jury considering both.

SENATOR FURNARI: Okay. So back in-- Now, the investigation was signed, sealed, and delivered complete back in December, is that right?

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

SENATOR FURNARI: Okay. So that indictment was ready to go--

ASSISTANT ATTORNEY GENERAL STONE: Well, the facts were ready to present it to a grand jury. You never count on an indictment.

SENATOR FURNARI: Right. But everything was ready, so that could have been moved as early as December, from your standpoint?

ASSISTANT ATTORNEY GENERAL STONE: Probably as early as the beginning of January, yes.

SENATOR FURNARI: Okay. But a decision was made by your office not to proceed with that indictment, but rather to proceed and complete the shooting investigation and present it?

ASSISTANT ATTORNEY GENERAL STONE: Yes. Initially, when we started doing the shooting investigation, this was an offshoot of it. I actually asked and received assistance from Bob Dunlop, who was then Lieutenant Colonel, to have an entirely different team of investigators to deal with that aspect of the case.

SENATOR FURNARI: And when did you do that?

ASSISTANT ATTORNEY GENERAL STONE: That would have been June of '98.

SENATOR FURNARI: So they began their investigation in June with regard to falsification?

ASSISTANT ATTORNEY GENERAL STONE: Yes. There was a total separate group, a group from Internal Affairs doing the IA investigation, and Major Crimes and my investigators handling the shooting case.

SENATOR FURNARI: Now, that investigation had only to do with Hogan and Kenna, is that correct?

ASSISTANT ATTORNEY GENERAL STONE: Hogan and Kenna, that's correct.

SENATOR FURNARI: Now, as a result of that investigation, decisions were made to do investigations of more troopers, is that correct?

ASSISTANT ATTORNEY GENERAL STONE: As a result of the investigation, I suggested that the State Police might want to know if there were more people out there doing this than just these two.

SENATOR FURNARI: And as a result, there were other investigations that took place. Were you familiar with those other investigations?

ASSISTANT ATTORNEY GENERAL STONE: There were audits done. I'm not sure that I would call any of them investigations until you get over to about the third stage of their auditing procedure. Because initially, they're looking for discrepancies, and then they narrow down the ones that have discrepancies.

SENATOR FURNARI: Well, the day after your -- or the day of the presentment of the indictment -- it would be then Attorney General Verniero announced to the public that there were 10 other officers who were under investigation for doing the same thing. Would that comport with what your recollection was?

ASSISTANT ATTORNEY GENERAL STONE: My recollection was, they had eight officers who had a number of discrepancies that warranted further investigation on their part. I think the 10 included Hogan and Kenna.

SENATOR FURNARI: You think they included--

ASSISTANT ATTORNEY GENERAL STONE: Hogan and Kenna in that 10. My understanding is there were 8. I was not aware of 10.

SENATOR FURNARI: Now, during this discussion with the Attorney General, he indicated, if I'm not mistaken, that his decision for asking whether you could move the other indictment first was based on the anniversary of the shooting was coming up and there was substantial focus, pressure, and criticism of the length of the time the shooting investigation was taking?

ASSISTANT ATTORNEY GENERAL STONE: That's what he said, yes.

SENATOR FURNARI: Now, when he said that, there were those of you in the room who said that wasn't a good idea to move that indictment up first by a separate grand jury.

ASSISTANT ATTORNEY GENERAL STONE: Yes.

SENATOR FURNARI: And among the things that I guess that you said is there's a likelihood that you would prejudice the grand jury that was hearing serious charges of a shooting.

ASSISTANT ATTORNEY GENERAL STONE: I was concerned that we would lose grand jurors due to the publicity and notoriety of the falsification case going first. The whole idea was to do the falsification case. Once the investigation was completed, the reason was -- we weren't moving it was I wanted it to go after the shooting case was decided one way or the other.

SENATOR FURNARI: One way or the other. So you were going to present it to one grand jury. If they returned an indictment, then you'd proceed--

ASSISTANT ATTORNEY GENERAL STONE: Even if they didn't return an indictment, I'd still proceed on the other case.

SENATOR FURNARI: Now, getting back to the first one. You were familiar with Judge Smithson's law division case that, throughout the second shooting indictment--

ASSISTANT ATTORNEY GENERAL STONE: I'm familiar with it.

SENATOR FURNARI: Okay. Now, is that precisely what the issues were that you warned the Attorney General of on that day, that meeting?

ASSISTANT ATTORNEY GENERAL STONE: I was warning him that he would get into litigation that we didn't have to get into. I thought then and I think now that Judge Smithson's decision was erroneous.

SENATOR FURNARI: Well, Judge Smithson said that-- I think he said that what they did is they made these two police officers the poster boys for the issue of racial profiling.

ASSISTANT ATTORNEY GENERAL STONE: I think that's unfair and inaccurate.

SENATOR FURNARI: Oh well, whether it's unfair, my question: Is that one of the things that you warned the Attorney General was a possibility in this particular case?

ASSISTANT ATTORNEY GENERAL STONE: I warned him that we were getting into an area which would cause us to have needless litigation. And while it is not unusual, as I said earlier today, to have multiple indictments against a particular defendant come out either at the same time in the same

month in the same year in the same county, in a case as high profile as this, I felt that I was going to take an ultracautious approach.

SENATOR FURNARI: Well, you would agree that any of the criminal attorneys sitting in the room, including yourself, foresaw that there would be an argument that if this case was brought first and announced, that this would poison your grand jurors on the basis of making these two out to be -- for want, I mean, I keep using his words -- the poster boys, but for wanting them -- for focusing all the blame of racial profiling on them.

ASSISTANT ATTORNEY GENERAL STONE: I was concerned people would look at the indictment, if there was an indictment returned, and view it as a racial profiling indictment, which is what members of the Committee keep referring to it as. It is not. It's a falsification indictment. And yes, that was my concern.

SENATOR FURNARI: That, in fact, one of the things that you told the Attorney General that you gotta make sure that you don't go forward and make this indictment out to be a racial profiling indictment, but rather a simple case of falsification of documents, because that's what this case is.

ASSISTANT ATTORNEY GENERAL STONE: That's exactly what this case is, and that's what I said.

SENATOR FURNARI: Now, did you have an opportunity to witness what the Attorney General said at the hearing of the announcement--

ASSISTANT ATTORNEY GENERAL STONE: I was there.

SENATOR FURNARI: Okay. And is it fair to say that what he discussed at that hearing was that these charges were related to racial profiling and that's why he brought them at that time?

ASSISTANT ATTORNEY GENERAL STONE: I don't recall exactly what he said, but that certainly was the feeling I got.

SENATOR FURNARI: That's certainly the feeling that you got as to what he said at that time. Okay. Do you believe that, and I mean, I know that your office has taken the position on many occasions that the decision to bringing an indictment and the reasons for bringing an indictment are soundly within the discretion of the Attorney General's Office. And so long as the direct purpose isn't to violate the rights of the defendant or the actual effect is a violation of the rights of the defendant, it's irrelevant what the motivation or the reasons that the prosecutor brings those indictments are? Is that a fair statement of what your department has taken as to the law?

ASSISTANT ATTORNEY GENERAL STONE: That's what the case law says.

SENATOR FURNARI: Excuse me.

ASSISTANT ATTORNEY GENERAL STONE: That's what the case law says.

SENATOR FURNARI: Now, in light of the circumstances and in retrospect, do you think that you need to make modifications of the law in this area?

ASSISTANT ATTORNEY GENERAL STONE: In what sense, Senator?

SENATOR FURNARI: Well, the reasons that we indict some people-- And again, if you go back to the statement that was made, we have a statement that the reason we're bringing the indictment, which you just told me was not a racial profiling indictment--

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

SENATOR FURNARI: It was a falsification indictment. The reason we're bringing this indictment, because the Attorney General felt that he was suffering criticism for failing to quickly investigate and attempt to bring an indictment on a shooting case. Isn't that what it was described as?

ASSISTANT ATTORNEY GENERAL STONE: I think-- It's almost-- You're almost confusing the process with the substance. Substantively, that case would have been put in front of a grand jury regardless. Whether it was put in front of a grand jury that month, three months from then, six months from then, it was a matter of timing.

SENATOR FURNARI: But in any event, when you went to that meeting, there was no design to put forth an indictment at that time. In fact, the decision had already been made that if you were going to do it sometime in the future--

ASSISTANT ATTORNEY GENERAL STONE: That's accurate.

SENATOR FURNARI: And in fact, there's -- no State Trooper has ever been indicted before or since on charges of falsification of his documents.

ASSISTANT ATTORNEY GENERAL STONE: I don't know if anybody ever had been indicted before for falsifying documents.

SENATOR FURNARI: To your knowledge and experience, or to your knowledge and experience, it's never happened before or since?

ASSISTANT ATTORNEY GENERAL STONE: I really don't know what has happened in the counties. I can only answer what happened in this case.

SENATOR FURNARI: Okay. Well, let's talk about your experience. Have you ever once been involved or seen it come across your desk, either the presentment of an indictment or falsification, before or since this time?

ASSISTANT ATTORNEY GENERAL STONE: Falsification of documents, sure, we get those over the years.

SENATOR FURNARI: Or a trooper failing--

ASSISTANT ATTORNEY GENERAL STONE: Well, now you're narrowing it down to a class of like three, okay.

SENATOR FURNARI: No. Well, we're dealing with this one particular issue -- for our trooper falsifying his documents, and that's what I'm talking about.

ASSISTANT ATTORNEY GENERAL STONE: There was sufficient evidence.

SENATOR FURNARI: No, no.

ASSISTANT ATTORNEY GENERAL STONE: And I can't-- You're asking me--

SENATOR FURNARI: I'm just asking you whether--

ASSISTANT ATTORNEY GENERAL STONE: --tough questions here, because I've got a pending case.

SENATOR FURNARI: Okay. If I'm asking questions about the merits of the case, I'm asking you in a general sense. Since that time, there have been no other indictments of State Troopers for falsification of documents.

ASSISTANT ATTORNEY GENERAL STONE: I have not been involved in that.

SENATOR FURNARI: So, getting back to the issue, the indictment -- the reason for the indictment for falsification was that there was pressure, because there had been a long period of time since the shooting had occurred, and no indictment had been returned, right? That's what you've agreed to before.

ASSISTANT ATTORNEY GENERAL STONE: The reason for moving the thing to a grand jury at that time, yes. That's not the reason for the indictment. There's a substantive difference.

SENATOR FURNARI: Okay. So-- And you agree that prior to that time, there was no intention, on the Attorney General's Office's part, to bring that indictment.

ASSISTANT ATTORNEY GENERAL STONE: There was no intention in the Division of Criminal Justice to do that, no.

SENATOR FURNARI: Okay. Now, do you think that it's an appropriate thing -- that's it's appropriate for a prosecutor's consideration to choose to bring an indictment for a charge of falsification or for that -- an unrelated charge for things that occurred in the previous engagement on the basis of criticism of his office for failing to move charges against the same individuals?

ASSISTANT ATTORNEY GENERAL STONE: I think that should never be a substantive reason for indicting anyone. That's-- There has to be a substantive, factual basis for having committed a criminal act.

SENATOR FURNARI: Well, there are times when indictments are investigated and could give rise to indictments. The prosecutor chooses, for whatever reason, not to go forward with the indictment.

ASSISTANT ATTORNEY GENERAL STONE: And exercises prosecutorial discretion. That's correct.

SENATOR FURNARI: Okay. And in this case, that might have been the case with each charge, as well.

ASSISTANT ATTORNEY GENERAL STONE: This case was going into grand jury, Senator, and really, I can't say more right now.

SENATOR FURNARI: I'm not--

SENATOR GORMLEY: Excuse me, I think she's answered the question. She's answered the question.

SENATOR FURNARI: So we're looking-- What I'm concerned about is the reasons that a prosecutor chooses to bring an indictment in. Whether it's the timing of the indictment or whether it's the substance of the indictment, are you saying that you think a -- for the future, there's no need to change the law, as I recited to you before?

ASSISTANT ATTORNEY GENERAL STONE: I think case law adequately takes care of that. If the prosecutor abuses his discretion in any way, the court has a remedy, as does the defense.

SENATOR FURNARI: Well, that isn't what the case law says, right? Even if it's the wrong reason under case law today, it's a wrong reason. It's still -- the indictment stands.

ASSISTANT ATTORNEY GENERAL STONE: Well, I don't know what a wrong reason is, but as long as there is sufficient factual basis to sustain an indictment, there is nothing that prevents a prosecutor from moving forward with it.

SENATOR FURNARI: Okay. So--

SENATOR GORMLEY: Excuse me.

SENATOR FURNARI: Yes.

SENATOR GORMLEY: I would appreciate it if we could move beyond.

SENATOR FURNARI: I'm trying to. That's the difficulty in rasing -- in asking questions, is that I'm trying to avoid dealing with any issue of substance. And I'm trying to deal with--

SENATOR GORMLEY: I understand, but I think in this particular case, the witness has been forthright and is dealing with an ongoing matter.

ASSISTANT ATTORNEY GENERAL STONE: Thank you, Senator.

SENATOR GORMLEY: And I think we have exhausted this area of questioning.

SENATOR FURNARI: All right. Let me ask you this question. When it comes to the area of a prosecutor's decision to bring an indictment--

SENATOR GORMLEY: Excuse me. I don't-- We want to have-- We've had enormous latitude here. The witness has answered this. And we're talking about discretion. And she's dealing with an ongoing case. And I just don't know where it takes us except the same answer that she's given for the last 15 minutes.

SENATOR FURNARI: Well, I was-- I wanted to ask about public relations indictments -- whether or not--

SENATOR GORMLEY: And I think she's answered the questions.

SENATOR FURNARI: On public relations?

SENATOR GORMLEY: I think I brought up-- And I-- And you know how I feel about that topic myself. But I think she's answered the questions.

SENATOR FURNARI: Can I ask the other witness about what he feels about the law with regard to public relations indictments?

SENATOR GORMLEY: There is-- As I've said, if you want to ask his opinion about indictments--

SENATOR FURNARI: Right. I think there's an area of law that we may want to look to change. And I understand what the law-- The law, on this area, Mr. Chairman, seems to be very broad. It seems to say, maybe, possibly you couldn't even bring a public relations--

SENATOR GORMLEY: In other words, what you'd like to ask the other witness is, "Do you think that there should be statutory or legislative limitations in terms of a prosecutor's ability to bring an indictment?"

SENATOR FURNARI: Yeah, that's what I'm--

SENATOR GORMLEY: Okay. I'll ask the question.

Do you think there should be those limitations? You can answer yes or no.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I think that would be dangerous in legislation. If we're talking about, now, prosecutorial motive, I think that's a very complicated issue, and maybe more appropriate for development in case law and court rules -- legislation.

SENATOR GORMLEY: Thank you.

SENATOR FURNARI: It's the only area I have, Mr. Chairman.

SENATOR GORMLEY: Thank you.

Senator Zane.

SENATOR ZANE: I've honed mine down to about six or seven questions.

ASSISTANT ATTORNEY GENERAL STONE: Bless you.

SENATOR ZANE: That haven't been asked at least three times.
(laughter)

SENATOR ROBERTSON: I can't imagine that.

SENATOR ZANE: In the last three years, so that I can get a sense of this-- In the last three years or thereabouts, how much of your time -- each individually answer this -- have you been devoting either to the *Soto* case or racial profiling?

ASSISTANT ATTORNEY GENERAL STONE: It's hard to quantify. At least for most of '98, I was the acting prosecutor of Burlington County, as well, so I was managing that office in addition to working as deputy director, so I was back and forth from Trenton to there.

SENATOR ZANE: Excluding the time in Burlington, how much of your time?

ASSISTANT ATTORNEY GENERAL STONE: It's hard to quantify it. I mean, a little bit of every day, probably.

SENATOR ZANE: Okay.

Mr. Susswein.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: For me, if you're including, in racial profiling, the reform efforts--

SENATOR ZANE: Correct. The issue.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: A large part of my time.

SENATOR ZANE: Major part of your time?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

SENATOR ZANE: More than half?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Recently, I would say, yes. I mean, that may have varied over the last two years or so, but over half is probably the average.

SENATOR ZANE: How many people would you say within the Attorney General's Office were working on the issues of the *Soto* case or racial profiling at any given time over the past three years? Is it just the people that we've seen testify here, or are there a lot more people? Were there investigative people from the Attorney General's Office, as well as--

ASSISTANT ATTORNEY GENERAL STONE: There were investigators involved in the shooting case. We worked with the Major Crimes Unit from State Police. And there were a number of lawyers from the Appellate Section who, at various times, were involved in the *Soto* litigation or subsequent other litigation.

SENATOR ZANE: Was it something that was of constant conversation -- the issues related to racial profiling, *Soto*, which I happen to think is all part of the same issue-- But were there constant conversations--

SENATOR GORMLEY: Your microphone.

SENATOR ZANE: Were there constant conversations at the Attorney General's Office about this subject?

ASSISTANT ATTORNEY GENERAL STONE: I wouldn't say they were constant until probably, at least from my part, after the shooting, because I was involved in that investigation. *Soto* -- there were periodic conversations, most notably, when the Division of Criminal Justice, which had not been involved in any of that litigation--

SENATOR ZANE: Your initial familiarity with the -- I'm going to call it the Gilbert documents -- the Sergeant Gilbert documents came about around March 15th, 1999. Is that correct?

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

SENATOR ZANE: You have since learned that the Gilbert documents were around three years prior to that.

ASSISTANT ATTORNEY GENERAL STONE: Apparently, yes.

SENATOR ZANE: Can you explain how, in the Attorney General's Office, especially at your level, with some of the other people who have testified here that you either work with or work under you or may have reported to you-- Can you tell me how that information would not have reached either or both of you?

ASSISTANT ATTORNEY GENERAL STONE: That information seemed to have been kept in the Office of the Attorney General. Criminal Justice never seemed to get that information for whatever reason.

SENATOR ZANE: Can you explain that?

ASSISTANT ATTORNEY GENERAL STONE: I wish I could.

SENATOR ZANE: Did you have the feeling, in retrospect, at this point, that that information was intentionally kept within the Office of the Attorney General?

ASSISTANT ATTORNEY GENERAL STONE: That's hard to answer. I think it was mostly because different divisions tend to be somewhat compartmentalized, and they focus on a particular problem that's in front of them at the time. And if OAG, which was litigating the discovery issues like *Soto*, they might not have thought, because they're primarily civil attorneys, that it impacted on criminal cases.

SENATOR ZANE: I think implicit within your answer is that people within the Attorney General's Office were aware, at some level, or should have been aware at a minimum, of the Gilbert documents long before March 15th, 1999, correct?

ASSISTANT ATTORNEY GENERAL STONE: Well, my understanding from this Committee's hearings is that people were aware in '97. The Division of Criminal Justice didn't find out until 1998.

SENATOR ZANE: That's right.

ASSISTANT ATTORNEY GENERAL STONE: 1999, excuse me.

SENATOR ZANE: And there were people in that office that knew that both of you were working on either *Soto* or racial profiling as issues, correct?

ASSISTANT ATTORNEY GENERAL STONE: It certainly wasn't secret.

SENATOR ZANE: Are you sure? (laughter)

ASSISTANT ATTORNEY GENERAL STONE: I'm fairly sure.

SENATOR ZANE: Are you sure that the information wasn't, by design, kept secret?

ASSISTANT ATTORNEY GENERAL STONE: I'd like to hope that isn't the case. I have no reason to believe it is.

SENATOR ZANE: Has it entered your mind that maybe it was the case?

ASSISTANT ATTORNEY GENERAL STONE: No, I really haven't thought about that.

SENATOR ZANE: Mr. Susswein, has it entered your mind that maybe it was--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, I've heard the testimony. I've heard comments from people about the testimony in the media and otherwise.

SENATOR ZANE: Didn't you have-- I mean, you had interreaction -- interactions with the Attorney General's Office -- the key people in his office, about these issues you were dealing with, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: At different times, yes, but--

SENATOR ZANE: Different times -- going back to '97, '98, correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes.

SENATOR ZANE: And, Ms. Stone, by your testimony just then, you said that as a result of the hearings, meaning these hearings, it's-- I don't know that you said this, but I'm saying it, and if I'm wrong, you tell me I'm wrong, that it's clear that people knew about the Gilbert reports and other documentations long before March 15th, 1999 in the Attorney General's Office, correct?

ASSISTANT ATTORNEY GENERAL STONE: It certainly appears that way from what I've seen.

SENATOR ZANE: Doesn't it make either one of you want to scratch your head and say, why in the devil didn't somebody who we work for -- or we work with say to you, "There's other information that's out there that you better take a look at?" Does that strike you as strange that that didn't happen?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

SENATOR ZANE: Can you explain that?

ASSISTANT ATTORNEY GENERAL STONE: No, I can't.

SENATOR ZANE: If you're sensing something within my tone of voice, believe me, it's not directed at either of you.

ASSISTANT ATTORNEY GENERAL STONE: I appreciate that, Senator.

SENATOR ZANE: I mean that sincerely. I think that you have made -- both of you-- If anything in the racial profiling hearings has been made crystal clear, your testimony has made some things crystal clear, at least in my eyes.

Can you think of any good reason why that information, again, Gilbert-type documents, that we know were presented to the Attorney General and his key people on December the 9th, 1996, December the 24th, 1996, May 20th, 1997, and various and sundry other dates that I can't remember right now--

ASSISTANT ATTORNEY GENERAL STONE: Any good reason why we didn't get it?

SENATOR ZANE: Yeah. Can you think of any reason why somebody didn't say to you--

Do people refer to you on a first-name basis in the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL STONE: Everybody calls me Deb.

SENATOR ZANE: Can you understand why somebody didn't say, "Hey, Deb, let me tell you something. You ought to look at such and such."

ASSISTANT ATTORNEY GENERAL STONE: I wish they had.

SENATOR ZANE: In retrospect, do you wonder why they didn't, since it's so obvious now that they knew?

ASSISTANT ATTORNEY GENERAL STONE: I wonder. As I said, the groups within the Attorney General's Office -- they tend to be compartmentalized. I think they tend to focus on whatever particular problem's in front of them at the time, and they might not realize the ramifications, is the best thing I can think about it.

SENATOR ZANE: That's kind comments. If you had information that may prove important to another section within -- it's under the Attorney General's Office that a colleague of yours might be working in, would you be so compartmentalized that you wouldn't tell them?

ASSISTANT ATTORNEY GENERAL STONE: No, I routinely turn things over to different areas.

SENATOR ZANE: So, are people in the Attorney General's Office told to be more compartmentalized?

ASSISTANT ATTORNEY GENERAL STONE: I don't know.

SENATOR ZANE: You don't have to answer that.

Can I ask you something? Do either of you know how many civil cases there are currently that have arisen out of the issues of racial profiling, shootings, etc., etc., that are affecting this state?

