



P.O. Box 32159
Newark, NJ 07102
Tel: 973 642 2086
Fax: 973 642 6523
info@aclu-nj.org
www.aclu-nj.org

ELLEN SAMUEL
President
DEBORAH JACOBS
Executive Director
EDWARD BAROCAS
Legal Director
THOMAS S. HARRIS
Development Director

**Testimony of
Edward Barocas, Esq.
On behalf of the
American Civil Liberties Union of New Jersey
before the
New Jersey Advisory Committee on Police Standards
November 21, 2006**

Thank you for allowing me to testify today. My name is Ed Barocas and I'm the Legal Director for the American Civil Liberties Union of New Jersey, a non-profit, non-partisan organization that defends our fundamental American rights on behalf of 15,000 New Jerseyans.

As you know, New Jersey has been saddled for many years with the stain of racial profiling by law enforcement. Over seven years ago (April 1999), in the wake of a disturbing incident in which four young African American students were shot by troopers on the Turnpike, then-Attorney General Peter Verniero admitted that citizens were stopped and/or searched on the New Jersey Turnpike based on the color of their skin. The state and federal government quickly entered into the consent decree and citizens filed numerous individual lawsuits against the State based upon civil rights violations. In 2002, Troopers Hogan and Kenna, in a much-publicized case, acknowledged that racial profiling was taught by the State Police; that it was encouraged by supervisors; and that they and others tried to cover up the fact of racial profiling by providing false stop data. Also in 2002, the New Jersey Supreme Court outlawed "consent searches" where no reasonable suspicion exists. In so doing, the Court noted "widespread abuse of our existing law" (per the Interim Report, eight out of every 10 consent searches were of minorities).

Today, on the Southern portion of the New Jersey Turnpike, profiling continues unabated: African-Americans now make up a higher percentage of stops than they did before the consent decree began.

Although the federal consent decree mandated a number of reforms, the compliance with the consent decree does not tell the whole story, because the structure of the decree is fundamentally flawed with respect to how the monitoring of profiling is conducted. In reviewing stops, the federal monitors determined whether there was a valid reason for each stop. However, as anyone who drives on the NJ Turnpike knows, there is a valid reason to stop almost any driver, as we all drive over the speed limit. The question should not have been: "Was the driver exceeding the speed limit?" Rather, the question should have been: "Are African-American drivers on the southern portion of the Turnpike stopped at disproportionate rates from whites?" This question reveals whether the police continue to engage in discriminatory police practices and profiling. The consent decree never asks this question, but we have.

When then-Attorney General Peter Verniero acknowledged in April of 1999 that profiling was occurring, African-Americans made up 28.7% of all stops on the southern portion of the Turnpike. When the first Monitor's Report was issued in 2000, that percentage was 29%. In 2004, the percentage was 30.1%. As of April 2005, the percentage was up to 30.8%. Also as of April 2005, on the southern portion of the Turnpike, over half of all persons that the troopers searched or required to exit their vehicles were African-American. These statistics come from the State's own aggregate data reports.

Those numbers become starker when compared with those on the northern portion of the Turnpike. While African-Americans consistently comprised about 30% of all stops on the southern portion of the Turnpike (the Moorestown Barracks), they comprise only approximately 18% of all stops on the northern portion of the Turnpike (the Newark Barracks), a percentage that is more in line with the actual percentage of African-American drivers on the Turnpike. Further, the numbers relating to searches are also widely disparate from the data from the northern portion of the Turnpike, where African-Americans made up less than one-third of all persons searched or forced to exit their vehicles (compared to over one-half on the southern portion of the Turnpike). It simply strains credulity to believe that a vastly greater percentage of African-American drivers pass by the Moorestown Barracks than the Newark Barracks. The answer to these statistics lies elsewhere.

Some have tried to rely on a non-validated report claiming that African-Americans simply speed more to explain the racial disparity in numbers of stops. I will not take the time to discuss the flaws in that report, of which there are many, including problems acknowledged by the authors themselves. I will however point out the absurdity of that suggestion given the disparity of stops on the northern versus the southern end of the Turnpike. To explain the disparity, one would have to argue that African-Americans speed on the southern end, but not the northern end, of the Turnpike.

In addition, the ACLU-NJ commissioned a study dispelling that notion altogether. The study, which will be discussed today by Dr. John Lamberth, found that the percentage of African-American drivers on the southern portion of the Turnpike, as well as the percentage of African-American speeders, was consistent with the percentage of African-American drivers stopped on the *northern* portion of the Turnpike (approximately 18.5%). The study found that the stops of African-Americans on the southern end of the Turnpike were greatly disproportionate from the percentage of African-American drivers or speeders there (18.5% versus 30.8%).

Some on this Commission have expressed concern that the State Police not backslide from any gains that may have been made from the Consent Decree. However, while certain areas and processes of the State Police may have been positively reformed during the period of the Consent Decree, the government's own evidence establishes that, on portions of the Turnpike, forward movement has never even taken place as racial profiling has not decreased.

The question now presented is: Where do we go from here? The ACLU-NJ would like to offer recommendations that will help address the problems that still exist, ensure that there is no backslide from the gains that have been made, and give New Jerseyans confidence in law enforcement.

Our first recommendation is to establish strong, permanent systems for monitoring of police practices in New Jersey. We cannot cling to a consent decree that hasn't accomplished one of the most fundamental reasons for its being – eradicating racial profiling on the Turnpike.

Rather, we need to see the consent decree replaced with more effective and productive methods of independent monitoring and oversight. There are models for independent oversight that work, and models that don't. Some cities have had success with civilian review boards and some with external auditors. However, we believe that the best system for New Jersey