ASSISTANT ATTORNEY GENERAL STONE: No, I imagine there's quite a few.

SENATOR ZANE: Any idea at all of a number?

ASSISTANT ATTORNEY GENERAL STONE: No.

SENATOR ZANE: Anything you said would be totally a guess?

ASSISTANT ATTORNEY GENERAL STONE: Absolutely.

SENATOR ZANE: Was there ever anything, Ms. Stone, in your particular case in dealing with the *Soto* case-- Was there ever any documentation that you asked for from the State Police if you had the occasion to ask that it wasn't provided to you?

ASSISTANT ATTORNEY GENERAL STONE: In regards to *Soto*, I never specifically requested things from State Police. It was my understanding-- As you know from appeals, you get an entire file. You assume that's everything in the record, unless something there gives you an indication that it is not -- that there's something else out there that you want to be looking for. There's nothing that gave us the indication that there were additional studies post-*Soto*. We had no way of knowing that.

SENATOR ZANE: Okay. And that's in the appeal process you're referring to.

ASSISTANT ATTORNEY GENERAL STONE: Correct.

SENATOR ZANE: So the answer really is, there was nothing you asked for, therefore there was nothing that you did not get that you asked for.

ASSISTANT ATTORNEY GENERAL STONE: That's correct.

SENATOR ZANE: Understood.

Mr. Susswein, in anything that you were doing, in regard to the issues of racial profiling, were there any requests for documentation, data, etc., that you requested from the State Police that you didn't get in a reasonable period of time?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, I never personally made any requests when we were getting material throughout the time that I was involved in the interim report from the State Police.

SENATOR ZANE: In other words, you were getting materials you weren't even asking for.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I assume someone was asking. It wasn't me. But material was coming over.

SENATOR ZANE: So, in your experience, there then would have not been-- There wouldn't have been anything at all that you had made a request for that wasn't coming to you. In other words, the flow of materials, documentation that you felt was relevant, you were getting. Is that correct?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, not that I was making the request, but we were getting materials that were, obviously, highly relevant.

SENATOR ZANE: Did you ever hear any suggestion from anybody from within the Attorney General's Office that the State Police was not providing information or documentation relating to the issues of racial profiling from anyone to anyone?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Well, I think our reaction on March 15th was what Deb and I, and I shouldn't speak for her, but we both learned at the same time. And it's reflected in her draft and in my draft, a certain amount of anger, for lack of a better word. We assumed that that information-- We immediately recognized it was highly relevant, and we assumed it had not been coming over.

ASSISTANT ATTORNEY GENERAL STONE: Been turned over, since we didn't have it when we were doing the litigation.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Right.

SENATOR ZANE: And your feelings, were they perpetuated by higher-ups, if you will, in the Attorney General's Office that there had been a lack of candor or cooperation by the State Police?

ASSISTANT ATTORNEY GENERAL STONE: The only higher-up that I really dealt with on that issue was Paul Zoubek, and he didn't have the documents either, nor, to my knowledge, did he have any knowledge that they existed.

I think part of the problem was it's one thing to ask for the documents and get them over in a timely fashion, and once we knew they existed, we could do that. But if you don't know they exist, you don't know to ask.

SENATOR ZANE: I'm sure that somehow in this whole scheme of things, there are some of the right questions that we're not asking. (laughter) I'm sure that happens. Am I right? Doesn't that happen?

ASSISTANT ATTORNEY GENERAL STONE: It certainly happens to me on a regular basis.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: The police officer were to ask a defendant, a suspect--

SENATOR GORMLEY: Are you going to tell us the right questions? (laughter)

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, I'm just saying--

SENATOR GORMLEY: If you're willing to do that, go right ahead.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No, I'm just saying that would be an inappropriate question -- tell us what we're not asking you.

SENATOR ZANE: You are now both aware and agree that that blue binder -- the March 15th documentation was available years before it was revealed. Am I correct?

ASSISTANT ATTORNEY GENERAL STONE: That's my understanding from these hearings, yes.

SENATOR ZANE: And you know where it was retrieved from, do you not?

ASSISTANT ATTORNEY GENERAL STONE: It was retrieved from a file. I don't know whose.

SENATOR ZANE: Mr. Rover's file.

ASSISTANT ATTORNEY GENERAL STONE: Was it Rover's file?

SENATOR ZANE: He's in the Attorney General's Office, is he not?

ASSISTANT ATTORNEY GENERAL STONE: He's over at Gaming Enforcement now, I think.

SENATOR ZANE: And before that, ABC, right?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

SENATOR ZANE: Do either of you believe-- Maybe this will be one of the right questions. Do either of you believe that the Gilbert documents were deliberately withheld?

ASSISTANT ATTORNEY GENERAL STONE: I don't believe--

SENATOR ZANE: By the way, you're both under oath. I don't say that in a wise guy kind of way, but you are.

ASSISTANT ATTORNEY GENERAL STONE: Yeah, I know.

SENATOR ZANE: My question is, do either of you believe they were deliberately withheld?

ASSISTANT ATTORNEY GENERAL STONE: I don't think so.

SENATOR ZANE: Mr. Susswein?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I don't believe that they were.

SENATOR ZANE: They just languished in a file?

ASSISTANT ATTORNEY GENERAL STONE: Apparently. I don't know if Mr. Rover looked at the documents or whether if he did, he didn't realize the significance. I don't know.

SENATOR ZANE: You're aware of the request for certain documents that were made, I think, in sort of a general fashion -- general language by the Department of Justice?

ASSISTANT ATTORNEY GENERAL STONE: I found that out when George brought over the boxes that contained that material.

SENATOR ZANE: And you're aware that there was correspondence and notations asking whether such and such documents should

be turned over and revealed at a particular time, and there was guidance and direction given from Mr. Rover's immediate supervisor, are you not?

ASSISTANT ATTORNEY GENERAL STONE: I found that out during these hearings, yes.

SENATOR ZANE: Do you think those-- Do you think the reports, which Mr. Rover had, should have been turned over to the Department of Justice voluntarily in light of the request made by the Department of Justice for documentation relating to the issue of racial profiling here in New Jersey?

ASSISTANT ATTORNEY GENERAL STONE: I'm not exactly sure what they asked for specifically. Certainly, stop data-- I don't know if they asked for consent data or not, but that's more telling to me.

SENATOR ZANE: Having looked at the-- Which is more telling?

ASSISTANT ATTORNEY GENERAL STONE: The consent data.

SENATOR ZANE: Okay. Having looked at that data, knowing an obligation that an attorney has to provide discovery, do you believe -- and knowing that-- Well, do you know that the only reason it wasn't actually a formal investigation was because of a request by the Attorney General?

ASSISTANT ATTORNEY GENERAL STONE: No, I didn't know that.

SENATOR ZANE: Okay. Although I don't think that really makes a difference, when and if the Department of Justice is asking you-- It doesn't matter, really, what they call it, does it?

ASSISTANT ATTORNEY GENERAL STONE: That's only a matter of how formal the procedures are. You're still, I would think, obliged to turn things over.

SENATOR ZANE: Now, having looked at those documents, and being the good attorney that both of you are, do you think you had an obligation to turn over that as part of discovery?

ASSISTANT ATTORNEY GENERAL STONE: If it were in a criminal case, yes.

SENATOR ZANE: I don't have any other questions.

SENATOR GORMLEY: Senator O'Connor.

SENATOR O'CONNOR: Thank you, Mr. Chairman.

I'll ask the questions of both of you, as well.

Can you tell me, each of you, how many years you have been in the Attorney General's Office?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Now, that's a--

ASSISTANT ATTORNEY GENERAL STONE: Today, too long. Twenty-three for me.

SENATOR O'CONNOR: Mr. Susswein?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I think 19 or 20.

SENATOR O'CONNOR: And would you agree that there's probably no one in the Attorney General's Office with any greater expertise than yourselves on this issue of racial profiling?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Today?

SENATOR O'CONNOR: Yeah.

ASSISTANT ATTORNEY GENERAL STONE: I suppose we're among the more knowledgeable. I don't think we're the only experts.

SENATOR O'CONNOR: Okay. But I mean you certainly devoted a lot of your time, particularly over the last few years, to this issue.

ASSISTANT ATTORNEY GENERAL STONE: Yes, sir.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Yes, sir.

SENATOR O'CONNOR: And we've read, and we're aware, because of the extensive hearings that this Committee has had, that this is an issue which has been in existence for 20 years or more. Would you agree with that?

ASSISTANT ATTORNEY GENERAL STONE: It's certainly been around since the '80s, yes.

SENATOR O'CONNOR: Okay. My question is then, the two of you, as experienced attorneys general, do you have recommendations that you would make to this panel in order to address where we go as we go forward with this? How do we right the wrong of racial profiling?

ASSISTANT ATTORNEY GENERAL STONE: Well, I think to try and avoid doing it in the future. I don't know how you would right the wrong of the people who've already been improperly searched.

SENATOR O'CONNOR: No, I'm talking about what can we do, as a legislative body, to address the issue as we go forward.

ASSISTANT ATTORNEY GENERAL STONE: I think supporting some of the reforms that are being put in place now to make police officers more accountable for what they're doing and restrictions that case law is now imposing on their ability to conduct consent searches. We go a long way towards eliminating the problems.

SENATOR O'CONNOR: Did you hear the Attorney General's testimony before this Committee the other day?

ASSISTANT ATTORNEY GENERAL STONE: No, I didn't.

SENATOR O'CONNOR: Did you read about it in the paper?

ASSISTANT ATTORNEY GENERAL STONE: A little bit.

SENATOR O'CONNOR: Are you aware of the fact that he gave testimony with respect to the statistics, which were compiled during the year 2000?

ASSISTANT ATTORNEY GENERAL STONE: Yes, I heard that, in fact, the statistics are as bad.

SENATOR O'CONNOR: Okay. Given that, and given the fact that some reforms have been put into place, such as what you've suggested, is that enough, do you think, to address this issue as we go forward?

ASSISTANT ATTORNEY GENERAL STONE: Well, I think I pointed out this morning that case law takes a while to filter down to the rank and file. And I also think you need some sort of internal disciplinary mechanism and education mechanism within the State Police -- within all police agencies, which keeps them current on State search and seizure law and also provides disincentives for them to violate that law.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Senator, if I could add to that.

SENATOR O'CONNOR: Please do.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I think that we need to do more, not only to institutionalize the reforms that have been done to make them permanent, but we need to do a better job of explaining to the law

enforcement community exactly what we found and why we found it, including the definition of racial profiling, which may or may not be the definition widely accepted in the case law as Federal -- Federal case law. And I think we have to address that.

I also think, because I've been reading other things in the paper, to avoid negative reaction by the law enforcement community, not just the State Police but the entire New Jersey law enforcement community, we have to make clear how we -- what we expect them to do and with respect to drug enforcement, which is obviously a major part underlying the racial profiling controversy. We have to explain the war on drugs can be waged with, not against, the communities we're supposed to serve. And if these reforms become associated with the concepts of legalization or decriminalization of some kind of abandonment, you're going to see a retrenchment within law enforcement and an unwillingness to accept some of the reforms.

So we have to show the right way to wage a war on drugs constitutionally, effectively, efficiently. And I think that's going to be our major challenge -- is explaining what we were doing, because there are a lot of people, to this day, they define racial profiling as racist harassment, and only as racial harassment, and they don't accept that the problem is real. We still are hearing people that say it's perception, not reality. And that gets back to the definitions. And maybe we haven't fully explained to the public and to the law enforcement community what we found, why we found it, what we didn't find.

SENATOR O'CONNOR: Well, this Committee has been criticized somewhat for making the focus of this the former Attorney General Peter Verniero. And the criticism has been that we haven't paid enough attention to

what we have to do to address the issue itself. Are you satisfied then that what was testified to by the Attorney General, given reinforcement and what the courts are doing -- give it some time for this to play out and take effect -- that that will, in fact, address this issue and that we don't have to do anything other than just--

ASSISTANT ATTORNEY GENERAL STONE: Well, I think there should be a clear mission for State Police. They have to know whether you're expecting them to wage a "war on drugs" on the Turnpike or not or whether you expect them to do highway traffic safety, which is really their main function there. And until that's made clear and understandable to all the road troopers, I think you're going to continue to have problems.

So long as they feel that they're going to get ahead by producing more drug arrest stats, regardless of how they get them, that's a profound incentive on their part to violate the law.

SENATOR O'CONNOR: Thank you.

SENATOR GORMLEY: Jo.

MS. GLADING (Senate Democratic Staff Counsel): Just a couple of quick questions.

Ms. Stone, in 1988, when the debate within the Attorney General's Office was going on concerning the use of drug courier profiles, was it your position then that drug-- And this is the debate that was discussed earlier when Mr. Susswein had written a memo that they were an integral and essential part of law enforcement. Was it your position back then that drug courier profiles could not be used without risking constitutional violations?

ASSISTANT ATTORNEY GENERAL STONE: That was my view then, yes.

MS. GLADING: Is that still your view?

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MS. GLADING: Earlier, when Senator Girgenti was asking you a couple of questions about the *Soto* appeal, you testified that Mr. Zoubek needed some time to deal with the Attorney General on some things. Can you explain what you meant by that?

ASSISTANT ATTORNEY GENERAL STONE: Well, in a case of that significance, we would have to have the approval of the Attorney General to drop the appeal.

MS. GLADING: What was the status-- In your mind, what was the position of the Department at that point concerning the *Soto* appeal?

ASSISTANT ATTORNEY GENERAL STONE: The position of the Division of Criminal Justice was that this case needed to be dismissed -- the appeal needed to be dismissed. If we were going forward on the narrow legal issues, then all of the information we had found needed to be turned over to the defendants and the court immediately.

MS. GLADING: And just to clarify, the time frame we're talking about is prior to the March 5th motion for seeking the 120-day extension.

ASSISTANT ATTORNEY GENERAL STONE: Yes.

MS. GLADING: Okay. So as of-- Prior to March 5th, when that motion for additional time was filed, the position of the Division of Criminal Justice was that the case needed to be dropped.

ASSISTANT ATTORNEY GENERAL STONE: That was certainly the position of Director Zoubek and myself.

MS. GLADING: Mr. Zoubek and you discussed that position?

ASSISTANT ATTORNEY GENERAL STONE: Yes, we did.

MS. GLADING: Okay. And there's no doubt in your mind about Mr. Zoubek holding that position in that point in time that *Soto* needed to be dropped.

ASSISTANT ATTORNEY GENERAL STONE: There is no doubt in my mind.

MS. GLADING: And just one last question for both of you.

Have you had any involvement during your time with the Department of Law and Public Safety in the management or administration of forfeiture funds?

ASSISTANT ATTORNEY GENERAL STONE: I oversee the prosecutor's forfeiture funds.

MS. GLADING: Do you provide--

Mr. Susswein, how about you?

ASSISTANT ATTORNEY GENERAL SUSSWEIN: I have helped draft forfeiture laws.

MS. GLADING: Have either of you ever filled the role in which you certified that forfeiture funds were being spent on specific purposes?

ASSISTANT ATTORNEY GENERAL STONE: No.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: No.

MS. GLADING: No.

Thank you.

ASSISTANT ATTORNEY GENERAL STONE: You're welcome.

MS. GLADING: That's it. Thanks.

SENATOR GORMLEY: We'd like to thank you for your testimony.

ASSISTANT ATTORNEY GENERAL STONE: Thank you very much, Senator.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Thank you, Senator.

SENATOR GORMLEY: Thank you.

ASSISTANT ATTORNEY GENERAL SUSSWEIN: Have a good day.

ASSISTANT ATTORNEY GENERAL STONE: Thank you, all.

SENATOR GORMLEY: Excuse me.

No, you're done. You're done. If you want to stay--

ASSISTANT ATTORNEY GENERAL SUSSWEIN: That was about to be a double jeopardy violation.

SENATOR GORMLEY: Our next witness will be Sergeant Vincent Bellaran.

I'd like to ask if another witness who will be testifying a little later-- Mr. Frederick Foster's here.

Mr. Foster.

If Mr. Foster is here, we'd appreciate him coming up to the side and meeting with Special Counsel Scott Weber. There is a videotape he has -- would like to review that first.

The next witness is Sergeant Vincent Bellaran. I will note that the Committee has asked for his presence today to testify regarding the issue of racial profiling.

Would you please stand and raise your right hand?

(Oath administered)

Be seated.

Sergeant, would you make sure that your red light's on? (referring to PA microphone) And you have a statement to read?

SERGEANT VINCENT BELLARAN: Yes, sir.

Race should not be a factor when stopping motor vehicles. And I want to start with that. That's the first thing.

I am here to talk about a system, a fault system, that has taken its toll on many good people for many years.

My name is Vincent Bellaran, and I have been a New Jersey State Trooper for almost 24 years. Ten years ago, on April 8th, 1991, after serving the organization for 14 years, I filed an Equal Employment Opportunity complaint against the New Jersey State Police. The complaint and corresponding lawsuit filed with the Federal government alleged that racism existed in the organization, and that I, in particular, was subjected to racial discrimination.

Later the next year, in December of 1992, I received a letter from then Deputy Attorney General Jack Fahy, who, as you know, recently testified before this Committee. The letter, which was copied to Executive Assistant Attorney General Alexander Waugh, basically was advising me that he had reviewed my deposition testimony and wanted to make me aware that the

Attorney General's Office was documenting all the time and expense incurred by them as a result of reviewing my complaint, and that they would be entitled to reimbursement if I were not successful in proving my allegations. I tried to maintain optimistic at the time and not feel as though my issues of racism were falling on deaf ears.

Later on, in August of 1995, in an effort to strengthen my claims of discrimination, I filed an amendment to the complaint and included details of incidents that other minority troopers were subjected to at the Troop C, Allenwood Barracks. I mentioned specifically that a white sergeant was making racial comments and using discriminatory practices against a black trooper. In addition, I complained that after making the Station Commander aware of these issues, he took no action against the sergeant, but instead began to discriminate against me.

The following year, in March of 1996, I received a letter from then Attorney General Deborah Poritz, in which she copied Executive Assistant Attorney General Alexander Waugh and stated that part of my complaint of racial discrimination at the Allenwood Barracks was with merit and that she would reinforce her policy of unacceptable practices. There were no formal reprimands, no repercussions, or any action that would clearly send a message to the rank and file, that this behavior would not be tolerated.

Meanwhile, the same year the incidents were taking place at Allenwood, our new Superintendent, Carl Williams, was at the Berlin Barracks in Camden County and addressing narcotics detectives about their concern of lack of upward mobility in the operational ranks out on the streets. In fact, one detective specifically mentioned all of the promotional opportunities that were

being made available with the administrative ranks at headquarters in West Trenton.

Superintendent Williams responded in front of witnesses that it was a known fact that if Adolf Hitler concentrated more on the administrative function at his headquarters than on the field operation, he would have won the war.

I was quite perplexed at the time to hear that anyone in a free society would even comment or parallel his administration to a man who was responsible for killing more innocent human beings than anyone in history.

In 1995, I had the opportunity to speak with Carl Williams at Allenwood Barracks. He was conducting one of his station fireside chats with station personnel. His escort was Sergeant First Class James Bruncati. And STFA Vice President Eddie Lennon told me I spoke with him for 17 and one-half minutes. We were in the Breathalyzer room. I told him everything, racism, troopers' treatment of minorities, supervisors' and peers' treatment of minority troopers, and all my concerns described in my complaints. His reply was, first, "I can't do anything for you." I stated, "I'm not asking for anything, I just wanted you to know so you're not blackjacked later on, I told you." He replied, "Good luck with your suit." He then left the room. As I felt back in 1992, I was once again wondering if my concerns of discrimination were falling on deaf ears.

Finally, in July 1997, my original 1991 complaint was scheduled for Federal District Court. I knew that, because on July 2nd I received a letter from Superintendent Williams telling me that since I filed a suit through my own initiative, on my own time, and without any State Police involvement, that

I would have to attend the proceedings on my own time and would not be able to attend the hearings while on duty.

I immediately appealed the decision to Sergeant Tom Gilbert of the Labor Relations Unit; Captain Joseph Brennan, the State Police Affirmative Action Officer; and to the Sergeants Union. After all, I was subpoenaed. No appeal decision was rendered, and I completed the trial while using vacation time. Five months later, the court case had been over, but the judge had not yet rendered a decision. At this time, I received a letter from Carl Williams that the racial discrimination trial was not a State Police issue and that I was not entitled to a reimbursement of my vacation days. The pattern was continuing of a system severely faulted, even in the midst of all the discriminatory practices that were documented during the trial. No one was about to change, there was no reason to.

Finally, on March 24th, 1998, Federal District Court Judge Mary Cooper rendered a favorable decision, and for the first time in the history of the New Jersey State Police, someone had proved that racism existed in the ranks. I remember thinking back then that if someday racism were no longer a practice inside the barracks, then maybe someday racism would no longer be a practice outside the barracks. Unfortunately, I was wrong on both counts.

Later the next month, in April 1998, while still feeling optimistic, I was being interviewed by an investigator from the Division of Law. The interview was being held within the section of the Justice Complex known as the Office of the Attorney General. In fact, prior to walking into the interview room, I saw Attorney General Peter Verniero in the hallway.

Although we didn't speak at the time, I did recently hear him say my name while testifying in front of this Committee. I remember receiving a December 12th, 1997 letter from him denying a January 5th, 1996 discrimination complaint. When I walked inside the hall of the Attorney General's Office, I observed Peter Verniero standing outside his office, watching me as I walked with the Division of Law investigator.

Anyway, after providing some information on the gender bias case that was being investigated, I took advantage of the opportunity to speak to the investigator about some racial discrimination issues within the State Police. He was very concerned about the issues and said he was going to speak directly to General Verniero about my complaints. When once again nothing happened and no one reached out for me, it was just another indication of a faulty system. However, it was now becoming quite clear there were two systems that were in denial, the Division of State Police and its supervising Department of Law and Public Safety, the Attorney General's Office.

It didn't take long before I felt I was being retaliated against as a result of the favorable decision in Federal District Court, both direct and indirect. Although the Attorney General directed the State Police to refrain from any such conduct against litigants, that would be Attorney General Verniero, and specifically mentioned me by name, it appeared to be just a formality.

I was openly retaliated against by my unit supervisor, with direct comments about my lawsuits, and the worst thing I did was complain about this officer. He was rewarded as a mid-level manager and appointed as an assistant bureau chief, then to acting bureau chief, promoted to captain, and most recently, the prestigious position of assistant section supervisor.

In addition to myself, those close to me were beginning to feel the hostility, as well. In one instance, a very close friend of mine, a lieutenant, was transferred from a promising position to one outside the mainstream of upward mobility. In this case, I myself overheard a captain tell him that in his opinion, the transfer was due to his relation with Bellaran.

Although it was his opinion, it was a well regarded one. He was in a very knowledgeable, influential position, and shortly afterward became the major in charge of the very section where all the hostility and retaliation took place. Supervisors in the Field Operations Section are now telling us that he is being considered for promotion to lieutenant colonel. I mention all of this to give credibility to his statements and opinions.

And so in April 1999, I filed another Federal EEO complaint and initiated a corresponding lawsuit based on retaliation. Once again, as we were approaching a new decade and into a new century, in my opinion, based on documented incidents, we were still in the midst of a system that was still severely broken.

At the time of the lieutenant's transfer, the Attorney General's Office somehow heard of the incident and called Lieutenant Colonel Fedorko, then Deputy Superintendent, to ask if there was any harassment going on. He advised them there was not and would have the lieutenant go to the Justice Complex and tell them so.

Being a 25-year veteran, the lieutenant realized the reality of Lieutenant Colonel Fedorko telling him the transfer could have been a worse assignment and that at the new location he would be able to keep his dignity.

So he went to see Assistant Attorney General Al Ramey and told him he was not complaining of the move and just wanted to be left alone.

And so it continued with business as usual, with friends calling friends, and putting out fires instead of addressing problems and implementing much needed reforms. The mind-set was allowed to continue inside the barracks, and so the mind-set continued outside the barracks.

One other significant note, if I may, with regard to my April 1999 retaliation complaint-- It's ironic that last week, April 5th, this year, after it was common knowledge that I would be appearing before this Committee, I received an official letter from the Office of the Attorney General, Affirmative Action Officer, that my 1999 retaliation complaint is still being investigated. This was the first time I had heard from them since.

With the career progression that I outlined for you concerning the principle of my complaint, what kind of message is any action going to send to those who need an example to be led by? I have taken you through nine years of a system in dire need of reform. I would be remiss if I didn't close with the reforms taking place.

I see reforms on the surface with regard to operating procedures and training sessions that are mandated in the benchmarks of the consent decree. But I also see a pattern of business as usual.

If I could close with some examples of why radical reform and legislation is needed rather than just read and initials, which periodically reinforce policy -- instances such as:

an anti-Semitic act at the Holmdel Barracks in 1999, which was covered up and allowed the suspected principal to quickly move on to a specialists' assignment;

a 2000 incident involving a direct racial remark by a supervisor other than to allow him to retire without penalty;

the manager of the supervisor who took no action and attempted to downplay what the black trooper was subjected to, was promoted to captain, retired, and now works in the Attorney General's Office;

a lieutenant who although kept his career intact amidst a shoplifting charge many years ago, should not be currently assigned to the Inspection Bureau and charged with insuring checks and balances of the rules and regulations, standing operating procedures, and mandates of the consent decree;

a captain who is mentioned in this month's JANE magazine article accused of gender bias;

the same man quoted making startling statements in the book *Behind the Badge*, describing an underground discipline for those troopers who don't fall in line.

Last week, gentlemen, I was in the ethics course at Princeton, and this captain was the instructor.

Troopers are not dumb. Many are well educated and all are well trained. They see right through a system of cronyism. Most recently, in August 2000, according to a letter sent from the Deputy Superintendent of Investigations to the homes of all 2700 members, he states that 94 percent of everyone in the Division does not have faith in the promotional evaluation system. And so, as chairman of the reform committee of those two very

important issues, he spoke in the letter of the research, reviews, consultation with professionals, and proposal of the new fair and impartial system.

But, as I mentioned before, don't underestimate the intelligence of the average trooper to not be able to see an all too familiar format. The letter of reform arrives on your doorstep in August. But three weeks prior, in July, while that correspondence is probably in the print shop, there is a mad rush to fill many of the vacancies that exist in the sections that he is responsible for.

Sure, Superintendent Dunbar says that supervision must go on, and the positions have to be filled and that they are not necessarily the people who are going to be promoted. That all sounds well and good to an outsider, but to an insider, we all know they are now one up in supervisory experience, job knowledge, as well as other areas of criteria for the position of promotion. It's, once again, just not fair. And it is certainly never impartial and without internal politics. I guarantee you if you were to poll the entire organization again, one year later, you'll find at least 94 percent or higher of members who still don't believe in this system. Even if you feel that there is the possibility that you may advance, just before you are to attend the promotion testimony, Superintendent Dunbar will send you a letter, and in my case that would be December 12th, 2000, the letter, stating, in essence, don't bother.

In closing, I would like to think that we will not be here 10 years from now, talking about the same issues, with different victims and different legislators. If you're serious about reforms, then the times dictate radical reforms. If you're serious about a civilian overseer, then it needs to be an independent civilian review board, not an individual with professional roots with the Attorney General, First Assistant Attorney General, and the private

counsel retained by Justice Verniero. It's time to get real and alter the culture, the mind-set, and the level of accountability of an organization that can once again be at a level of greatness. If not, then all of the depositions, sworn public testimony, and public outcry was once again for nothing. I appeal to you to make your mark in history and do the right thing.

Racial profiling is just another excuse to stop minority people, just like speeding, weaving in the roadway, broken taillamp, improper hand signal, or an air freshener hanging from the rearview mirror of a vehicle. A trooper is held to a higher standard because they possess an incredible amount of power and discretion. A public servant must serve all the people without prejudice.

Thank you.

I will answer anything about anyone in this organization.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Trooper, you just read from your statement, and so let me just go through a couple of points that I circled quickly.

Page 6, second paragraph-- I circled the words, being retaliated against as a result of the favorable decision of Federal District Court. What was the retaliation?

SERGEANT BELLARAN: I was working for the Diesel Emission Unit. When the decision arrived and found in our favor, I was subjected to a supervisor who gave me special attention throughout my duties. Missing paperwork-- It was a junior lieutenant at the time. He was one that had made statements about how they would rid me of the State Police when he was with the Equal Employment Opportunity Commission within the Division of State Police, which was, at the time, in charge with Captain Val Littles. This

individual had a priority in making my duties with the Diesel Emission Unit a nightmare.

In fact, if I may, he would call me in continuously and berate me in front of a supervisor. He would question little things about appearance. He would put me in a lesser position with a man -- thousand badge numbers below me as a supervisor over me.

See, a trooper only receives one badge number. It's the only badge number he would get. My badge number is in the 3000s. This trooper was in the 4000s. He actually had a junior man that was not the rank of sergeant in charge of the unit. It was things of this nature that, as a trooper, were noticeable over a period of time amongst other things.

Sir, I could bore you with the details of my life of retaliation at the Division of State Police, and I could continue with this ongoing litigation that we have now, and that is now pending within a Federal court. We're just waiting to receive the final disposition and the money that the State owes me before we continue with that. And now I'm dealing with a law firm in the Attorney General's Office, which is the largest in the State of New Jersey, with deep pockets. And I'm running out of time and money and getting gray hair. I started this, actually, with my first special in 1978, and it's been a long time in 24 years in doing this. It's not just one chapter, it's all the chapters that will make up this book.

SENATOR ZANE: None of the retaliation against you was racial in nature, correct?

SERGEANT BELLARAN: Well, the lieutenant we're talking about is black. He's an African-American in this particular case. And he would

continually chastise me that because he's black he has never observed racism in the Division of State Police. "No kidding, Lieutenant." That's how he got his rank. And that is the problem that we have. I'm not saying it's unique with any person or any color. What I am saying is that there are things that are glaring that occur within the outfit. If someone calls you a spic, then you heard it. And certainly more than one person has heard it. And to have another Hispanic or African-American or even a white trooper deny that, there is a problem with that, but you are well rewarded if you do.

SENATOR ZANE: You indicated on Page 11-- You said, "In closing, I would like to think that we will be -- we will not be here 10 years from now talking about the same issues with different victims and different legislators. If you're serious about reforms, then the times dictate radical reforms." And you go on. Such as radical reforms?

SERGEANT BELLARAN: I have heard, over the last several weeks, Attorney Generals--

SENATOR ZANE: Let me just say this to you, all of -- many of us sitting on this Committee have said that we really wanted to hear from some troopers. And that's really where I'm coming from with that question, because who knows better what's going on, I guess, than troopers. That's what we think, anyhow. And I'm asking you, again, and I didn't mean to interrupt you, but then what are those radical reforms. And I guess we're really talking about addressing the issue of racial profiling, correct?

SERGEANT BELLARAN: Well, to deal with racial profiling, you better deal with racism within an organization.

SENATOR ZANE: Well, tell me what you meant by radical reforms as it relates to racial profiling, if that's what you meant. If you meant something else, then we'll move onto another question. If you were talking about racial profiling, I'd like to know what you meant. What are your suggestions?

SERGEANT BELLARAN: What deals-- What happens or occurs within the station kitchen -- the barracks kitchen is what's left on the shoulder of the road. If you don't deal with the racism within the organization, how they treat other troopers, how can you expect them to treat other minorities on the road with indifference? No one is sensitive to these issues.

I work with an organization that puts people in a position that condones racism within an organization. We, after everything, have allowed troopers, not all of them but too many of them, to stop people just because of their race. I can't imagine anyone stopping that many people on a New Jersey Turnpike -- just the Turnpike, and it happens at many barracks, without having any type of sensitivity towards that particular person.

If they're stopping just Hispanics just being human nature, it's going to bother me. That will be my uncle or my family. And if it's my kids, and I have children, it's going to be my daughter or my son. And as a father, I'm not going to allow that to happen. What you have here are troopers who are very -- who are not sensitive to the issues of minorities.

Attorney General Farmer just made a statement that they find out that it is actually white males who have more of the drugs -- that are carrying more of the drugs. Are we now going to sick the troopers on white males? Do

you think the people will put up with that? Reforms that we need are to have disciplines and carry them out.

Former Attorney General Del Tufo stated that they had fired 20 people for racism or racial profiling. That's not true. He's misinformed. We have never fired or terminated an individual for racism or racial profiling in this organization. In fact, we have promoted them. And we have put them in a position of prestige.

The reforms that we need here are to clean house. We have to take the head off, the body will fall. We should start at the top. These people are there now. Every single person -- this is a long time now -- that I have anointed with being some part of racism or racial profiling in this organization has retired with a pension or have been promoted to a high level in this organization.

SENATOR ZANE: I don't think I'm asking for names, and I don't think I want to give them here, because I don't think that's fair unless those people have notice before, but you have specific people that you have in mind that you're talking about?

SERGEANT BELLARAN: Yes, sir. Quite a few. And I did not give names because of that reason. I would not remove the decorum that you have here by giving names. I think it's unfair also. And that should be handled in another forum.

I'm just telling you this as a fact, that when the Kenna and Hogan shooting occurred, you had a captain that was out on that roadway who was accused of being a racist in a Federal lawsuit. And we won that case. We now have an individual who, like I said, is in JANE magazine for gender bias and

also for disciplinary action with the lords of discipline and the book *Behind the Badge*. And he's now in charge of the Turnpike.

What type of leadership-- How can you lead by example when you have a trooper who's looking at someone with that face of hypocrisy in that leadership? This is just one vicious cycle. We need housecleaning. And I really think that we should start by not putting all of our accusations or all of our suits or all of our grievances in the walls or hide them and misplace them somewhere. I think we should address them. I think they should step up to the plate and start dealing with these individuals. If it's not happening, let's, at least, get them to the table. Let's see what we have here. They're doing nothing. None of these courses have been to trial. All we are getting is lip service from the Attorney General's Office and the Division of State Police. These are-- My case alone is several years old. We have more recent ones within the last two years.

But to send me a letter-- It's an insult to my intelligence to receive a letter from the Attorney General's Office last week, I believe, to tell me that they now found my case and, "Oh, by the way, we're sorry about that." I'm used to this stuff. I've seen this all the time. I'm used to the extensions, and I'm used to the lip service. I've been doing it for a long time. You become numb with it.

But it's insulting for you, gentlemen, not me. I'm used to it. I'm just telling you that to get this, and I'm showing you this, it's a slap in the face to this -- to these hearings.

SENATOR ZANE: What's a slap in the face to the hearings?

SERGEANT BELLARAN: I received a letter from Assistant Attorney General-- May I give her name--

SENATOR ZANE: That's fine.

SERGEANT BELLARAN: --Laurie Hodian, who stated that the summer of '99 complaint that I had issued -- that I haven't heard from anyone concerning this-- "We're sorry, but we just wanted to let you know that we're still investigating this and that we neglected to continue your extensions." This is several years afterwards. I just received this just prior to me showing up here on Monday. They already lost an Allenwood case report that, until he was closed by the Merits Board of Personnel just recently-- I had to call the individual up and wanted to know, "You know, we never received a complaint. I've been asking for this discovery. I've been looking for the investigation report."

For over six years they cannot locate the report. They gave the State Police 10 days. I have all the documentation. I brought this box of paperwork just in case you wanted to see for yourself. And they would request the Division of State Police to come forward with this information. No one could find it. And then just recently, this month, after a complaint that has been since September 24th, 1996, a gentleman from the Merits Board tells me they're going to close the case out. I said, "Did you get the report?" He said, "No, sir." I go, "Well, I'm finding it hard to believe that you're going to close a case that you have never seen." He goes, "Well, that's our policy."

I spoke to Laurie Hodian just prior to that. When they closed the case, this woman had the gall to call me to tell me that they found the report and that everyone has it. The State Police has it. The EEO Bureau has it. The Attorney General's Office has it. And the Merits Board has it.

And I called this gentleman up, and I said, "I just contacted the State Police. They said they had it all along." He said, "Trooper, I'm being frank with you." He goes, "If that report is in the file, they put it in after I closed it."

This is what I'm dealing with. This is what we're all dealing with. This is why nothing is getting done, because they're misleading with their information. They hide the documents. They provide them only when they're caught. And someone else has them, because if you don't, they're shredded.

SENATOR ZANE: Sergeant, were you ever assigned to Troop D?

SERGEANT BELLARAN: Yes, sir. I was assigned to Troop D in 1978 through 1980, I believe.

SENATOR ZANE: And not since then.

SERGEANT BELLARAN: That's correct.

SENATOR ZANE: You're aware that the figures for the State Police other than Troop D are consistent with the minority representation of population, are you not?

SERGEANT BELLARAN: That's correct.

SENATOR ZANE: Okay. And where the numbers are substantially greater are on the Turnpike, which is Troop D.

SERGEANT BELLARAN: That's correct.

SENATOR ZANE: So your comments regarding racial profiling here today would have to be hearsay, wouldn't it, regarding Troop D and the Turnpike?

SERGEANT BELLARAN: You're concerning the statistics that are mentioned which are just recent, which I see no change. If you're-- There's no rules of evidence, I believe--

SENATOR ZANE: You know what I'm really-- I understand.

SERGEANT BELLARAN: What-- I'm just trying to give you-- I could tell you what happened on the Turnpike then, sir.

SENATOR ZANE: What I'm really saying to you is that you're saying that -- correct me if I'm wrong with this -- that the real problem is that there are people within the State Police that are racists, isn't that what you're saying?

SERGEANT BELLARAN: Yes, sir. Would you like me to give you an example?

SENATOR ZANE: Let me just ask you a couple of questions--

SERGEANT BELLARAN: Sure.

SENATOR ZANE: --then tell me all you want to tell me.

And you're saying that those racists have to be removed.

SERGEANT BELLARAN: What I'm saying is they need-- I am not going to sit here and tell you that we can change anyone's mind.

SENATOR ZANE: I understand.

SERGEANT BELLARAN: What I will tell you is that we need something to curb their appetite for that behavior if they are a public servant in this State. If what he understands or believes in his home, once he steps through that barracks door, once he dons that uniform and gets out on that highway, he has to curb his appetite of expressing such behavior with motorists

-- that's what I'm talking about -- or he has to be removed. If he cannot curb that appetite, he has to be removed.

SENATOR ZANE: Let me tell you what I'm troubled with, with your statement. Again, looking at the numbers, the numbers suggest that the racial profiling happens on the Turnpike. And yet, you have not been on the Turnpike for 20 years, and therefore, tell me why I shouldn't believe -- and I'm not being critical of you, there are no rules of evidence here, you're absolutely right with that -- why I shouldn't believe that basically what you're telling us is hearsay, as opposed to your own experience that you haven't been there on the Turnpike for 20 years. Help me with that.

SERGEANT BELLARAN: Because, sir, it not only occurs on the Turnpike, it occurs throughout the State of New Jersey. For us to just single out the Turnpike is ridiculous. We shouldn't do that.

If one barracks, for example, goes to a place-- For example, if Alloway Station sends troopers into Asbury Park, because there are indigent individuals there or you have a high population of minorities there, or if a particular barracks will happen to go into Camden City, for example, where they have their own police department, or Long Branch or Lakewood or the City of Newark, we could go on forever with this -- this is just racism. This is racism patrol.

Racial profiling is just a moniker that they're giving this name. It's been going on when I was on the Turnpike years ago. It is going on now, because I speak to troopers. I have so much documentation sent to my house, I have a fire hazard. I can't-- My E-mail is just filled with all troopers, not just troopers of color, but white troopers who are fed up with it, because this is what

is driven throughout the Division of State Police. You can't just stick with the Turnpike. You just have numbers from the Turnpike. It's throughout the State. It's throughout the State in every barracks, maybe not as prevalent as some areas, but it's throughout there.

I have spoken with individuals-- In fact, the night -- the exact same night as the Kenna and Hogan shooting, I sat down with a trooper who had told me, advised me, that it was rampant, that it was worse than it ever was. It was worse than 1988, when they had problems with it out there, and no one was ever charged with racism or racial profiling.

The night that he was telling me this was the night of the shooting, and we were talking about how we were surprised that not more people were shot. This was just sitting in a restaurant and just happened to discuss this, and it just happened to be that evening.

It's not just-- I can tell you, not hearsay, but what I've experienced myself, what troopers-- Especially, I'm bringing to the table 24 years of being a road trooper, and I can only tell you as an old sergeant of what I hear within the barracks. I hear more than some black men would, just like some white men would hear more than me. And I'm just telling you what I've heard and what I have seen out there.

A consent to search form-- I can stop someone and go by the numbers with a consent to search form, and if I rip it up and I never called in the stop, you will never know. You'll never get that in documentation.

So, if I have a guy who's streetwise, for example, who does have drugs in his car, and he's loaded and he knows I'm going to try to get in that car, he's not going to let me in there. And I can sit there and read for him verbatim

on that form, and then I'm going to start explaining to him, "Like if you don't let me in there, I'm going to have to get the dog. You know, he's eating a bowl of Eukanuba right now, makes his coat shiny, and I'm going to get him, and he could sniff the chrome off a tailpipe. I'll tell you right now, the dog is good, and by the way, we'll get the judge." Meanwhile, it's 40 minutes. It's four below zero. The kids are running around.

SENATOR ZANE: Sergeant, is that common practice, what you're talking about right now?

SERGEANT BELLARAN: I would say it's more than you think.

SENATOR ZANE: Okay.

SERGEANT BELLARAN: And then after he's done, if there's no drugs in the vehicle, he just rips the paper up, and the trooper continues on.

Or, for example, if it is a guy who has drugs, it gets to the point, after about an hour, that he knows he's not going anywhere until he lets that trooper in his trunk. Or even the trooper will call someone else to drive the man someplace to make a phone call, and the trooper is getting in that trunk.

We have trained some guys who took advantage--

SENATOR ZANE: Explain that again.

SERGEANT BELLARAN: If I have you stopped and you are carrying drugs, and after about 40 or 45 minutes, you're not going to let me in that car and I'm going to tell you I can't allow you to drive, I may offer you a ride to a barracks. I may even get my bud to take you there, and when you go, I'm in your car. When you come back in the car and you're driving as if there's nothing-- Some people who this has happened to, they're driving and they're closing the door and the handle's coming off, because some troopers carry a

briefcase of tools that will be able to overhaul your engine, because they're getting in that car.

And you have to understand that it's not-- You're just glossing over what actually is going on here. We have mechanics that can do quite a job in disassembling your car better than Fisher Body.

SENATOR ZANE: Have you ever seen that done?

SERGEANT BELLARAN: Yes, sir, I have seen that done. I've seen that done.

SENATOR ZANE: Cars are taken to these mechanics?

SERGEANT BELLARAN: No, sir. You're missing my point.

SENATOR ZANE: Okay.

SERGEANT BELLARAN: What I'm saying is that the mechanic is the trooper.

SENATOR ZANE: Oh, I get it.

SERGEANT BELLARAN: The trooper is the one with the briefcase, that if you think it's a briefcase of paper and you go to lift it, your arm's going to fall off. They have all kinds of tools, and there's ways of getting into that vehicle.

SENATOR ZANE: And you've seen troopers do that?

SERGEANT BELLARAN: Yes, sir.

Sir, I myself, I'm not saying this because-- I myself would carry some tools in my briefcase if I was on the Turnpike, everybody did. And I'm not going to sit here and tell you that I'm not guilty of some of these things that occurred. I didn't like doing it, but you didn't say much back when I was on the Turnpike and a year and a half on the job.

And what turned me was when a supervisor referred to me as a spic. All the good soldier things went out the window then, because then I realized I wasn't all blue. There was a difference between me and the rest of them.

We have a bus that is traveling from city to city trying to hire minorities, and these minorities have decades and decades of abuse from troopers. In fact, we can't even keep the ones we have. As quickly as we are hiring, we are trying to figure out ways to fire them. So they also not only get the abuse from troopers on the road, they're getting it firsthand from troopers who are within the organization, explaining to their family and friends why they're not a trooper anymore or why their heart's not in it anymore. So you can fly a Concorde down Broad and Market in Newark, and nobody's going to get on that plane.

What you should do is start within the organization. Make sure that everybody is treated fairly. Start creating mandates for some type of discipline or some type of -- a way for them to answer. We may need a civil review board. We may need that, maybe not forever, but we may need one to first clean house. But you have to look into some of these issues and not make the presumption that because you have a consent form, that that's going to be on your stops. These numbers, to an average trooper right now, mean nothing to him, because he knows deep down that not every stop is logged, not every one.

Right now, we have a case of a shooting in a southern city in Jersey, where four shots were fired, and we don't have any video on it. That's not supposed to happen. The car had a camera. That's not supposed to happen. The stop wasn't called in.

But I'm telling you, Senator Zane, it's happening, because everyone here is just a blip on a screen to a trooper. And to supervision, they're just going to lay dormant until you get done. They hope it's a pony and horse show. You go away, the election year is over, and they're right back to business as usual. Something has to be done.

SENATOR ZANE: Sergeant, if there is any question that I ask you and you don't want to answer it, I will respect that and understand it. The only thing you're going to have to do is tell me you don't want to, and we'll respect that.

When you were a trooper, you said you carried -- when you were on the road, you carried your own tools from time to time.

SERGEANT BELLARAN: Well, I would-- When I say my own tools, I didn't have a ratchet set like some individuals, but I did-- I just wanted to be up front with you and say, "Yes, I would have a screwdriver or a knife or something that if I had to get into a door panel, because I felt there was something in there, I had those tools." That's correct.

SENATOR ZANE: Tell the Committee why you did it. Why would you do it? I mean, you knew it was wrong, right?

SERGEANT BELLARAN: Well, you have to put yourself--

SENATOR ZANE: Excuse me, let me just ask you a question: Did somebody at some point in time in your training say, "That's wrong, you can't do that?"

SERGEANT BELLARAN: Well, I-- No, I stood up in the class when they were teaching individuals how certain minority groups would act -- a black man would act one way, a Rastafarian would act another, a Hispanic

would be emotional. He'd like to come up close and touch you. I stood up in the class and said, "Is anybody insulted by this?" But nobody was, because it was really a bunch of white troopers, and they just weren't sensitive to those issues.

But yes, what you have here is just a culture that, this is what we did.

SENATOR ZANE: Yes, but why? Why did you do it?

SERGEANT BELLARAN: Well, there's two things here--

SENATOR ZANE: Were you out to impress somebody with the numbers?

SERGEANT BELLARAN: Not me, I know people do, but that wasn't it with me. You just wanted to be accepted. I wanted to be one of the guys. I wanted to-- I was in uniform, and I would do anything to be a trooper's trooper.

And there are a lot of things that I feel that, even today, I would keep. I would risk my life to save yours, and that's a tough thing to do. I have no problem doing that, and I would risk it to save any trooper, even if I didn't like the guy.

But the other stuff, as I'm watching it -- and like I said, for a short period of time, when I observed all of this -- you try, and then all of a sudden inside of you, it's that moral issue that you're talking about. It's the right and wrong, I am wearing a white hat not a black one, and you just back off. It happened a lot sooner for me than it did other people.

SENATOR ZANE: What I think you're saying is, is that we're sitting here looking at statistics and being presented with statistics and courts are

being presented with statistics and attorneys in the Attorney General's Office are being presented with statistics, but they're probably not real.

SERGEANT BELLARAN: I think it's a good start, but you will never get to how bad it really is. You'll never get it, it's as simple as that. Because I know for a fact only until recently-- And as much as I just told you, you had an individual who happened to stop a vehicle, and if you don't turn on the lights, the camera's not going to go on. You know, that's not a mistake.

My point is, though, is that not all stops are recorded, and we have a computer system that, quite frankly, really doesn't work. And we have a records management system that is not on-line.

You're being told all these things, because after this is all done, they'll tell you a month or two-- They might as well tell you ten years from now, because this will be over, and there's nobody to answer to.

SENATOR ZANE: When you would stop somebody and I guess, one way or another, finally get them to agree to a consent -- that's what I'm sensing -- that there would always be-- The person would almost be intimidated until they finally agreed?

SERGEANT BELLARAN: Well, sir, I never-- I don't think I ever filled out a consent form. I have to be quite frank with you. I never did. If I smelled the marijuana, if I saw the gun protruding out from underneath the car, if the tinfoil was sticking out from the visor, if the guy was smoking a pipe, I would lock him up. I would not get to the point where I was going to begin a body and fender shop out on the shoulder of the road. It never got that bad for me.

And one of the reasons -- one of the main reasons is that it gets to the point where, as a trooper, after seeing the same people sitting on the guardrail every single day when you're on your way to work, while you're at work, and when you're going home, you begin to realize that you are not in the position to fight with these people. And it took me some time before I was able to file my first complaint, because of complaining of just that.

SENATOR ZANE: What do you mean if you saw the same people sitting on the guardrail?

SERGEANT BELLARAN: If I'm driving on the Turnpike and all of the people sitting on the guardrail and the hoods of their cars are of color, I'm having a problem with that.

SENATOR ZANE: Okay. That's what I thought you meant.

What amount of-- What percentage of those stops or searches that you were involved in produced nothing? We're told it's a very high percentage.

SERGEANT BELLARAN: Well, again, if for example, I stop you and I'm trying to get in your car and you're a person of principle and you're not going to let me in that car after about 40 minutes of me trying to convince you, and you say, "Go ahead, there's nothing in there anyway." There's nothing in there, and then I turn around, I don't give you a summons, I don't give you a warning, I pat you on the back and say, "Whatever you do, don't speed again," and you're on your way. I didn't call the stop in and I rip up the consent form that you just signed, there's no percentage for that. That number doesn't even exist. That's a ghost stop.

SENATOR ZANE: So that almost -- that would almost suggest that the number of stops that produced nothing is probably higher than--

SERGEANT BELLARAN: Absolutely.

SENATOR ZANE: --we have been led to believe--

SERGEANT BELLARAN: No doubt in my mind.

SENATOR ZANE: --by the statistics.

SERGEANT BELLARAN: That's correct.

SENATOR ZANE: Would you have an estimate as to how much higher?

SERGEANT BELLARAN: No, sir. I wouldn't even venture a guess. I'm not qualified, and besides, no one would be able to give you that number only for the simple reasons that the number doesn't exist.

SENATOR ZANE: How common is the practice of throwing away the consent document when you find nothing, if you know?

SERGEANT BELLARAN: Well, I have a consent form, if you'd like to see it, but there were two forms, one that was initiated in 1990, the other one in the year 2000. After the consent form, then you also had to do an operations report, because you had to log it also with your daily, so there was paperwork involved, and if no one knew you stopped a person, why bother doing the paperwork? And beside, if you did do the paperwork and if someone happened to take a look at those numbers and realize that you're stopping minorities at a high rate, well then, you would have a problem.

Even after all of this, you still had troopers who did have a problem. It's like giving somebody a drug test and saying, "I'm going to give you a drug test in six months." If the guy fails the test, he has a serious problem, a serious problem. If a trooper gets caught using derogatory statements towards a black man with a camera on him, that man has a problem, but there's

a good chance -- and there are many of them that do, that will not perform in that fashion in front of that camera.

SENATOR ZANE: You've been very open and probably revealed a lot to this Committee. Are you at all concerned about yourself in light of what you've told us?

SERGEANT BELLARAN: No, sir, I think they're more concerned about me. I have 24 years in this organization.

SENATOR ZANE: You're in good standing, right now, in the State Police, correct?

SERGEANT BELLARAN: With the troopers I work with, I am. I don't think Carson Dunbar cares for me, but I am-- I have respect from the men -- men and women -- that I work with. I'm comfortable with that.

SENATOR ZANE: What do you think he would say? I've asked Senator Gormley to invite him back, and I believe he's agreed to come back tomorrow. What do you think he would say about what you have said to us? Clearly there were practices a number of years ago, which you say, from what other troopers have told you, still go on today. What do you think his reaction to that would be?

SERGEANT BELLARAN: He would probably say it's your perception, and then he'd probably quote something from the interim report. He would probably quote something from something he read. He would probably read something from a book or work out of his box. The man is not a leader. He is someone who is an administrator, and what we need right now is a leader. We need someone to step up to the plate. I don't care or any of the

minorities care what color he is, we need a superintendent, a colonel in this organization to guide us.

SENATOR ZANE: Let me ask you one last question, which I didn't quite understand. It's on Page 11 of your statement. You said, "If you're serious about reforms, then the time dictates radical reforms. If you're serious about a civil overseer, then it needs to be an independent civil review board, not an individual with professional roots with the Attorney General, First Assistant Attorney General, and the private counsel retained by Justice Verniero."

I'm not sure what you meant.

SERGEANT BELLARAN: What I'm talking about is that Mr. Cronin hired with him a trooper that was his go-between from the Division of State Police, who happened to be someone that he knew from Seton Hall University who he worked -- who he was a professor for. I'm talking that Mr. Chertoff-- I'm sorry, Mr. Zoubek also worked with Mr. Cronin, that Mr. Farmer worked with Mr. Cronin. Mr. Mintz worked with Mr. Cronin. They all worked in the Justice Department, and I believe Mr. Chertoff was their supervisor, and if anyone from the outside were to look at something like this, they would have to imagine that this is not for real. And quite frankly, three weeks ago, I probably would have felt the same thing.

Gentlemen, you now have almost cult status among the troopers and your constituents, because I believe it truly is for real. But that gloss or that cover sheet, at first glance, really pushes somebody back. They step back and have to look at it and think that, you know, it's a fix. It's something political. It's something driven, and a lot of people don't understand that you're public servants.

I would stand here and swear unto this Committee, when Mr. Gormley would give that to me, and it's important that myself or any other trooper not have their hand in their pocket like an officer of the court would when he was here. It's important that I'm very serious about being here just for that, and it's more important that the most credible testimony that you had from the troopers that were here happened to be from a sergeant and a lieutenant. Even we see that, and we're looking at it, and we have high regard for anyone else that recognizes it.

And, gentlemen, and Ms. Glading, it's important to us, and I think this is for real, and that's all I do. I have to go back and instruct a recruit that I have now on my squad, and I go back as a sergeant with 24 years who has been suing them since 1991 -- I had my first complaint since 1978 -- and without a cynical attitude, lead by example, for a young man who left the academy who, I feel, if we have more like him, is going to be outstanding. But he has to be given something where he can also, when he leaves me, know that he is not in a pool or a cesspool of this continually going on.

SENATOR ZANE: Are you still on the road, trooper?

SERGEANT BELLARAN: Yes, sir. I'm at Hightstown. I've been on the road forever. I've been at Hightstown Station, and I run a squad there.

SENATOR ZANE: So your entire 24-25 years with the State Police has been on the road?

SERGEANT BELLARAN: My entire 24 years, except for eight months, have been on shift work on the road.

SENATOR ZANE: And things such as you've told us here today are openly discussed among troopers, or are they not?

SERGEANT BELLARAN: Actually, I'm here-- Actually, they are openly discussed, and right now, I'm hearing more confessions in the barracks than anything else, and it's healthy. I think we'll be in the right direction, we just need some leadership. We have to change the captains, the majors, the lieutenant colonels, and the colonel. We have to have a serious look at what we have up there running the ship.

SENATOR ZANE: Just a couple more questions, I think.

Various directives-- We've heard of several SOPs that dictated certain conduct and certain methods of handling things to troopers. We've also heard -- in fact, you even made mention of it -- with Chief Justice Poritz, when she was the Attorney General, indicating in essence, I guess, that she was going to be tougher with a no-nonsense kind of policy regarding racial issues. Even with all of that that has happened, the statistics -- which you don't really have a great deal of faith in, I gather, but those statistics indicate that it's the status quo today.

SERGEANT BELLARAN: You want to see a spike, a spike in these bad statistics, a drop at this level of horror? Just have a general court-martial with just one person. After everything that we've said, everything that you've mentioned and have repeated about the statistics, not one person has been brought to the table to answer for any of this. In fact, and I'll repeat it, they have been promoted, patted on the back, given plum jobs, or retired with their pensions and full benefits.

You bring one person to the table, they're not stupid. When they realize-- Troopers are just not dumb when they realize that things are going to change. When you have someone who's up there and is going to say, "We're

going to have a discipline now for anyone who doesn't follow the rules and regulations. Oh, yeah, just for you 1700, but you 1000, you're on my team."

When you have a system that works for everybody, that is going to go across the table, that will make sure that individuals, when they do wrong, will be fired and not allowed to resign, won't get medical benefits when they should be terminated, I think -- there's no doubt in my mind, and I know this for a fact, because it's happening now, because they're just waiting for the other shoe to drop. I just want to know, and I'm sure we all do, we're hoping that this is the other shoe.

SENATOR ZANE: What do you mean the other shoe? In what regards?

SERGEANT BELLARAN: That after this, that changes will be made.

SENATOR ZANE: This being these hearings?

SERGEANT BELLARAN: These hearings, that after this, the mandates or some type of legislation would move forward, where there would be an accountability for individuals that -- for wrongdoing, that it won't be allowed. And it should be fair across the board. We have that now. Not now, what we have now is-- I don't know what we have, to tell you the truth.

SENATOR ZANE: I don't mean to pick on you with this one, but some of the things you're suggesting should be corrected are things you did, aren't they?

SERGEANT BELLARAN: I never racially profiled. I've never stopped a man of color-- If anyone would point the finger at me, it would

probably be very firm in my stops, control the stops, but there is one thing I never did was stop a man for his color.

I maybe illegally searched, sir. I'm not going to sit here and say I didn't do that. I never locked up anyone who wasn't really, say, an .09, when it was a DWI. He would have to be a drunk, because most of the ones I stop, they'd have to be falling down before I brought them back to the barracks, but quite honestly, I drove more drunks home than I locked up.

I'm just a regular guy. I'm a grunt. I'm exactly where I am. I just look to be-- I get a kick out of giving someone directions and changing a tire, than locking somebody up, and I'll do that, too. I think a lot of troopers are like that. We leave the hero stuff for the guys who want to breach that. You know, to me, there's no gray line with right and wrong, that's the bottom line.

SENATOR ZANE: Thank you.

SERGEANT BELLARAN: You're welcome.

SENATOR GORMLEY: Senator Girgenti.

SENATOR GIRGENTI: Thank you, Mr. Chairman.

Just a few questions, Sergeant. Good afternoon.

Did you ever come into contact or know Deputy Attorney General Jack Fahy?

SERGEANT BELLARAN: Yes.

SENATOR GIRGENTI: In what capacity?

SERGEANT BELLARAN: I believe he received the assignment for my Federal case in 1991. I believe it was June of 1991. I do have the paperwork here. And that lasted until May of '96, I believe, and I have also -- I have both that documentation. But it was for at least four and a half to five

years, and we're talking depositions, hearings. I sat in with depositions of other troopers. I heard everything that the State -- their witnesses had had.

SENATOR GIRGENTI: Did you ever advise Jack Fahy that profiling was real and prevalent on the highways?

SERGEANT BELLARAN: Again, I'm not going to use the word profiling, because profiling back then when this all began, was not something that was addressed to stopping minorities on the roadway. It was racism.

I would explain to him of an individual, for example, who was a trooper who was holding a Bible and told me that he was put on this earth to treat -- to give black men a lesson. He heard of stops of individuals over and over again, of certain troopers who would stop no one, just minority people.

He heard of minority troopers backing up a white trooper, just prior to the Driscoll Bridge, asking if he needs he help. The trooper says, "No." There's four black men in the vehicle. The black trooper continues, makes the loop over Cheesequake, comes back, and there he has all four black men on the shoulder of the road with their hands behind their heads, and now, there's two white troopers there.

Jack Fahy is very knowledgeable about the case that we won. In fact, he should know better.

SENATOR GIRGENTI: At that point, do you think anything was ever done with that information or knowledge that was given to him? Did you see any changes? Did you see any--

SERGEANT BELLARAN: Within the Division of State Police?

SENATOR GIRGENTI: Right.

SERGEANT BELLARAN: No, sir.

Again, I saw it in '91, it just got worse. I mean, at the time, you had, I believe, several troopers on trial just prior to the Gloucester County incident. They never used the word racism, God forbid, but it just got worse.

SENATOR GIRGENTI: How widespread throughout the system do you feel the racism you've experienced is?

SERGEANT BELLARAN: I feel it's as widespread -- and again, you're looking for a number or a percentage, and I can't do that, but--

SENATOR GIRGENTI: No, my point is that we've been told it's just a small pocket of troopers, or is this a systemwide problem that you feel is more -- I heard the term a few--

SERGEANT BELLARAN: A few bad apples.

SENATOR GIRGENTI: --bad apples.

SERGEANT BELLARAN: How do you get that number? I mean, I'm curious how they ever received that number. If you don't investigate any of this, how do you know how small it is? And I can't believe that someone would come up with a statement like that when it has never been addressed, and no one has ever investigated. How do you get just a few bad apples?

SENATOR GIRGENTI: Well, what are your feelings on it?

SERGEANT BELLARAN: I feel that we have a significant amount of racists that are in the hierarchy of Division of State Police. More so, I think some that are in the organization were like that prior to getting on. But right now, only because of our society now, you have a lot of old dinosaurs, and some young ones with dinosaur thinking, that have to go. There's no doubt about it.

I cannot give you a number, but I would start there, and I think history and documentation itself, it goes across the board. We can't have a woman testifying that she's been sexually assaulted for seven years, and then they promote the individual twice to captain. You just can't have it.

SENATOR GIRGENTI: From where do you believe that racism you've witnessed within the ranks comes from? Is it just-- Is it inherent in the people who are hired? Is it taught in training, or is it both?

SERGEANT BELLARAN: No, you don't train racism. I mean--

SENATOR GIRGENTI: Well, I mean the mind-set. Originally, I believe when you came on it was the DEA directives about different characteristics that you would look for. And you mentioned before, that in your training you were told blacks would react this way, Rastafarians that way, etc.

SERGEANT BELLARAN: Right.

SENATOR GIRGENTI: When were you told this?

SERGEANT BELLARAN: Oh, that was early on in my career, in the early '90s. I believe even Mr. Susswein alluded to some of that information. That's how it was generated to us, there were many other things involved in that. I'm really-- I'm going to use the word -- I was glossing over exactly how in-depth it was. You also had it--

What you have here are a number of troopers, especially on the Turnpike, who feel that people of color or Hispanics are the ones who carry drugs. They're the ones who are going to hurt you. There is no doubt in my mind that individuals like a Kenna and a Hogan, when this van had backed up or if they felt that they were frightened, there is no doubt in my mind that they were uncomfortable with four black men in a van, whether they knew it or not.

The point is, is that I am not uncomfortable with minority people, because I am a minority person. And there are a lot of white people who are not uncomfortable with minority people, because they live with them. You are not allowed to live with each other in this organization. You are separated. You are declassified. You are humiliated, belittled. You are not one of them.

SENATOR GIRGENTI: Well, so was this taught when you first came in, in the academy? Was this part of the training?

SERGEANT BELLARAN: No. No.

SENATOR GIRGENTI: Was it in-service?

SERGEANT BELLARAN: The racial end of it? The racism? The racism end of it?

SENATOR GIRGENTI: Right.

SERGEANT BELLARAN: That comes from your table at home, and you bring that with you, okay? But the racism, how it is pushed throughout the organization from one person to another, you may have someone who has tendencies in doing something like that, for example, but what you would have is it's okay to do, whether you have someone, for example, who is more in-depth or involved in that or someone who would preach it.

For example, I told you I had a trooper who was holding a Bible and explained to me what his job was. There are different degrees of it, and what you have is just a clique, whether it be in South Jersey on the Turnpike or South Jersey or North Jersey or wherever, you have a clique of individuals, where if they find each other, it will work.

You have a superintendent who still feels that minority people are the ones who are carrying drugs. That's okay for a Klan rally, but it's not okay for the leader of the State Police.

SENATOR GIRGENTI: Again, I don't mean to keep coming back to it, but originally, going back a number of years ago, we had this Operation Pipeline, I believe, along the highways, and there was a big emphasis on interdiction of drugs on the Turnpike, and part of the mind-set at that point was they were looking for certain characteristics. Wasn't that part of the modus operandi at that time?

SERGEANT BELLARAN: Sir, if you're give a trooper who does not like people like that, you're just giving him another excuse to stop that person. If it's not the racial profiling or a description of an individual, it's going to be something else; it will be his taillight, but you're still stopping the same people.

And I think the Operation Pipeline and the information that we received, I mean, you had many people -- white and minority -- who were just looking at it like it was absolutely-- You knew exactly what it was. They were showing you films, for example, of a white cop stopping a black man whose name was Mr. Freeman, and the individual who had come up and asked him, "Do you think you're a free man, Mr. Freeman?" I mean, this is the type of thing that was going on. It was something out of the '60s. It was really bizarre.

And again, I have a high school education. I never finished college. I'm just telling you that I'm just bringing to the table my experiences of what these people are like and what they are trying to express towards minority people on the road, and that is that, "We are in control. We are in command, and we gotcha."

SENATOR GIRGENTI: Colonel Dunbar, who appeared before us, has decided that a major step he's taking toward fixing the many race problems within the State Police -- and of course, the AGs as part of the interim report -- is putting a focus on the hiring of minority recruits. Do you feel this is a good start to solving the problem? Is that something you feel that should be done?

SERGEANT BELLARAN: Colonel Dunbar can't keep the minorities he has on the job. I don't know how he's going to hire more minorities. We have minorities that are in the cities that have decades of abuse from troopers, from this organization, from just those few apples that we're talking about -- those few bad apples -- decades of abuse.

We have troopers who have walked through the halls of Division of State Police and then walked out through a general court-martial for something that they just don't understand, because a white trooper did it and nothing happened to him. So, they're not only getting it from the people who experience interaction from police who stop them. They're getting it from troopers who are either not on this job anymore, who are still in this organization, are going home and telling their friends and their family that this is what this organization is all about.

A \$350,000 bus driving down Broad and Market is not going to do it, because no black man is going to get in the back of that bus and sign that paper, when he knows for real from the people that he knows in his organization, that minorities aren't treated fairly, on the road or with the uniform on.

SENATOR GIRGENTI: Okay, so you're saying, basically, since the time of the interim report a couple of years ago, there's been no change

whatsoever in your feelings in terms of minority recruitment, a different attitude? Has there been changes since that point in time, the last couple years?

SERGEANT BELLARAN: You mean in the process of hiring minorities?

SENATOR GIRGENTI: In the process--

SERGEANT BELLARAN: I don't know what the percentages are. I could ask my wife, she's an instructor in the academy. I can't tell you what the numbers are, but the thing is--

SENATOR GIRGENTI: Has the attitude changed? Have there been--

SERGEANT BELLARAN: I think the attitude in the academy, with these troopers coming through the academy, I think, generally, you're getting the best you can get, and I think that they're doing one heck of a job. And they present to us on the road a fresh canvas to paint, and I think when we get that, it's where they go that will determine what direction they're going to go in.

All the recruitment in the world, and we still have a hard time putting minorities there only because, and I'm going to tell you this, because they can't keep us. If you're able to keep the minorities you have instead of trying to figure out ways of firing them, I think that would be the best selling point, and that would help the reforms in hiring minorities.

SENATOR GIRGENTI: And then just one final question. You said before, when you were answering Senator Zane, you were hearing all sorts of confessions. What did you mean by that? What kind of confessions?

SERGEANT BELLARAN: I don't know if I could talk about those confessions. When I'm talking to troopers who either have been treated poorly

or have treated others poorly, I think they feel-- Well, I don't know, I'm hoping that they feel that I'm fair and I can hear it, and maybe give them advice. Like I said, I'm just a grunt, I just tell them what I know. But I think it's a good thing.

SENATOR GIRGENTI: It's a positive thing to be--

SERGEANT BELLARAN: I think it's a positive thing, but it shouldn't be with me. It should be somebody in Division Headquarters. I mean for a trooper, after all the climate and the notoriety of what I've been doing, to have a trooper step forward and come to me with this information, you really have to look at the hierarchy only, because I know that when I've been there, they've lost my reports.

And I know, for example, when a woman would complain, that they would forget what she went through, and they would try to figure out a way how to get rid of her complaint, or better yet, how to do a character assassination on her or anyone that goes against that grain.

SENATOR GIRGENTI: But you feel this is a positive development in the sense that people--

SERGEANT BELLARAN: Oh, we're ripe. We are ripe. We have troopers who now -- maybe were thinking about going to the dark side -- are ripe to be brought in the right direction with the right leadership, and I'm telling you we don't have that now.

Not just Carson Dunbar, I'm telling you that the hierarchy in this organization is just not going to cut it, because it's not public service on their minds, it's a selfish attitude in career development that they're more concerned about and taking care of their own. You can't help it. I mean, you have

professional suck-ups. What can I say? And with that, goes the racism to boot when they turn around and condone something like that.

I feel that right now, we're ripe to put this in the right direction.

SENATOR GIRGENTI: Okay. Thank you very much, sir.

SENATOR GORMLEY: Senator Martin.

SENATOR MARTIN: Thank you, Sergeant. Just a couple of questions, promise.

With respect to selection of new leadership, the last time we did this, one of the overriding questions was whether it should come from in-house or outside of the State Police, outside of the culture. You feel very strongly about this. In cleaning house, would it be your recommendation in top leadership, if there was a replacement now or in the future, should it be from those who know the system within the State Police or should it be some fresh face from somewhere else?

SERGEANT BELLARAN: No, we need someone from our organization. It's a slap in the face to even think about picking somebody from the outside, which is why we have a problem -- the problem we have now.

What we need-- And we do have individuals in this organization that are capable of that job, quite a few, but not in the hierarchy. That's how they got there. We have individuals who have been slapped down for trying to do the right thing.

No, no one from the outside. We have an organization of fine young men and women, and some older ones too, who are capable of being there and putting us in the right direction. You need the confidence. The people

want the confidence in our State Police. We are here to serve you. We are held to a higher standard. We are professionals and well trained.

I am a person who has been able to prove that there is racism in the organization, and I am standing here telling you that this organization is a fine organization. It is an outstanding group of men and women, who can go further, much further than they are.

I'm here just to help build confidence in trying to explain that-- Don't throw us out. We're here for the people. You have many individuals who are just begging to go out there to prove to people that they're not career-minded, more or less, but just want to do the job and be public servants. We can get that from inside this organization. We need a review of the individuals, but you better start from a lieutenant. Do not work from a captain and above, that is how they got there.

SENATOR MARTIN: And there has been some talk about either a review board, advisory board, or some type of civilian, we'll call it a review, so it isn't just a -- there is some way in which citizens can have some kind of look at the State Police operations.

Is that something you would support?

SERGEANT BELLARAN: Again, I'm just speaking for myself, and we talk often about this, many troopers. I, of course, know many troopers throughout this organization. Yes, absolutely, I think we do need a civilian review board. I think it should be, perhaps, the Black Ministers Association to sit at that table, and I think we should have someone representing individuals of maybe an alternative lifestyle and we should have everybody that is concerned about how this organization is.

Yes, we need someone to review it, but we don't need a leader to say, "I welcome a consent decree, because I need someone to guide me." I need a leader, or we need a leader, who can just take the ship, get in charge, don't be afraid to take a step and get up to the plate, and just do what you've got to do. Don't look for somebody to blame it on, which is exactly what is going on here from day one. They just keep pointing to the person next to them and who's upstairs. It's a disgrace.

SENATOR MARTIN: I'm just trying to understand, with a little more clarity, your organizational model. You would have a strong leader from inside the force, someone who isn't at the top level and is already, perhaps, involved with--

SERGEANT BELLARAN: Someone who is sitting with us.

SENATOR MARTIN: --expressing the current problems, and this review team or advisory team, it would be in that capacity, to provide advice to that leader about the concerns of their constituent groups?

SERGEANT BELLARAN: An independent review team. I truly believe that the State Police should have its own cabinet, its own Division. I don't think we should go through the process of going through the Attorney General's Office.

I feel it's important that if the Governor wants to know what's going on within Division of State Police, she could get it from its leader. She should be able to talk to the Colonel to get straight answers to her questions, instead of going through what we are going through right now.

No one knows what's going on. No one knows where the paperwork is. They can't determine who figured out how they even got here.

And I think it's important that the Division of State Police, like years ago, are removed from the Attorney General's Office so there's no conflict of interest, just in case, for example, the Attorney General's Office has to protect the State Police or protect themselves from that office, instead of hiring an outside entity to hire an attorney to defend the State Police against the Attorney General's Office.

There's a conflict here. And I'm just a layman, and I see it and I don't know how anyone else doesn't. I'm baffled by that.

But yes, I think we need a strong leader, a civilian review board--

SENATOR MARTIN: And some separation from the AG's Office.

SERGEANT BELLARAN: No political ties to the Attorney General's Office, an entity that is removed from Division of State Police, officially leading concerns about their issues, it's a home run.

SENATOR MARTIN: I want to switch gears, and just ask you about one other area.

We talked earlier this morning -- I think you were here for some of it -- we were looking at stops and consent searches, and we've been given some assurances that with video cameras, with the new, improved consent forms, that they would really help minimize wrongful conduct by State Police. Now, you've testified to something else. I'm not entirely clear--

Let's start with the video cameras. If I understood you correctly, the State Trooper knows when those video cameras will be turned on, at some point, during a stop. Maybe you can just explain this--

SERGEANT BELLARAN: When you turn--

SENATOR MARTIN: --how is he able to-- Here's what I'm getting at: You indicated that they can do certain things that they'd be embarrassed about later, but they know when the camera is on and when it isn't? I'm not quite clear how that works.

SERGEANT BELLARAN: If I turn on my overheads, if I turn on my audio, that camera's on.

If I pull up alongside of you, Senator, and I don't have my lights on and I put my cap on in my troop car and I point you over, you're pulling over, but that camera's not on.

We have an organization that is now putting cameras in vehicles to make sure our State Police is doing the right thing. What we need is an organization that can put the cameras in the vehicles that will make sure that our State Police are safe, that no one is going to shoot them or use that material just to be able to get the bad guys, instead of having the cameras there, because we have no confidence in our troopers and we should. And we should start there, because then we have a camera that will be useful for us, that we're concerned about it.

That's not what's going on now. We have now almost-- We have someone looking over our shoulder, and rightfully so, because that's what's in the papers right now, and that's why troopers are concerned about these cameras. But really it should be for nothing else but the safety of a trooper and to assist in that.

But, yes, there are ways to get around that, and obviously, like I said, they have.

SENATOR MARTIN: You may not agree with it, but assuming we believe the video cameras do serve a useful purpose now, because they may control some of the behavior that you talked about before -- I think you said, curb certain troopers' appetites -- is there any problem with just leaving the camera on all the time, as opposed to it only going on when the lights go on?

SERGEANT BELLARAN: Sir, that's like leaving a camera or a microphone on in your bedroom. Yeah, I have a problem with that, only because if you're with another or if you're speaking just candidly with the trooper in your vehicle, I--

SENATOR MARTIN: So, as a concern, some respect for a trooper's privacy when they're not engaged in going after somebody on the road.

SERGEANT BELLARAN: Exactly. I know it's beyond 1984, but what I'm talking about is, yes, there is some privacy involved, that troop car is a trooper's office. I think it's important that a camera's used for the right thing, and the right thing would be to get our troopers in the position where the people have confidence in them and that camera's used to save his life, instead of making sure he's doing the right thing.

SENATOR MARTIN: When that camera goes on now, when the lights go -- when the overheads, as you call them, go on, is that video-- It isn't showing somewhere at that time, right? It's just being stored on a disk?

SERGEANT BELLARAN: It's stored on a tape that is in the trunk of the vehicle. When the tape runs out, we replace it with a fresh tape. I don't know where we're going to put all these tapes we have so far. No one has figured that out yet.

SENATOR MARTIN: But there's no monitoring screen, where somebody's watching it simultaneously?

SERGEANT BELLARAN: No, for me to review that tape, I would have to physically remove the VHS tape from the VCR and view it on a TV screen when he returns to the barracks. We don't have that capability of viewing what's going on while I'm sitting in the station, if that's what you're talking about.

SENATOR MARTIN: Are they ever reviewed just for training purposes? To--

SERGEANT BELLARAN: I believe, and only from being a sergeant in a station, they're now requesting some videos for training purposes. Any of your good stops, we ask permission of the trooper if the academy can submit them for training purposes, yes.

SENATOR MARTIN: And with the consent forms, you indicated that, at least from your own experience, there have been -- you're aware that sometimes consent forms either don't get filled out in the first place or they get filled out and they-- I guess they get filled out, but then they get torn up on the roadway?

SERGEANT BELLARAN: Consent forms are useless. I don't believe in consent forms. I think it's a tool that muddies the waters between reasonable suspicion and probable cause. I think this is just something that's trying to weaken that bridge. I mean, there's a threshold that you have to match.

What it does, it allows you to look at somebody and wonder -- and what we're speaking of, for example -- and wonder if his skin color is telling the

truth, and I think that's something that would help stop some of this, by removing the consent forms. A good officer, a trooper, if you don't have probable cause, if you're almost certain it's there, if you didn't see it, you gotta let them go. You've got to let them go.

SENATOR MARTIN: You're not suggesting we should get rid of note taking in some formal way by the troopers, it's just this concept of a consent process? I'm not quite clear.

SERGEANT BELLARAN: Note taking? Is that--

SENATOR MARTIN: Well, the trooper should have some record to be able to memorialize what he saw at a given stop. I mean, that's standard practice. You're not advocating dismissing that?

SERGEANT BELLARAN: Right. Well, what it was years ago, initially, was if you stopped a vehicle and you smelled marijuana and you had called in your stop, and you now have reasonable suspicion, because you smell marijuana, you look into the vehicle, you find nothing, you now have the opportunity, in fact -- later on because of law changes -- to either arrest him for driving under the influence or you can give him a speeding ticket or whatever you stopped him for originally, and he continues on his way.

A consent form now will allow you, because of reasonable suspicion and the odor of marijuana, to take it a step further, okay. The problem I have with all of that is how many families have been stopped--

SENATOR MARTIN: I don't want-- We're a little bit interested in time, and I know your point here, and I actually concur with it. I'm just very interested in the mechanics of the consent forms. Are they sequentially numbered, for example?

SERGEANT BELLARAN: They're numbered with an OPR number. If you have-- Or an invest number -- if you arrest someone, it's an investigation number. If you allowed the individual to continue, because you found nothing, it's an OPR number with an OPR report -- an operations report. So, it's a consent form, operations report, found nothing, or a consent form, investigation report, because you did, and documented on your patrol chart.

SENATOR MARTIN: Suppose you conduct an investigation and you -- and I don't mean you personally, obviously -- wanted to eradicate, because you found nothing and you'd just as soon not have this reported as a statistic, what do you do?

SERGEANT BELLARAN: You mean if I found nothing? I had stopped someone?

SENATOR MARTIN: You alluded earlier to the fact that there are some instances--

SERGEANT BELLARAN: If I stop someone-- If I'm one of these troopers who are going to stop an individual and I'm going to search that vehicle no matter what, I'm not calling the stop in. If I'm going to stop him and the lights aren't on, no one's videotaping this. If I get out of the car, and I convince this guy to sign this sheet and I'm looking in his vehicle, if I find nothing, no stop, no radio message, no camera on, I tear up the report, no report. You're not getting that in your statistics.

SENATOR MARTIN: And what do they do, they just write void on that ticket?

SERGEANT BELLARAN: There's nothing-- That report, it's not like a summons book, it's just ground filed. You're not going to get anything

from that report. These reports are not like summonses, where you have four copies and they're numbered and they're accountable. These reports have a space that you put the number in. You can draw a clown face on it and throw it out, it doesn't make a difference. That's what's wrong with these consent forms.

SENATOR MARTIN: If they were revised to have more of the organizational approach of a summons, that might help a little bit, somewhat?

SERGEANT BELLARAN: Good point. It's a good point.

SENATOR MARTIN: Thank you.

SENATOR GORMLEY: Thank you.

Senator Robertson.

SENATOR ROBERTSON: Good afternoon, Trooper -- Sergeant, excuse me.

SERGEANT BELLARAN: Good afternoon.

SENATOR ROBERTSON: Just to quickly recap, you don't believe in consent searches particularly. Do you think that we would be better off without a consent search protocol?

SERGEANT BELLARAN: Again, I think consent searches muddy the waters between reasonable suspicion and probable cause.

SENATOR ROBERTSON: Well, that being the case, would you suggest that the troopers not be given the ability to conduct consent searches?

SERGEANT BELLARAN: I believe that's so. I believe a search warrant-- If you have probable cause, then get a search warrant.

SENATOR ROBERTSON: And you also believe that the State Police should report directly to the Governor's office, perhaps at a cabinet level position?

SERGEANT BELLARAN: I do.

SENATOR ROBERTSON: Okay.

Given what you've heard informally from troopers, especially once this starts happening in the higher profile way as it is now, is there any sort of opportunity administratively or structurally in any way for troopers to be able to be heard within the State Police itself, on a sort of a no-name basis? Is there any sort of outreach that's done in an effort to really try to assess what's going on out on the road?

SERGEANT BELLARAN: Mr. Zoubek, I believe it was -- I'm going to say March 24th -- actually held a meeting in Buster Soaries's office with a number of black troopers -- minority troopers. I was invited to go, myself and Emblez Longoria. I was told to bring all of my documentation, because this was going to be the time that we'd be able to express to the Attorney General's Office at this level of everything that I just explained to you: the racial profiling or the racism concerning my suit, the retaliation.

It was just prior -- I would say, three weeks prior -- to the interim report coming out. As we walked into the office or into this room, we were then advised by Mr. Zoubek that anyone with litigation would have to leave. And so I explained to him, I go, "Well, I was invited here." And he goes, "Well, you have to get the okay from your attorney." I go, "My attorney knows I'm here, and that's why I'm here. They told me to bring the documentation, that's why I showed up." There's only about maybe 12 of us.

He goes, "Well, anyone with litigation has to go. If you want to talk to me later on, I'll be able to speak with you then, and we'll discuss these issues." I'm still waiting for that phone call.

But my point is, is that what he did, essentially, is he separated with minorities with litigation and minorities with none, and he did that, I believe, because in the final report, he said that he had spoken to minorities about these issues. But he did speak with minorities, just not the ones with the baggage, and he didn't speak to the ones who had the information.

SENATOR ROBERTSON: Well, I don't mean to cut you--

SERGEANT BELLARAN: So what I'm saying is that here you have the Attorney General's Office trying to address these issues, and they still are conducting some type of skullduggery.

The outfit, what they do, is just not address it, "We'll take your information," and that is the last you hear of them.

SENATOR ROBERTSON: One of the things that you've been suggesting all along is that racism is deeply rooted systemically within the Department and within the culture of the Department and within the history of the Department -- at least, within the last few decades.

And one of the things I'm wondering is, some of the people who have come forward to you and have made confessions to you, they don't necessarily -- they're not necessarily in the category of folks who have baggage, at least official litigation baggage, necessarily?

SERGEANT BELLARAN: No.

SENATOR ROBERTSON: The question is: Would it serve a useful purpose for there to develop some format that on a no-name basis a trooper can come in or a collection of troopers--

Hopefully, that's our system. (referring to loud static)

SENATOR GORMLEY: That was my cell phone. (laughter)

Go ahead.

SENATOR ROBERTSON: Would it serve a useful purpose to have a situation or have a structure in which troopers can come in on a no-name basis, either individually or where, for lack of a better word -- I hate to even use the word -- focus groups can be done, maybe using random badge numbers or whatever else, to try to engage in some diagnostics to try to get at how widespread the attitudes--

SERGEANT BELLARAN: Well, we have that, sir.

SENATOR ROBERTSON: --that you're talking about are?

SERGEANT BELLARAN: Well, we have something not at that level, but we have the Employees Assistance Program. But they also are deeply rooted within the hierarchy of the Division of State Police, and if someone comes to the Employees Assistance Program -- the confidential program that we're speaking about -- they get there, they plead their heart out about what's going on, and they tell them all the issues they have, and that's only good for 30 days, because after that, now you're on sick leave from the Division of State Police. They send you to a psychiatrist, and you're a Section 8.

You don't have-- You don't trust anybody right now in this organization at that level, and rightfully so. I mean, if history is any-- We can't

even police ourselves, never mind try to help ourselves, and a good indication of that would be the Turnpike audit. I mean, look what that did, nothing.

So I mean, what I'm trying to say is that you can't-- It has to be an outside entity that doesn't have to report to the Division of State Police, that it is totally confidential. I mean, if you have some troopers who go into Employees Assistance, it's unfortunate, once it hits the medical at Division of State Police, everybody knows about it.

SENATOR ROBERTSON: Well, that carries it's own baggage in and of itself.

SERGEANT BELLARAN: Once you do it, now you're stereotyped.

SENATOR ROBERTSON: The other area I just wanted to ask about briefly is civilian complaints. To what extent are they reliably, effectively, fairly dealt within the State Police system, in your opinion?

SERGEANT BELLARAN: Now? (affirmative response) I don't know.

SENATOR ROBERTSON: As opposed to what time frame?

SERGEANT BELLARAN: As opposed to 20 years back. You would have to commit a homicide before you would be brought up on charges, unless, of course, you were not on the A team.

SENATOR ROBERTSON: Have there ever been citizen complaints against yourself?

SERGEANT BELLARAN: Yes.

SENATOR ROBERTSON: How do you think they were dealt with by the system?

SERGEANT BELLARAN: Sir, I had four people try to steal my car in Monmouth County on the Garden State Parkway while I was in plain clothes. After we caught the individuals-- And it was a melee on the road, there was four people. I tried to get my gun that was in the car, because I was outside the vehicle. The State Police began to investigate me for harassment. They had more documentation of arrests on these individuals that could have filled everybody's desk; everything from stolen vehicles, police assaults, sex crimes. It was a contest. Two of them were brothers, and there were actually having a contest to see who would have the most arrests.

If I was another trooper, and I'm not going to say white trooper, I'm just saying another trooper that was on the A team, they would have received perhaps a yellow ribbon, maybe Trooper of the Year, who knows? Some type of award or a pat on the back for doing a good job. I was almost indicted for harassment.

SENATOR ROBERTSON: What year was this?

SERGEANT BELLARAN: This was 1986, I think, '86 or '87.

SENATOR ROBERTSON: So this would have been prior to your 1991 filing of the EO?

SERGEANT BELLARAN: This was prior to me being left at the barracks stoop in my underwear with socks on the day I was suspended. It was prior to all of that.

SENATOR ROBERTSON: Okay. Then why do you think you were being singled out for that sort of treatment?

SERGEANT BELLARAN: Because I was known, since 1978, to bring to the attention of my supervisors when someone would refer to me as a

spic, another human being as a nigger, a kike, or whatever they wanted to call anyone they felt like calling -- and I'm not talking about troopers, because at that level, I would not get that, because it would be dealt with.

But at a level of authority where you can have a quasi-military outfit, if I had an individual who was going to tell me to remove my uniform, if I did take action, I would then be proving everybody right, the type of person that I was. So it was better for me to take it on the chin, learn the rules, and fight them at their own game.

SENATOR ROBERTSON: I have no other questions, Mr. Chairman.

SENATOR GORMLEY: Senator Furnari.

SENATOR FURNARI: I know you said we should eliminate consent to searches completely in New Jersey, but you said before that you could just crumple up the consent to search form and eliminate it. The forms themselves-- I know that there's warning forms and there's ticket forms. Now, both of those forms have a number that's punched into them. Is there not a number that's also punched onto the consent to search form, so they can keep a record?

SERGEANT BELLARAN: The number would only apply if you logged the report. In other words, on a summons book you have sequential numbers, on a warning book you do--

SENATOR FURNARI: But in other words--

SERGEANT BELLARAN: I have-- Would you like to see what they look like?

SENATOR FURNARI: Yeah.

SERGEANT BELLARAN: Has anyone ever seen what they look like?

SENATOR FURNARI: The consent to search form would only have a box where you can fill in the number--

SERGEANT BELLARAN: That's correct.

SENATOR FURNARI: --as if it were a report.

Do you think -- do you think that simple things like that are corrective enough, if in a consent to search, to eliminate the ability to throw it away, if you just add sequential numbers printed on them?

SERGEANT BELLARAN: Oh, I think it would impede anyone trying to get rid of them. It's very hard to lose a summons, I can tell you that. And I would only imagine, it would be just as hard to lose a consent to search form if you were to number them. But that's not the only problem I have with them.

But, yes, it is a good point, and it would make it difficult for them not to utilize it without using that particular form.

SENATOR FURNARI: Again, without necessarily you having to show me the form, is the form of a nature that is more like a police report, or is it more in the nature of a summons? Because I'm trying to get to why they didn't put these numbers on them in the first place.

SERGEANT BELLARAN: No, it's a form like-- It's a police report form without a number. I mean, our investigation reports don't have numbers.

SENATOR FURNARI: Right.

SERGEANT BELLARAN: And we use the investigation reports, we log one in, we apply it to the report, I mean for a number of reasons. Mostly,

because some people mishandle them and are able to continue with an additional report for co-ops and subs. This is utilized in the same way. I think it's easier. It more or less-- It stops the paperwork of losing these reports or making a mistake. This is something that's out there on the road. It's thrown on the trunk of the cars. It gets dirty. I just-- I don't think it really is a serious tool for its use. I think what we should do is just keep it black and white, probable cause, search the vehicle.

SENATOR FURNARI: Okay.

Thank you very much.

SENATOR GORMLEY: Thank you for your testimony.

SERGEANT BELLARAN: Thank you, sir.

SENATOR GORMLEY: We're going to take a five-minute break.

Then we're going to have a panel of motorists who were stopped: Laila Maher, Felix Morka, Frederick Foster, Ivan Foster, and Ethel Abernathy.

Oh, just Frederick Foster? (affirmative response) In other words, we're just going to have Frederick Foster, not Ivan Foster or Ethel Abernathy.

Okay, we'll take a break, and then the motorists will be sworn.

Thank you.

(RECESS)

AFTER RECESS:

SENATOR GORMLEY: I ask that -- the Committee members to be seated.

I would ask the following three witnesses to come forward: Laila Maher, Felix Morka, and Ivan Foster.

We're just waiting for a couple more of the Senators to come back.

We ask the witness to please stand, raise their right hands, and take the oath.

(Oath administered)

Prior to my calling the individuals to testify, I'd asked Mr. Chertoff to advise -- let me see -- Mr. Foster regarding some of the facts that he should be aware of prior to the time that he testifies. This is just by way of notification to you, if you would.

Mr. Chertoff.

MR. CHERTOFF (Special Counsel to the Committee): Thank you, Mr. Chairman.

Mr. Foster, I understand that you're-- Don't answer this. My understanding is that you're currently a defendant in a pending case arising out of the incident that you're going to testify about, and am I correct that you voluntarily solicited the opportunity to appear before the committee?

I V A N F O S T E R: Yes, you are

MR. CHERTOFF: Okay. Now, I just want to make sure you understand that what you say is going to be recorded, you're under oath. What you say could be used against you in your case, and so therefore, if you testify here, you have to understand that anything you say could be used against you.

Do you understand that?

MR. FOSTER: Yes, sir.

MR. CHERTOFF: Also, I assume you have an attorney in your criminal case. Have you talked to your attorney about your desire to be present here?

MR. FOSTER: Yes, that has been arranged and spoken upon, and permission was given.

MR. CHERTOFF: Okay. So your attorney has, basically, agreed with your coming here, right?

MR. FOSTER: Right, he has at some point.

MR. CHERTOFF: Now, if at some point you decide you want to stop testifying, you ought to notify us of that fact. We won't push it, but I want to make sure you understand that you are giving up the right to remain silent, by voluntarily appearing.

MR. FOSTER: Yes, I do.

MR. CHERTOFF: And also, I just understand, Mr. Chairman, that the other witnesses do have a pending civil case.

Is that correct?

L A I L A M A H E R, E S Q.: Yes.

MR. CHERTOFF: I just want to make sure you all understand that-- Obviously, you've got counsel on the case. Does your counsel know you're appearing?

MS. MAHER: Yes.

F E L I X M O R K A, E S Q.: Yes.

MR. CHERTOFF: And I take it that's-- You've talked it over with him, and you want to voluntarily appear?

MS. MAHER: They actually asked us to appear.

MR. CHERTOFF: Oh, they asked you to appear, okay.

Thank you.

SENATOR GORMLEY: Okay.

Would you make sure you have your red lights on? (referring to PA microphone)

MS. MAHER: Okay.

SENATOR GORMLEY: The first to testify-- We'd ask to hear the-- We'll run through the three statements, and then we'll open it to questions.

The first person that we'd ask to make their statement is Laila Maher. Maher?

MS. MAHER: Maher. (indicating pronunciation)

SENATOR GORMLEY: Okay, I'm sorry.

MS. MAHER: Okay.

My name is Laila Maher. I am an attorney. I practice law in New York. I'm a member of the New York State Bar. I will just start and give you a little background about the stop.

On January 16th, 1996, Felix Morka and I were traveling from the Washington, D.C., area to New York City. At around 2:30 a.m., we -- as we were going along the New Jersey Turnpike heading north, we saw some police lights flashing behind the car.

After we-- We actually weren't sure if they were wanting us to pull over, but when we determined that we had a safe spot to pull over on the highway, we did. At that point, the two officers -- there's two officers -- got out of their patrol car. One officer came up to--

Felix was driving, and I was in the passenger seat. One officer came up to Felix's side of the car, and the other officer came up to my side of the car. I was in the passenger seat. My heater wasn't working. This was actually my car. My heater wasn't working, so I was cold, so I had my hands like this. (demonstrates)

The officer came up to the window, and he told me to show him my hands. I didn't hear him when he first said it. I said, "What?" And he repeated it again, he said, "Show me your hands." So I did. I took my hands out like this. (demonstrates)

At that point, the other officer was demanding that Felix show him his driver's license. As Felix-- I'm trying to just give you kind of a basic background of what happened without all the details. As Felix was trying to get his driver's license out -- he had his seat belt on -- and he was reaching into the left-hand pocket, the other officer said something to the effect of, "I said show me your-- Give me your driver's license."

And within less than a few seconds, he started to-- He grabbed Felix by the collar of his sweatshirt, started to violently shake him, knock his head against the steering wheel. At that point, he -- Felix was dragged out of the car.

I had gotten out of the car to see what was going on, and the officer that was on my side of the car-- The next thing I knew, I was under my car, trying to see what was happening to Felix on the other side, and he put -- I looked up and there was a gun to my head, about one inch from my head. He was standing like this. (demonstrates)

I was-- You know, throughout all of this, there are cars driving by. I couldn't understand what was going on. I kept asking, "What did we do? We didn't do anything wrong. We didn't do anything wrong." And he kept-- He told me to get back in the car or I would be arrested.

I said that I wanted to see what-- I screamed, actually, that I wanted to see what was going on. At that point, he took my right hand and twisted it behind my back and threw me against my car and put my head -- slammed my head against the top of my car. So I was like facing traffic as it was coming by. Then he forced me back into the car.

Of course, Felix was dealing with the other officer, and I was still trying to see what was happening, although at this point, I was in the car. Then they had actually-- They didn't tell us at any point why we were stopped. At some point, I heard the other officer yelling for Felix -- for the registration of the car. I said that I had it, because it was my car.

So the other officer, he was standing at the window, and this was after I had been shoved back into the car, and he had a flashlight pointing on the glove compartment. And I was crying and shaking and trying to search through my envelope that has all the documents on the car for the registration. And at one point, he screamed, "That's it. That's it," and it wasn't it. It was my proof of insurance, but he grabbed it, and then he went off to his car. Then I found the registration, and told him, "Here it is," and then he took that.

Then, I also remember at one point, he -- actually, after I got back in the car -- he had stood next to the car to block me from getting out of the car. At one point, my toe touched the concrete of the highway, and he told me to get my toe back in.

So, when it was all over, Felix was given a speeding ticket. Felix had asked the-- And Felix will go into more detail of what happened from his vantage point. But he had asked him what his name was, and the officer wouldn't give him his name, and he also asked the other officer, who had done this to me -- who had held the gun in my face -- what his name was. He wouldn't give us the name either.

We finally-- We went to the station to file a complaint. When we got to the station -- we actually got lost on the way to the station on the Turnpike, so when we finally got there, we saw both officers pulling out from the station. So they had gone to the station ahead of us. When we got to the station, we spoke to an officer named Officer--

Oh, I forgot to mention something very important. When it was all over, we were sitting in the car, and I remember I looked up in the rearview mirror and I saw the officers behind us in their patrol car, and they were laughing. And I remember telling Felix, "Can you believe they're--" They were laughing hysterically after they had done this to us.

When we went to the station, we told the officer, Singletary, that we wanted to file a complaint, and we told him what happened. He said, "Just tell me what happened, and I'll have somebody get back to you." We said, "No, we want to fill out a form. We want to file a complaint." I mean, he was doing everything in his power to make sure we didn't file a complaint.

Then he gave us a Post-it note and said, "Write your name and phone number on this, and I'll have someone get back to you." And I know, both Felix and I said, "We're not leaving this station until you give us something to write on so we can file a complaint and state what happened."

So finally, he comes back and gives us both a legal pad. So we stood and wrote on this legal pad everything that we could remember. At this point, it was around 3:45 in the morning, and we wrote everything that we could remember. We gave it to him when we were finished. We told him we wanted a copy, and he gave us a copy. Then we went on to New York.

We filed an internal complaint. We heard from a Lieutenant named Matonis, who had called us on the phone and spoke to us over the phone about what had happened. That was, I guess, their version of the investigation, and then we later heard -- I think Felix got a letter -- that our complaint could not be substantiated, and that was the end of it.

So we found an attorney in New Jersey who took the case, and our individual cases were filed in 1997, although this had occurred in January of 1996.

At one point, too, when Felix was asking -- back to the time we were stopped -- when Felix was asking the officer why we were stopped or what was happening-- He, at one point I remember, said, "People like you shouldn't be on the road anyway." And he made other comments, "You've come this close to being arrested." They never did search the car either.

I can tell you just-- Ever since this has happened, as far as my life is concerned, it's had a huge effect on my life in many ways. I live in New York City, and at this point, whenever a police officer is anywhere near me, I get very nervous. If they're behind me in a car, I get extremely nervous. I also do not like to drive on the Turnpike. I'm on the Turnpike as little as possible. I feel like the world is no longer safe.

I don't know if you've heard people say this before, but once an incident like this happens with the police, and they're supposed to be there to protect you, you no longer feel like that anymore. So if something-- If I'm ever in a situation where I need protection, the last thing I would do at this point would be to call a police officer, because I'm now afraid that they're going to do something to me because of my skin color.

I can tell you a little bit about the status of our case. They also-- Our attorneys tried to certify a class -- class action. It was denied at the trial level. Judge Amy Piro Chambers denied the motion for a class. The Appellate Court refused to hear the motion, so now it's at the Supreme Court. We're waiting to see if they are willing to hear the motion.

The current Attorney General, John Farmer, is aggressively fighting certification of those who have been victims of racial profiling as a class, as we speak. And I think that without certifying a class, victims of racial profiling are not going to have a voice in what is happening to us.

I don't know if you wanted me to-- There are several remedies, I think, that could be instituted to help in fighting racial profiling. I didn't know if you wanted me to get into those?

SENATOR GORMLEY: Go ahead.

MS. MAHER: Okay.

I'm actually going to read directly from the second amended complaint that has been filed in our case. These are some of the requests for relief. This list is not a total list.

"No. 1, certify a class for all motorists of color who have been victims of racial profiling; two, enjoin police immediately to discontinue their

pattern and practice of discrimination based on race, color, and/or national origin, and to put into place safeguards sufficient to ensure that such discrimination does not continue in the future, including, but not limited to, the following:

“1. To cease and desist from all discrimination motivated by a person’s race, color, and/or national origin in the enforcement of traffic laws on the Turnpike, including the policy of making ‘profile’ stops.

“2. To maintain records of all traffic stops, including those that do not result in the issuance of a citation; to provide the date, time, and location of the stop; the race, ethnicity, age, and gender of the person stopped; the alleged motor vehicle infraction that led to the stop; whether a search was conducted; whether the vehicle, personal effects, driver, or passengers were searched; what the legal basis for the search was, including whether consent was obtained, and whether there was a probable cause or reasonable suspicion to suspect a crime; whether any contraband was discovered in the course of the search; whether any oral or written citation or warning was issued as a result of the stop; whether an arrest was made as a result of either the stop or the search; and whether any property was seized and a description of that property; and to compile these data and report these results to the State and make them available to the public on a quarterly basis.

“3. To conduct, on an annual basis, a violator survey to determine the demographic characteristics of the population eligible to be stopped for motor vehicle infractions, and to report the results of this survey to the Attorney General and make the results available to the public.

“4. To install video and voice recording equipment in each State Police vehicle, which operates automatically and which will provide the date, time, and circumstances of each traffic stop, and to maintain such recordings for not less than six years.

“5. To provide each person involved in a traffic stop, and the general public, the right to obtain a copy of the written video and voice record of a traffic stop for a reasonable charge.

“6. To establish a procedure to enable each person involved in a traffic stop the right to file a grievance to contest the actions of any State Police officer if the grievant reasonably believes that the grievant has been subjected to acts that were motivated by bias due to the grievant’s race, color, and/or national origin, and to establish clear and consistent discipline in the event the grievance is sustained.

“7. To screen candidates for State Police officer training for racial bias or bias due to national origin.

“8. To require that all State Police officers participate in regular and recurring training to assure that the officers do not act due to bias based on race, color, and/or national origin.

“9. To establish an early warning system, which will collect information such as citizen complaints against an officer, any weapons discharged by an officer, civil suits against an officer, and internal warnings to an officer to determine if an officer needs help, retraining, or reassignment and will alert the officer’s supervisor when a set number of incidents are recorded.

“10. To establish a mechanism for internal discipline of officers within the State Police who are found to have engaged in racial profiling.

“11. To establish a civilian complaint review board and,

“12. To appoint an independent auditor who will review the records of the State Police quarterly to determine that there is compliance with these reforms.”

Thank you.

SENATOR GORMLEY: Okay.

The next statement will be from Felix Morka.

SENATOR ZANE: Mr. Chairman, can I just get a clarification? What court are they in, State court?

Is your case in the State court or Federal court?

MS. MAHER: State.

SENATOR ZANE: Okay. Thank you.

SENATOR GORMLEY: Mr. Morka.

MR. MORKA: Yes. Thank you for opportunity to share with you my experience at the hands of these two troopers on the New Jersey Turnpike.

As Ms. Maher said, on the 16th of January, 1996, I was driving, and Ms. Maher was a passenger in that car. Just about Exit 8-A on the Turnpike, I noticed lights flashing in my mirror and began to wonder whether it was police, but I quickly made the judgment that it was probably the police, and then signaled and pulled over.

Once I pulled over, the cop pulled up behind me, which confirmed my suspicion that it was the police. And a police officer approached on my window -- my side of the window, the driver's side window -- and then I rolled my glass down, and he asked for my driver's license. And I said, "Sure," and then I reached into my left pocket to pull out my wallet, which had my license.

Between the question and my answer, he backed up again, and this time, he reached in with both hands through the window and grabbed my sweatshirt around the neck area, around my collar, and began to pull and throw me back and forth between the seat and the steering wheel.

As he was doing this, he was saying, "When an officer tells you to do something, you better do it." He just went on and on, back and forth, and was just speaking -- really talking to himself, like muttering things I couldn't comprehend, and in the process, my face was, like, lined with a lot of liquid from his mouth. And he just went on and on in a fit of rage, just kept banging back and forth.

And then, at a point, I knew that I had to do something. I quickly reached between his grip and stuck a couple of fingers between my throat and his grip, just to let some air in, because I was beginning to choke. And then, he let go for a moment, opened the door, and then came back in, grabbed me again around the neck, and continued the same motion -- just going back and forth, knocking me back and forth, and saying all kinds of things, which I couldn't understand.

And then finally, I struggled and I reached down, unfastened my seat belt, and he pulled one more time, and I was out of the car. Once out of the car-- I mean, this fellow is big, much bigger than I am, so he had a very, very good grip. So, once I was out of the car, he held on. He didn't let go, and just continued to throw me and bounce me against the car. It went on like forever. Again, as he was doing this, he was saying a lot under his breath. My face was still full of his liquid, and he just went on and on in such rage.

And then, I think he must have tired out, because I remember I asked, "What is it I have done?" Just screaming, "What is it I have done," and he just kept on. But when he finished, he let go and ordered that I get back in the car.

Now, before he had pulled me out of the car, I had noticed the discussion between Ms. Maher and the police officer who had come through the passenger side window, and the officer had, in fact, at that point, pulled a gun -- when I had looked over on my right, he had a gun drawn with his flashlight. I could just see it. The flashlight went across his gun's position like this, and that was the moment at which I left the car, so I didn't know what transpired thereafter between Ms. Maher and the officer.

But once outside the car, the officer with me finished what he was doing, and then I got back in the car. He now asked for my driver's license, and he took it, went back to his own vehicle, came back a few minutes later with a speeding ticket, which he gave to me.

And then I asked for his name, he wouldn't tell me. And as he was walking back to his vehicle, I stepped out momentarily and asked, "Look, how do we get to the station?" He also didn't tell me.

And then when I asked, "Look, you're public officers, why don't you just tell me your names? How about the second officer, what's his name?" He was like-- He then came backwards towards me, and said, "Look, you came this close to getting arrested. People like you shouldn't be on the road anyway," and then as they were walking back, they were laughing hysterically, walked back to their car, and then left.

We were there for a few minutes consoling each other, and then finally, we were making our way to a police station. As we were going in, like Ms. Maher said, they were pulling out. And then on getting into the station, Officer Singletary would not let us make a statement. He just gave us some small Post-it and said, "Look, give us your number and go home, and we'll call you sometime." And eventually we were able to make a statement, one in which we had to get some thoughts on paper, so at least write a statement. So we eventually did.

And then a few days later, someone called-- Actually, we didn't get a call, I called the station -- got the number through the information service, called the station, and asked about our complaints. And a few days after that, I got a call from one Lieutenant Matonis, who then asked a few questions over the telephone. And I answered him. And the next thing I got two weeks or so down the road, was a letter saying that their investigation had been completed and that they could not substantiate all of the allegations we had made against the officers.

I think this matter is pretty much at rest. All of the (indiscernible) are developed thereafter. But my point, basically, to you is that I believe that what happened to Ms. Maher and myself was very wrong. As a matter of fact, in December -- December 12th the previous day, of 1995, I was testifying before the Africa Subcommittee of the House of Representatives on the human rights situation in Nigeria. I'm a Nigerian national, and I'm involved in the human rights walk -- because of the movement in Nigeria. And we have had quite a long history of military rule. But in all of my walk in that country, I've never been as much beaten by anybody. Not the police, not the army.

But it came quite-- I mean, it was very shocking to me to have that experience with the officers on the Turnpike. I thought it was wrong then. And in retrospect, to know that this is still going -- from the report that I read is just unbelievable, and I think that if you are able to do anything, I really would urge you to do something, because I was here trying, with my colleagues who are back home, to get the system here -- to get the U.S. government to when -- to see how we can help ameliorate the political situation in my country. And there I was on the Turnpike at 2 a.m. getting beaten by the police. It was something for me.

Thank you.

SENATOR GORMLEY: The next witness will be Ivan Foster.

Now, do we have a--

MR. FOSTER: Videotape.

SENATOR GORMLEY: We have a video. Let's get that set up.

MR. FOSTER: Mr. Weber, did you give them the--

MR. WEBER: Yes, we handed out copies of a police report.

SENATOR GORMLEY: We have one question. What I want to do-- Here's what I'm going to do. We'll get through the panel, and then we'll ask questions to the motorists. Let's stick to the format, because if we start-- Let's--

There was a sheet handed out -- Does everybody have it? -- related to this tape.

MR. FOSTER: It was a two-sided sheet, Senator. One with the picture on the front side -- or either side, and the report on the other side.

MR. WEBER: Mr. Foster, do you want to start and tell us the day of the incident, and then we can start the videotape? However you want to work it--

MR. FOSTER: Okay. This incident happened on February the 3rd of 2000. And the tape will speak basically for itself. Mr. Weber has seen it. And the tape is very clear. And one reason why the tape was brought here was so that you guys can actually see what people live through and what goes on on the Turnpike when nobody's watching.

And basically, I just want to refer you to the beginning of this report, because the officer says in this report: "On this date, I was on patrol of the New Jersey Turnpike SNO roadway in the left lane. I had just reentered the roadway from the Milepost 94 U-turn."

You will see in the tape that he is sitting at a rest area -- Grover Cleveland. And he is watching traffic ride by on the Turnpike. Then he pulls out onto the Turnpike and decides to chase the car down and stop the people.

And I guess you can roll the tape from there. I just want you to know that even from the beginning of this officer's report, he's putting forth his scheme.

SENATOR GORMLEY: Okay. Has that volume-- You've got to check the volume levels on this.

MR. FOSTER: And if you could rewind it and just stop it at the beginning, because the time is very important. In the beginning, you will see it says five hours, six minutes, and 15 seconds. And if you will stop it there, you will also see that he is at Grover Cleveland, which is a rest stop near -- before

Exit 12, where you have two rest stops facing each other. So you can see he is looking towards one of the rest stops and actually at the Turnpike.

SENATOR GORMLEY: Let's start the tape again.

MR. FOSTER: And this is the scene where, again, he is looking towards the Turnpike. You can see the other rest area on the other side. And it goes from 5:6:20 to 5:9:19. So, in these three minutes, this is where he's fabricating his story, saying that he had chased us -- or he was following the car for a mile and a half.

And notice the signals on the white car. That's the vehicle. And the vehicle is not illegally lane changing. They're using-- The signals are being used.

And this is where his report just starts from.

And as this is going on, he has alleged that this car was doing 80 miles and hour, and he had paced it for a mile and a half.

All right, could you stop the tape here for one second?

Now, what you're about to see come up next is my brother-- Well, the trooper is going to come to the passenger side of the window. He's going to ask my brother, who is driving, if he has any ID, license or anything like that. My brother is going to say no, and then he's going to instruct my brother to get out of the car. Then, once my brother is out of the car-- If you can turn over your sheet, you will see this actual set of circumstances happen. This is where my brother -- he asks my brother if he has any ID. My brother says no. My brother is very forthright and tells him that he doesn't have a license. He just bought the car -- didn't have the information on him. The trooper did not wait for any report to come back from the radio transmission. He just went to reaching into my brother's pocket without permission. He just did it.

And if you could go with the tape, you will see it all happen as it happens.

I think you have it going fast. It's not on regular mode -- probably why we're not hearing anything.

He did warn him about the danger of getting out right there.

He's asking does he have a wallet right here.

SENATOR ZANE: Is that as good as the sound gets?

MR. FOSTER: Yes.

And this is the part to pay particular attention to, because, again he's just doing it. He didn't ask permission or anything.

And this is without permission. He's actually acting for the camera, being delighted while he's violating his Fourth Amendment rights.

Could you pause this for one second?

And I'd just like you guys to pay attention to what's going to happen here, because this trooper actually is going to neutralize his camera. He's going to set my brother in the middle of his car so that the camera can't see what he does as he starts to set up his -- finish the rest of his--

And now he is getting ready to have one of the occupants in the car-- He's getting ready to give him some orders to open the glove box. You may not be able to hear it. But again, he's neutralizing the camera's view.

He's telling them to keep their hands down in their lap and don't move.

Now, if you listen, just before he gets in his car, when he walks past my brother, he's going to say he smells weed or that's marijuana. Right there. He said, "I smell weed."

That's as far as I'm going to go with the tape.

So my major concern here is, if you look at the officer's report, he-- Like I said at the beginning, he gives a representation that he was on the highway already, which is not true. And the scenes indicate, and the fact that he tried to edit between five hours and six minutes and then he brings the tape back on at five hours and nine minutes--

Then also in his report he says, "I visually checked the driver's pants pockets, and I observed a large, flat bulge in his rear pocket." Well, everybody's seen it. And if you haven't -- if you were unable to see it, here's a picture. This isn't visual checking, this is reaching into a person's pockets without their permission. This is just violating the Fourth Amendment.

And then the officer later says that he returned to the front of the car to see if he had ID, who my brother was, whatever. And he was ordering people to do things without asking any type of consent forms to be signed or anything like that. And then he comes back and says, as he gets in his car, "I smell weed." Well, he didn't have a reason to tell anybody to do anything inside that car until he made everybody aware of what was going on.

This is really a shame that people can't ride on the highway without somebody seeing you ride by, chase you down, and then fictitiously say you were speeding and that they paced you for a mile and a half when they have a tape-recorded picture of the situation. And they still lie.

So something is definitely wrong. And the reason why this was brought here so that you guys could see it is for you to understand how serious of a problem this is, because this officer had a videotape, and he still lied in his report.

So that says, somewhere along the line, that he knows, or he assumes, that nothing's going to happen to him. So, if nothing does happen, then we continue to be victims on the streets, because these people feel as though they won't be held accountable.

This happened in February of 2000. It is now April 2001. The trial is still going on. The prosecutor still passed indictment on this. With all this information to review, they still indicted him. People have to come from Philadelphia for a year, waste their time, come all the way to Trenton just because their rights were violated, and now you still want me to do something to not say that my rights were violated. You know, when does it end? When will-- I mean, the judge saw this tape. The prosecutor saw this tape. I don't know what it takes. I really don't.

At some point, you guys -- maybe to get together and say, "Listen, something has to be done." There needs to be some type of amendment to any statute that says, if you racially profile, and it is brought up, and then it goes to the review board-- The case right now is not in a criminal court. It's at the review process for the racial profiling. But this is a whole year later. A whole year later. And it's just ridiculous. And I just want to leave it at that.

But I really wanted you guys to see what happens. It's on videotape. It's right there. The guy was in a rest stop. He's watching the Turnpike, pulls out, chases down a car, and hopes he can -- found a wad of money, lies about searching the money, lies about the money being his motivating factor. And still, people, a year later, have to continue to fight and fight and fight for nothing. And it's wrong.

And that's all I'm going to say.

SENATOR GORMLEY: Senator Zane, then Senator O'Connor.

SENATOR ZANE: In this particular-- You indicated at the beginning of your testimony that there were charges against you pending. Is that correct?

MR. FOSTER: There are charges pending.

SENATOR ZANE: I want to be very narrow with it. I don't want you to talk an awful lot about it, because I don't want to see any problems for you. But are the charges pending as a result of this?

MR. FOSTER: Yes, the charges are pending as a result of this.

SENATOR ZANE: Okay.

You were a passenger in the--

MR. FOSTER: No, I wasn't. I was sent here today, because my brother and them who were in the car are scared to step foot in New Jersey.

SENATOR ZANE: That's all I'm asking, though. You were a passenger in this car.

MR. FOSTER: No, I'm telling you I was not.

SENATOR ZANE: Oh.

MR. FOSTER: I'm telling you why I'm here and why I was sent here today.

SENATOR ZANE: Oh, so whatever your problem is has nothing to do with this.

MR. FOSTER: Right.

SENATOR ZANE: Okay. That's the only question I had.

MR. FOSTER: Right. Personally, I can say what I want, but what I was asked to do was to bring this tape up here so that you guys can view it, so

that you can see what is happening and what is happening to people. My brother and them didn't know what to do until they called me.

So now they know that there is a Judiciary Committee, so forth and so on.

SENATOR ZANE: Just very quickly-- Were there summonses issued in your particular case?

MR. MORKA: I was--

SENATOR ZANE: Tickets.

MR. MORKA: Speed tickets, yes.

SENATOR ZANE: Speeding ticket.

MR. MORKA: Correct.

SENATOR ZANE: That was the only ticket issued?

MR. MORKA: That was the only ticket, yes.

SENATOR ZANE: What was the speed?

MR. MORKA: I don't recall. It was probably-- I was probably going about 80 miles, which I wasn't.

SENATOR ZANE: Eighty miles an hour?

MR. MORKA: Yeah, but I wasn't. I couldn't even have done that because of the road conditions at the time. But that's what he wrote.

SENATOR ZANE: Has the motor vehicle violation been disposed of?

MR. MORKA: Yes, it has been, because after the incident, my first reaction, when I had time to breathe and to -- was to try to just force it back.

SENATOR ZANE: Try to what?

MR. MORKA: I mean, force back the experience -- what happened to me. And so I believe that I may have paid the ticket even without thinking -- to just say look -- not to have anything to do with it. So I think I paid the ticket.

SENATOR ZANE: You paid the ticket?

MR. MORKA: Yes.

SENATOR ZANE: Did not contest it.

MR. MORKA: I wasn't going to come back to New Jersey to contest a ticket.

SENATOR ZANE: I'm sorry?

MR. MORKA: I wasn't about to come back to New Jersey at the time in a few days to contest the ticket.

SENATOR ZANE: Okay. I don't have any other questions.

SENATOR O'CONNOR: Senator Zane asked the question I was going to ask, because we didn't hear anything about whether a summons was issued, and I was curious as to what the basis for the stop was. You've answered that.

Thank you.

MS. MAHER: Can I just point out that we were moving along with traffic? We were not moving any faster or any slower than general traffic. And what we came to find out later, what our lawyers had told us -- and they might have gotten this information during discovery, is that the officers had been parked parallel to the moving traffic with their lights on so they can see the identity of the people driving the cars. And then what they do is, I guess when they pick a target, go out and follow the car for a certain period of time. You've

heard the term referred to as paced. So that's why we, when we suddenly saw the lights flashing, we hadn't seen a police car pull out, we hadn't seen anything. All we were doing was driving along the highway. Suddenly, we see lights flashing behind us.

SENATOR GORMLEY: Thank you for your testimony.

SENATOR O'CONNOR: Can I just--

SENATOR GORMLEY: Oh, one more question. I'm sorry.

SENATOR O'CONNOR: You said the conditions were bad at the time.

MR. MORKA: It was a cold winter night, and I think it had snowed, probably, earlier in the day. So it would have been unthinkable that I was going at that speed. But from what I have come to understand, the officer had made his judgement to pull us over not because we were speeding, but because he had paced us for a while, from what the records now show -- that his estimation of my speed was simply based on his pacing, not on any radar activity or anything like that. So whether or not I was going 80 was simply his own figment. I know I was driving, and I wasn't going 80 miles.

SENATOR O'CONNOR: You were staying with the flow. Is that what you said?

MR. MORKA: With the flow of traffic. And it was about 2 a.m. We were suddenly going with the flow of traffic. And I was driving, and I know that I wasn't going as fast as he was -- suggested that I was.

SENATOR O'CONNOR: Were there a lot of cars out at that time of night?

MR. MORKA: Reasonable for that hour of the night, yes.

SENATOR GORMLEY: Senator Zane.

SENATOR ZANE: Just one last one. You both filed, on a, I guess, yellow legal pad, a complaint. Is that correct?

MS. MAHER: Yes.

SENATOR ZANE: You each gave your own versions as to what happened.

MS. MAHER: Yes.

SENATOR ZANE: What happened with that within the State Police? Anything? Has there been a hearing or review or somebody came out-- What happened?

MR. MORKA: Well, as we said, the first contact we had with the officer was when the officer was at the station -- was when he gave us two little Post-its and said, "Write your names and just go." But we insisted, and then he gave us legal pads. We wrote our complaints again, and then we were there for a while, and then finally left on our way to New York. And then a few days after that, about a week or so, we hadn't heard anything from anybody. About two weeks later, I placed a call to the station to ask what they had done with the complaint we had filed. And we were told that somebody would get back to us. And then, I think, shortly thereafter, probably a week or two weeks after that, somebody -- Lieutenant Matonis called me and said he was calling from the station and asked me a few questions on the telephone, and then that was it. That was all that we heard.

SENATOR ZANE: Did he ask you to come into the station?

MR. MORKA: No, I was never asked to come to the station?

SENATOR ZANE: Did anybody from the State Police come to see you?

MR. MORKA: Nobody did.

MS. MAHER: The only--

SENATOR ZANE: Have you been asked to give any other documentation?

MR. MORKA: I wasn't asked to give anything.

SENATOR ZANE: Were you, ma'am?

MS. MAHER: No. The only follow-up was the phone call from Lieutenant Matonis.

SENATOR ZANE: And that was it to this date.

MS. MAHER: Yes, that was it. And actually, when we went to the station, we kind of briefed what happened, but I recall when we got there and we were saying we want to file a complaint, I remember the officers had been in and had left right before we had gotten there. And he was trying not to -- trying to discourage us -- seriously discourage us from filing the complaint. And I remember that he pointed to-- There were a lot of framed black and white pictures of officers along the border of the wall in front of me, across from him, and he pointed to all these officers, and he said, "Do you see all these officers? They all died in the line of duty. And this is why it's dangerous out there. And this is why officers have to protect themselves." And he was going on and on. And I tried to tell him, "We didn't do anything wrong. We complied. We tried to comply with what the --

they told us. Are you telling me that this is justification for them putting a gun to my head and strangling Felix and banging his head against the steering wheel?"

I can tell you that when this was going on, I was so incredibly shocked. I couldn't believe-- It was as if these two had known me their entire lives and hated me. It was rage towards us.

SENATOR ZANE: I understand. You have filed suit, and your suit is still in litigation someplace, correct?

MS. MAHER: Yes.

SENATOR ZANE: Did anyone indicate to you that once the litigation was concluded that they would be back to you?

MS. MAHER: Who, from the police station?

SENATOR ZANE: Yes, the State Police

MR. MORKA: Actually the suit was filed January 16, '96.

SENATOR ZANE: Right.

MR. MORKA: The action was not filed until '97. So then at least went by a year--

SENATOR ZANE: Okay.

MR. MORKA: --during which time nobody, beyond a phone call from Matonis, nobody called or made any contact. Then the next thing was the letter, saying the allegations have been investigated, and we don't find any substantiations for that allegation. That was the end of it, from the police.

SENATOR ZANE: Just lastly, out of curiosity, any physical injuries that required medical treatment?

MR. MORKA: I was -- I, for about a week, two weeks, I had my entire neck region was--

SENATOR ZANE: Were you treated by a physician?

MR. MORKA: I was, yes.

SENATOR ZANE: Okay.

MS. MAHER: My arm was very sore, and it was sore for about a month. I wasn't treated by a physician, because I was a student and uninsured, so I couldn't afford it.

SENATOR ZANE: Thank you.

MR. FOSTER: Excuse me, Senator Zane. Can I just tell you about the current response, because I handle this for my brother, and it takes 90 days for them to get back to you. And in this particular situation, a letter was typed and mailed out on October the 31st. Three months later, no one had called my brother or called me.

Also, a month after it, they sent out some people from Internal Affairs, who came to West Philadelphia to do an interview. So, once you push the system now, it seems that you can get some response. But from the initial request, nothing was done, and then there had to be another call, other letters, and then calls around, and then somebody was sent out.

SENATOR ZANE: Thank you.

SENATOR GORMLEY: Thank you for your testimony.

MR. MORKA: Thank you so much.

The next witnesses will be Ronald Thompson and Regina Waynes Joseph, from the Garden State Bar Association.

Just for the record, we have an additional statement from William H. Buckman, who previously testified. It's being distributed to members of the Committee. It will be made a part of the record.

We'll ask you to stand so we can administer the oath.

(Oath administered)

We'll hear first from Regina Waynes Joseph.

R O N A L D T H O M P S O N, ESQ.: If I may precede her, Mr. Chairman?

SENATOR GORMLEY: Oh, fine.

MR. THOMPSON: Thank you.

Good afternoon, Chairman Gormley, Counsel Chertoff, and honorable members of this Judiciary Committee. My name is Ronald Thompson, and as the President of the Garden State Bar Association, the largest organization of African-American attorneys in the State of New Jersey, I am honored to have this opportunity to address this body relative to the repugnant and unconstitutional practice we have now come to call racial profiling.

Let me once again, on behalf of this organization, congratulate this Committee for its hard work in conducting a comprehensive investigation of the long-standing and institutionalized policy of racial profiling against African-American and Latino motorists in the State of New Jersey.

I am pleased to be here today with my colleague, Attorney Regina Waynes Joseph, who is the chairwoman of the Garden State Bar's Issues/Legislative Watch Committee, who has done a significant amount of work in this area. And her presentation today, following mine, will further

articulate our concerns, our hopes, and our recommendations in bringing New Jersey one step closer to ending this abhorrent practice.

The Garden State Bar Association has, since its inception, been an organization strongly dedicated to the elimination of discrimination and inequality based on race, ethnicity, or sex in our legal and judicial system.

The African-American bar has repeatedly spoken out against the practice of racial profiling, and as officers of the court, we have been appalled by the policy actions and inactions of those at the highest levels of our government, including the offices of the Attorney General and State Police, who for years have either failed to acknowledge the seriousness of the problem, or have failed to take appropriate steps to remedy same.

As professional individuals, we, too, have not been insulated from this vicious practice which has affected so many of our black and brown sisters and brothers from every station in our communities.

So I speak here today not simply for African-American lawyers, but more importantly, for all victims of this scourge of racial profiling, who for decades and decades have been subject to the abuse of being stopped for no reason other than the color of their skin.

While perhaps some in our society may be reticent to acknowledge it, to a significant extent, racial profiling is born of a larger disease we have come to call racism. Racism and intolerance of our fellow citizens and their sacred civil and constitutional rights is a problem we have undoubtedly long wrestled with in this country, and obviously, much work remains to be done before we can achieve its eradication.

Unfair misunderstanding, insensitivity, bigoted stereotyping have all too often led to unfair treatment and abuses in our communities.

While we recognize that there have always been many good, decent, hardworking members of the State Police, as well as other law enforcement personnel throughout the State, who bring honor by their service, we must also regrettably recognize that insensitivity, misunderstanding, bigotry, and intolerance has infiltrated the ranks of our law enforcement at times, creating a culture within that no honest and decent trooper, officer, or citizen could be proud of.

If racial profiling is to end, we must resolve that the New Jersey State Police, as we have known it for many years, must change and can never be allowed to be the same.

The phrase, badges and indicia of slavery was used to describe any postslavery behavior that tended to place African-Americans in a position of second-class citizenship. One of these badges was inhibition on the right to move freely about the country as other citizens could.

The 14th Amendment guarantees equal protection to all citizens of this nation. It quite simply was meant to ensure that African-Americans, Latinos, and all other people of color could enjoy the same rights as white citizens. Equally important, however, the 14th Amendment guarantees the same protections that white citizens enjoy. One of those protections is the right of Americans to be free from unreasonable searches from law enforcement. Another of those protections, of course, is the right to travel freely throughout the United States.

Historically, the 14th Amendment was passed to eliminate the lingering racial problems that continued after the passage of the 13th Amendment, which eliminated slavery. There was a recognition that without the protection of the Federal government, conditions for African-Americans would deteriorate. There was a true concern that although slavery as an institution was gone, the so-called badges and indicia of slavery would continue.

Those who do not understand the legal and historical context for racial profiling would do well to read the *Slaughterhouse Cases*. History teaches us that African-Americans could be stopped at any time for any purpose and forced to legitimize themselves, explain their reason for being in a certain place at a certain time, to show some form of legitimacy in the form of papers which certified them as harmless.

Today, racial profiling is nothing more than an extension of the old badges and indicia of slavery standard. African-Americans in the year 2001 are still being stopped based upon their race, forced to legitimize themselves to law enforcement officers, often forced to explain their destination and reasons for being at a certain place, or for driving a certain make or model vehicle.

The right to travel and the right to be free from unreasonable searches: I mention these two together to illustrate the fundamental problems of race-based policing. Racial profiling is more than a simple catchphrase. It is more than a simple inconvenience for the person stopped. It is the full discard and destruction of a constitutional right imposed by those who are tasked with enforcing the law. The ultimate tyranny, of course, is when those given the charge to protect and serve become the practitioners and symbols of lawlessness.

Race-based policing can be described as the imposition of a racial tax. A person of color is forced to bear the burden of being stopped by police based solely upon race. He or she may be forced to endure vehicular searches based upon race. He or she may be forced to endure highway detention based upon race. It is a tax imposed only upon people of color.

What is more frightening is that over the years we have heard from law enforcement, from our fellow citizens, and even from some legislators that the racial tax is reasonable. Many suggest that it is a small price to pay in exchange for effective law enforcement. But the question must be asked: How many members of our law enforcement community would be willing to pay this tax? How many legislators? How many would be willing to say that in the name of effective law enforcement, the suspension of the Constitution can begin right here and now? Search my car, or my wife's car, or even, my wife.

Each and every person of color must bear the burden of this racial tax. It is paid through a deprivation of basic constitutional rights. And it violates all that we stand for as a nation.

There has been a stunning lack of diversity within the ranks of the New Jersey State Police, as has been mentioned during the course of these hearings. Though Superintendent Carson Dunbar has recently been appointed, there have been virtually no people of color in the policy and decision making ranks of the New Jersey State Police. Indeed, the same point must be made about the Attorney General's Office. This lack of diversity of personnel can often translate into a lack of diverse ideas, viewpoints, and beliefs, as well. Diversity promotes the infusion of different experiences and the lessons learned from those experiences.

While we obviously cannot legislate love and understanding through the passage of our laws, we can enact measures which will ensure that discrimination and disparative treatment, as we have repeatedly seen, will simply not be tolerated.

As these hearings wind down and head toward a conclusion, the real work must now begin. At the end of the day, once the television lights have faded and the camera and radio crews have all gone away, the real challenge and work must commence.

With sincerity and purpose, we must all move in a bold and uncompromising way to clearly put the specter and business of racial profiling in New Jersey's rearview mirror. If we are truly to make New Jersey realize its motto, "Many faces, one family," we must move now from rhetoric to reform, real reform.

Our bar association believes that if we recognize the need for real reform that we should understand, as the Black and Latino Caucuses have, that racial profiling is not confined to a few, isolated incidents. Clearly there was a de facto, if not de jure, policy in effect that promoted the practice of racial profiling. As we've heard, the problem is systemic and pervasive as indicated by its continuing practice, even in the face of its exposure. There must be true, top-down reform of both the agency and its system of accountability in order to ensure lawful compliance within.

We believe, secondly, that the adoption of the package of bills proposed by the New Jersey Black and Latino Legislative Caucuses aimed at eradicating racial profiling in the State of New Jersey, which they have pointed to making racial profiling a third-degree crime, this would be, we feel, a

deterrent, and the provisions would require compilations of statistical vehicular stop information and requisite police officer information to be given to the motorist at the time of the stop.

We feel, thirdly, very strongly about the end to the practice of consent searches by New Jersey State Police and all New Jersey law enforcement officers. The practice of consent searches is one of the methods which are now being used to justify race-based stops. Under this practice, persons who have been pulled over by law enforcement agencies are asked for permission to search their motor vehicles. Our law provides that searches are to be based upon probable cause as defined by the New Jersey Supreme Court and the Supreme Court of the United States.

Consent searches allow law enforcement officers to bypass the important step of establishing probable cause, and actually encourages them to attempt to use coercive and persuasive methods to gain entry into a vehicle they deem suspicious. Many citizens do not understand that they have the right to refuse these searches, and often the suggestion is made that if they do refuse consent, then the officer will get a search warrant, which the officer may know he cannot do.

In motor vehicle stops, police officers enjoy a substantial advantage over the average citizen. That advantage is often translated into unfair leverage which allows them to do by consent what they cannot do under the law.

Four: We would ask that there be required the collection of vehicular stop and detention statistics for all law enforcement agencies in the State of New Jersey. As you know, racial profiling is not limited to the New Jersey State Police. Recently, at least one prominent New Jersey First Assistant

Prosecutor was quoted in a local newspaper expressing support for the principles of racial profiling. The same influences and attitudes that give rise to racial profiling by New Jersey State Police are clearly present on the local level with local police agencies. At the local level, profiling is often manifested in stop and frisk or stop and question situations. Absent probable cause, the violations are the same.

While the focal point of these hearings is the New Jersey State Police, it is important that we seize the opportunity to correct the matter of race-based policing throughout the State so that we do not find ourselves in the same position some months or years from now.

And fifthly and finally, we would ask that the establishment of a special prosecutor to handle abuses generated through profiling and other law enforcement, constitutional, and statutory violations. If we have learned one thing from these proceedings, it is that at critical junctures there was no accountability on the part of the New Jersey State Police for their egregious behavior, and no willingness on the part of the Office of the Attorney General to hold them accountable or force compliance with the law.

In fact, at critical junctures, the complicity of the Attorney General's Office only served to insulate the New Jersey State Police from full liability and accountability. The interconnection of those two agencies renders the Office of the Attorney General either unable or unwilling to enforce the law against its own law enforcement arm. The creation of a special prosecutor ensures impartiality in matters pertaining to law enforcement.

The operation of a democracy is clearly based upon its legitimacy with the citizens. There is an expectation that citizens will abide by the law in

going about their everyday lives. When a citizen runs afoul of the law, there is the expectation that there will be consequences for unlawful behavior. Likewise, when a citizen of this democracy acts within the confines of the law, he or she has every expectation that they will be protected from unlawful behavior.

The record is clear. Scores of African-American, Latino, and other people of color, acting lawfully, have been exposed to unlawful behavior at the hands of the New Jersey State Police. For them, it is too late for protection. They have already been violated. For countless others, however, this body must act, and act aggressively, to protect them.

If we work hard, and in the spirit of unity and understanding, we can truly succeed in writing a bright and glorious new chapter in the history of our State, and indeed, our nation.

Thank you.

SENATOR GORMLEY: Thank you.

Go ahead. Is it red? (referring to PA microphone)

Turn yours off. Would you turn yours off?

Is it red yet? Oh, good. It's a very complicated system we have here.

REGINA WAYNES JOSEPH, ESQ: Thank you so much. Good afternoon, Chairman Gormley. I also bring greetings to Senator Lynch, who is not here this afternoon.

Members of the Committee, Mr. Chertoff, and Counsel, I am Regina Waynes Joseph, an attorney at law of the State of New Jersey, a member of the Board of Directors of the Garden State Bar Association, and Chairman

of its Issues/Legislative Watch Committee. Thank you for your courtesy in extending to me an invitation to testify before you today.

First, permit me to commend you, Senator Gormley and members of the Judiciary Committee, for initiating this important investigation into racial profiling. Your special inquiry, with the reforms which will hopefully result, have the potential to change the face and methods of law enforcement in New Jersey and throughout the country.

The purpose of our testimony today is to assist you in that effort by providing you with our views of what racial profiling is and its effect on its victims; why we believe it has been permitted to continue for so long; what measures must be taken to ensure that those accountable for violating the rule of law are brought to justice; and recommendations for meaningful reforms in the Division of State Police and the Department of Law and Public Safety's Office of Attorney General, which should go far, as well, in providing direction to local law enforcement agencies in the State of New Jersey.

Attorney General John Farmer, in his testimony before you on April 3, 2001, complained that the police and civil rights leaders had varying definitions of racial profiling. General Farmer noted that, "Everyone agrees that law enforcement decisions predicated solely on race are reprehensible and should be forbidden." He goes on to say that the State Police, when denying that systemic racial profiling existed, meant the definition of racial profiling I just quoted. General Farmer then stated that civil rights leaders defined the term to mean any consideration of race as a factor in forming a law enforcement decision. He told you that the State Police were bitter and felt that they were being unjustifiably persecuted because they were doing their jobs properly, using

race as a factor when many courts have upheld its use, and when race was preeminently featured in law enforcement intelligence routinely provided by the Justice Department and other law enforcement entities.

It appears to me that the Attorney General, as have Attorneys General and State officials for decades, is presenting you with a seemingly contradictory set of circumstances which appears to be designed to attempt to defend and immunize the actions of State officials and the State Police on the one hand, while suggesting that he is now caving in to the demands of civil rights leaders to forbid the use of race as a factor in law enforcement decisions, not because of constitutional compulsions, but for policy considerations. I suggest to you that the Attorney General's analysis will go far in ensuring the continued divisions and hostility between the police and the African-American and Latino community based on his improper assessment that the State Police were engaged in valid law enforcement practices.

There is nothing new or complicated about racial profiling. It is simply the illegal and discriminatory targeting of African-Americans and Latinos by police for no reason other than the color of their skin. And it is firmly rooted in this country's and this State's refusal to address the legacy of slavery, repression, and legal inequality, with the resultant prejudices and racial biases which have been and remain the unfortunate outcomes.

This practice did not start as part of the late 1980s war on drugs, nor is it restricted to behavior by the New Jersey State Police. Racial profiling by police, whether Federal, State, or local, and New Jersey's peculiar status as leader of this illegal and unconstitutional practice has been the basis of virtually every racial uprising in this country. It is a part of our popular culture.

In 1956, Chuck Berry, the popular rock and roll singer, wrote these lyrics for the song *You Can't Catch Me*, the first song he ever recorded for a motion picture: New Jersey Turnpike in the wee wee hours; I was rollin' slowly 'cause of drizzlin' showers; Up come a flattop he was movin' up with me; Then come sailin' goodbye; In a little old suped up mini; I put my foot in my tank and I begin to roll; Moanin' sirens, 'twas the state patrol; So I get out my wings and then I blew my horn; Bye-bye New Jersey I become airborne.

In the 1968 Report of the National Advisory Commission of Civil Disorders, commonly known as *The Kerner Report*, the Commissioners made these remarks when discussing the views of African-Americans respecting police conduct: "Physical abuse is only one source of aggravation. In nearly every city surveyed, the commission heard complaints of harassment and the stopping of Negroes on foot or in cars without obvious basis."

I asked former United States Senator Fred Harris, who was a member of the Kerner Commission, whether he believed that racial profiling stemmed from the failed drug enforcement policies of the 1980s. Senator Harris told me that his opinion was that racial profiling began much before that, and was not just tied to the drug business.

This view was reinforced by former United States Assistant Attorney General Roger W. Wilkins, now the Clarence J. Robinson Professor of History and American Culture at George Mason University, who served as Associate Director and Director of the U.S. Department of Justice's Community Relations Service from 1964 to 1969. Professor Wilkins told me that his basic charge was to assess why there was civil unrest in the cities. He said that he and his colleagues went to virtually every uprising in the United States, from Watts in

1965, the riots in 1966 and 1967, through those in the spring of 1968 after the assassination of the Reverend Dr. Martin Luther King Jr.

Professor Wilkins said that the result of his study revealed that every riot was started by a police incident in which a policeman, almost always white, either shot or harassed a black citizen. He said that he heard, time after time from blacks and Latinos, that they were stopped and talked to roughly and disrespectfully by police. The most constant refrain was friction between the black community and white police, and the profound and persistent complaint was that they were stopped because they were black.

Nothing has changed, Senators. Professor Wilkins made the same comment that most African-Americans and Latinos have about racial profiling, whether they live in New Jersey or elsewhere in the United States: "It is a regular feature of American life."

So what are these profiles that General Farmer testified are routinely provided by the Justice Department and other law enforcement entities? Generally, the profile is any person of color, according to Professor David A. Harris of the University of Toledo College of Law, regardless of their obedience to the law, their age, the type of car they drive, or their station in life. In short, skin color has become evidence of the propensity to commit crime, and police use this evidence against minority drivers on the road all the time.

You heard former Superintendent of the New Jersey State Police, Carl Williams, testify here and repeat his assertion, the one that got him terminated by Governor Whitman, that minorities are the ones who were moving the drugs. It is no secret that everyone now knows that national and your own state statistics do not support Colonel Williams's opinion.

Nationally, African-Americans constitute 13 percent of the country's drug users, 37 percent of those arrested on drug charges, 55 percent of those convicted, and 74 percent of all drug offenders sentenced to prison.

Nationwide, in 1999, as reported in *The Philadelphia Inquirer*, the percentage of drivers searched who were found with contraband were 17 percent white, 10 percent Latino, and 8 percent black. In New Jersey, for the year 2000, as reported by General Farmer, 53 percent of black drivers were searched by the Moorestown Station, yielding 13 percent of those found with contraband. Only 19 percent of white drivers were searched; however, 25 percent of those white drivers were found with drugs. And 25 percent of Latino drivers were searched, and only 5 percent were found to have illegal substances. Yet, despite these statistics, General Farmer, according to *The Philadelphia Inquirer*, as late as January 2001, said that the apparent continued disparate treatment of minorities, as suggested by statistics on motor vehicle stops, was not proof of racial profiling. Based on his review of videotapes of traffic stops, however, General Farmer now concedes that we have proof and that some of the videotapes confirm what the numbers suggest.

The bottom line is that African-Americans and Latinos have known that it is incontrovertible that we have suffered disproportionate illegal police actions for as long as we have been in this country. What is also true is that this selective enforcement has been condoned and covered up by senior management of law enforcement agencies and those to whom they report in government, whether at the local, state, or Federal level. The effect of these illegal police activities has been devastating on our communities.

The profile that law enforcement agencies have perpetuated about us is not true, Senators. It is a racist stereotype that debases law enforcement as the perpetrators and degrades us as the victims who have had no recourse at the highest levels of government in this state and this country to make it end.

Let me give you some examples. My late father, William D. Waynes, brought my mother, me, and my sisters to Moorestown, New Jersey, in Burlington County, to live in 1964. For those of you who know the Turnpike, that's Exit 4. When I grew up and had my own family, I lived variously in Newark, East Orange, and Montclair, all of which are at Exit 15W of the Turnpike. Since we're a very close family, I have been up and down the Turnpike from 15W to 4 and back again a great deal over the past 30 years.

When my daughter was a very little girl, starting around 1975, she would play a game on those trips down the Turnpike. The game was to spot the Volkswagen Bugs. Every time my daughter would see a Volkswagen Bug, she would say, "Mommy, there's a Bug," and she would keep count for the entire trip. As she got older, my daughter took to reading books on those trips up and down the Turnpike, because she loved to read. Her head would be buried in a book for the whole trip, except when she saw a State Police officer who had pulled over a motorist. Then my daughter would lift her head out of the book and say to me, "That's a black person, Mommy." Her refrain would continue all the way down the Turnpike and all the way back -- "That's a black person, Mommy" -- and that refrain has continued for 30 years.

On a sunny Sunday in 1974, my former husband and I decided to go out for a drive with our daughter, who was less than one year of age. At the time, we lived in the Colonnade Apartments in Newark, which was adjacent to

Route 280. I remember like it was yesterday thinking that we had to be careful, because we would be driving into communities which were predominantly white, although on the highways surrounding those communities -- and police had a tendency to target blacks who dared to even drive where police felt that they did not belong. Sure enough, on the way home from that Sunday drive, a State Police officer pulled my husband over.

My husband was born and raised in Harlem, went to Catholic grade school, high school, and college, as did I. He had never been arrested, never stopped by police for any reason, and was a very slow driver. The officer had no reason when we asked him why he stopped us, but he asked us where we lived and where we were going. At this point, our 10-month-old daughter was crying in the car. Both my husband and I told the officer what our backgrounds were, and I told the officer that I was involved with a coalition of organizations that was challenging the State Police for practices just like this stop. The officer then told my husband that his license plate was crooked and gave him a ticket for this offense.

I will never forget the Sunday night in August, in 1991, at about 1:00 in the morning, when I had just completed a 14-hour drive from Atlanta, Georgia, after taking my daughter back to Spelman College to begin her sophomore year in school. I was driving alone, and I had made it through North Georgia, South Carolina, North Carolina, Virginia, Maryland, and Delaware on Routes 85 and 95 without incident. I had traveled all the way up the New Jersey Turnpike, Route 280 West, and was a block-and-one-half away from my home in Montclair. I was proud of myself. I had to go to work in Little Silver in the morning, and I rationalized that I would probably just be

getting to bed at that hour anyway, so I wasn't so late. However, as I made the turn from Undercliff Avenue onto Gates Avenue in Montclair, I was pulled over by a Montclair police officer, who seemingly came out of nowhere, because there was not a soul on any street, not a car, not a person. I was driving a new silver Mazda which I had bought in April of 1991 after my old 1980 Toyota died on the Driscoll Bridge on the way home from work one night.

I asked the officer why he had pulled me over. He told me that they had a report that a small car had sideswiped another car on Undercliff Avenue. I told the officer, first, that mine was not a small car; second, that there were no cars on Undercliff Avenue to begin with; and third, there was not a scratch on my car since it was new. The officer wanted to know where I was going, and I told him that I was going home, which was a block and a half away. I told the officer further that I was outraged that I had been stopped for what I believed to be a spurious reason which had, additionally, ruined my day. The officer, apparently realizing that we both knew that the stop was improper, made matters worse, as far as I was concerned, by telling me that I could not leave until his supervisor came to verify that I could be let go. I then proceeded to wait almost one hour until six police cars pulled up to check me out and my credentials. Then I was allowed to go home.

On March 31, 2001, my daughter and I were driving down the Turnpike again -- this time to Exit 2, Swedesboro -- to attend the installation of my nephew as an Eagle Scout. Between Exit 5 and Exit 4, my daughter noticed a State Trooper and warned me to be careful. Shortly thereafter, we saw the trooper with sirens and lights blazing doing at least 90 miles an hour down the left lane. Everybody was moving over, all of us hoping that we weren't the one

he was after. Then, as suddenly as he appeared, he turned the lights off and pulled no one over. I said to my daughter, what was that about? My daughter, now 27 years old, said to me impatiently, "Because he can, Mom, because he can."

Senator O'Connor asked General Farmer if racial profiling on the highways was just the tip of the iceberg, in essence, if these stops by police for no reason other than race occur elsewhere in our society. Senator, these illegal law enforcement actions are pervasive throughout our society. We discussed this issue in some detail in our statement to the public on April 14, 1999. We said then that we are often stopped because an officer questions why we are traveling in a particular neighborhood, town, or highway. We are often stopped because an officer questions why we may be driving a particular make or type of vehicle. And we are disproportionately stopped when we are seen to be shopping in a particular store, mall, or shopping center in a community where some officers assume we should not be. These illegal practices of profiling, based solely on race, by law enforcement officers at the state and local levels rob us of our liberty and, as we have seen all too tragically in this state and others, our property and our lives.

So, Senators, racial profiling is not just the province of the State Police or the Turnpike in New Jersey. But me and my family have been fortunate black residents of New Jersey. There are horror stories which are far worse than mine, some of which you have already heard here today and some of which have been told to the New Jersey Legislative Black and Latino Caucus at their hearings in August 1999, and some of which will be told to you additionally by other persons as a part of these hearings.

Suffice it to say that these illegal law enforcement actions have wreaked havoc on the emotional, psychological, and physical well-being of the African-American and Latino communities. As Elaine R. Jones, Esq., President and Director-Counsel of the NAACP Legal Defense and Educational Fund, noted at a symposium on April 4, 2001, the criminal justice system has demonized black men in particular by portraying them as criminals. The result is that this justice system has systematically destroyed our families by taking away our fathers, brothers, husbands, sweethearts, and sons, even though government statistics state unequivocally that 80 percent of the country's cocaine users are white and the typical cocaine user is a middle-class, white suburbanite.

Why has it been going on for so long? Senators, I believe that there are two principal reasons for racial profiling in this state and everywhere else in this country. Superintendent Carson Dunbar stated the first reason in these hearings. He told you that the State Police was a microcosm of the larger society, and each officer brings to his position the same biases and prejudices which he or she may have formed by living in this society. I agree. To the extent that the issue of race remains an intractable, seemingly insoluble problem in the United States, some State Police officers and other law enforcement officers will reflect those biases and prejudices against people of color. In addition, to the extent that law enforcement agencies encourage these officers to perceive African-Americans and Latinos as representing the profile of a criminal, law enforcement is promoting those biases and prejudices to fester and grow.

Secondly, the absence of African-Americans and Latinos in substantial numbers, or at the very minimum in proportion to our representation in the population of this state, in the New Jersey State Police, the New Jersey Office of Attorney General, and other law enforcement agencies in this state and country contributes to the insensitivity, lack of knowledge, and misperception about African-Americans and Latinos. Further, the fact that there are virtually no people of color in the management ranks in either the Attorney General's Office or in the New Jersey State Police goes a long way in telling the story why racial profiling has continued for so long.

Why do I say that? Because clearly, if there had been an African-American or Latino in management in the Attorney General's Office or even in the State Police, maybe that person or persons, having been stopped themselves many times by the police or knowing that their father, mother, son, uncle, or sweetheart had been stopped for no reason other than the color of their skin, maybe that person would have insisted that the Attorney General or State Police investigate the problem and take steps to stop these illegal practices.

Such an investigation should not have had to rely on a black or Latino to tell the Attorney General or the Superintendent of the State Police that racial profiling, which had gone on for decades in New Jersey, was wrong. But no one else in the those offices did, not until the U.S. Department of Justice threatened to sue the State Police for the illegal practice and not until the black and Latino community, along with other people of good will, rose up in justified outrage when two State Police officers shot four of our kids on the Turnpike in April of 1998.

I have been told by First Assistant Attorney General Paul Zoubek that the Attorney General's Office is the largest law firm in the State of New Jersey. He indicated that he is aware that there are virtually no minorities in the senior ranks of the Attorney General's Office. I do not have the numbers from him concerning exactly how many African-Americans and Latinos work for the Attorney General and in what capacity. We stand ready, however, to consult with his office respecting how to change the recruitment, hiring, and retention practices in the Office of Attorney General to ensure that more African-Americans and Latinos get an equal opportunity to practice in that office.

The problem with the State Police, however, is much more intractable, and over the past 26 years has taken several lawsuits and two consent decrees to address. Specifically, as you know, in October 1975, the State of New Jersey, State Police, and New Jersey Department of Civil Service entered into a consent decree with the United States of America which contended that the State Police engaged in a pattern or practice of discrimination based on race, sex, or national origin in all aspects of employment. The consent decree required, among other things, that the State Police seek to achieve a long-term goal of hiring sufficient numbers of black and Spanish-surnamed members of the State Police necessary to result in a workforce consisting of 14 percent black or Spanish-surnamed members, combined within five years of the entry of that decree.

The State Police did not achieve those goals within five years, with the result that the United States of America continued its oversight of the State Police until 1992, when the 14 percent goal was achieved. But the State Police soon took measures to change that progress. In January 1993, shortly after

being released from the oversight of the United States Department of Justice, because of a pattern and practice of discrimination in hiring of minorities, the New Jersey State Police imposed the requirement of a four-year college degree or 60 college credits, plus two years military service or police service as a minimum educational qualification to compete for entry-level State Trooper jobs. Prior to 1993, the State Police required no education beyond a high school diploma or its equivalent.

Further, in 1999, the State Police, by the Attorney General, accepted a recommendation to eliminate the alternative requirement of 60 college credits plus two years military or police service so that the only acceptable requirement was a bachelor's degree from an accredited four-year college.

No other State Police agency in the United States had a four-year college requirement when New Jersey adopted it in 1993. Of 48 other State Police agencies surveyed by the NAACP in 1992, 39 required a high school diploma and 9 required one or two years of college, 5 of which permitted the substitution of military or police experience for some or all of the formal education. Hiring in the five classes before 1993 was approximately 15 percent black and 8.8 percent Latino. For the five classes from 1993 through 1998, the hiring was only 4.3 percent black and 3.6 percent Latino. Consequently, the NAACP and the New Jersey State Conference of the NAACP and several individuals sued the State of New Jersey again in 1996. Another consent decree was entered into in June of 2000, which requires, among other things, that the State Police must consider people with two years of college and two years of work experience for hiring into entry-level trooper positions.

There is a direct correlation between the absence of African-American and Latino State Troopers and racial profiling, Senators. And until this state makes a good-faith effort to recruit, hire, and retain people of color, there will be no change. As important is how minority officers are treated once they are hired into the State Police. I know that you are aware of a pending lawsuit by 13 African-American troopers against the State Police for discriminatory treatment by white officers and supervisors. Attorney Renee Steinhagen represents both the NAACP and the 13 troopers, and Ms. Steinhagen will be testifying before you tomorrow. I hope that you will give her and several of her clients every opportunity to reveal the difficulties the NAACP has encountered in enforcing the terms of the consent decree and the problems faced by minority troopers daily.

Equally important respecting why racial profiling has continued for so long in this state is the political climate and the feelings of the people here in New Jersey and around the country. In the 1999 National Opinion Poll conducted by the Joint Center for Political and Economic Studies of Washington, D.C., the following question was asked in part: Do you think police regularly employ racial profiling when on patrol? Sixty-nine percent of black respondents answered yes, and 47 percent of white respondents replied yes. Despite this feeling, however, it has been recently reported that polls have shown that while blacks have become increasingly distressed about evidence of racial profiling, whites, who make up three-quarters of the population, are largely indifferent. And Republicans showed the lowest level of concern.

Hopefully, the pollsters have gotten it wrong and all people, regardless of color, believe that this illegal treatment of African-Americans and

Latinos must stop now. Moreover, we certainly hope that our legislators, irrespective of the fact that they are politicians who may very well pay heed to polls, will do the right thing and push reform measures vigorously.

There has been much discussion during these hearings regarding who will or will not be accountable for the illegal racial profiling by the State Police. We are aware that this Committee has taken steps with respect to the former Attorney General. However, we believe that, unfortunately, there is plenty of blame to go around for permitting this festering illegal activity to lie dormant for so long.

Accordingly, we believe that it is simply unthinkable to permit those persons who have violated the rule of law in this state time and time again to go unpunished. We recognize that Senator Lynch, among others, has properly, in our view, and continually pursued this line of questioning of the Attorney General and his aides. The response that they chose to spend their time fixing the problem rather than retroactively determining who had violated the law of this state and meting out the appropriate discipline or, if appropriate, criminal charges is simply unacceptable. There is no way that, in our society which so values the rule of law, that it is right or just that differential treatment can be accorded to people who have broken the law just because they are law enforcement officers or state officials. Accordingly, we urge this Committee to ensure that measures are taken to bring to account those who have violated rules, regulations, policies, and our laws. If that means discipline or criminal charges, then our society and values demand no less.

We know that your deliberations will include meaningful reforms. We suggest the following:

1. Remove the Division of State Police from the supervision of the Department of Law and Public Safety and have the Division report directly to the Governor. It has been very clear from these hearings that the Office of Attorney General has a conflict of interest between its role as defender of the State Police and supervisor which ensures that the agency complies with the law. It is also very clear that in the matter of racial profiling and enforcement of individuals' civil rights in this state, that the status quo of racial profiling ruled the day. There must be a separate system of accountability for the State Police to ensure that this conflict of interest does not continue.

2. Appoint a special prosecutor to investigate those in the State Police, Office of the Attorney General, or any other State agency who may have engaged in wrongdoing with respect to the denial of, covering up, and continuation of racial profiling in this state. Such a special prosecutor would have the power to institute charges and disciplinary action, as appropriate.

3. Appoint a Civilian Review Board with members from the public, Legislature, and the Executive Branch of government to review compliance with the two consent decrees -- racial profiling under the jurisdiction of the U.S. Department of Justice and the NAACP consent decree pertaining to the recruitment, hiring, promotion, and retention of minority troopers -- so that activities respecting these two matters are accessible to the public view, and so that New Jersey doesn't have to revisit this issue again in another 26 years.

4. Pass the package of bills proposed by the New Jersey Legislative Black and Latino Caucus aimed at reforming the State Police and ridding this state of racial profiling. These include:

creating the offense of racial profiling as a third-degree crime;

requiring every trooper who stops a motorist to provide name and rank, the reason for the stop, and the means for filing a formal complaint if the motorist wishes;

establishment of a special affirmative action compliance unit in the Division of State Police to develop new goals and timetables for correcting the State Police's deficiencies in hiring, retention, and promotion of minorities;

maintenance of records, logs, audio, and videotapes for 10 years after their creation;

establishment of a telephone hotline for citizen complaints of police misconduct;

criminalizing the tampering of video cameras or tapes placed in a patrol car by a law enforcement officer;

establishment of a psychological evaluation test to be administered by all applicants for the State Police to reveal racial bias or insensitivity;

elimination of the four-year college degree requirement for entry-level State Troopers which is already stayed by the consent decree;

requiring State Police officers to prepare and file reports on every motor vehicle stop they initiate, also known as the Traffic Stop Statistics Act at the Federal level;

and establishment of a civilian board of review to review and investigate complaints and allegations of misconduct by State Police troopers and officers.

It is with chagrin that we have watched the State Assembly bypass this important legislation for over two years and ignore the entreaties of the members of the Legislative Black and Latino Caucus last week as they

attempted to get action on these bills. Comments by legislators decrying racial profiling ring hollow when the public sees that no action is being taken at all on these important matters.

Finally, I spoke earlier about a trip last weekend to Swedesboro for the initiation of my nephew, Langston Clement, as an Eagle Scout. For me, it was a remarkable ceremony. I had no idea when I went to Swedesboro that the ceremony was just for him. I thought other boys were going to be installed as well. But what was most amazing to me in this day and time was that, not only was Langston the only boy receiving this honor, but the entire auditorium of people honoring my nephew, with the exception of my immediate family, were all white. The entire Boy Scout Troop was white, the troop masters were white, the dignitaries were white, the mothers who helped my sister with the reception were all white. Town officials came from Logan Township, Woolwich Township, and Swedesboro to honor my nephew. There was no sense that there was anything remarkable going on. It was just what this town and these people normally do and would have done for one of their own, regardless of color.

I submit to you, Senators, that we in this state and in this country have to reach the point, as I am sure many already have, of acting like the good people of Swedesboro who know my sister and her family for who they are and the contributions they can make positively to this society, irrespective of their race. Until we all achieve that, we will be in the same situation described by Dr. Kenneth B. Clark, who was one of the first witnesses to appear before the Kerner Commission. Dr. Clark said, "I must again in candor say to you members of this commission, it is a kind of Alice in Wonderland, with the same moving picture reshowed over and over again, the same analysis, the same

recommendations, and the same inaction.” Hopefully, that will not be the case here in New Jersey again.

Thank you for your time and your patient attention.

SENATOR GORMLEY: Questions from members of the Committee? (no response)

Thank you. Thank you for your testimony.

MS. JOSEPH: Thank you, Senator.

SENATOR GORMLEY: That will conclude today’s hearing.

(HEARING CONCLUDED)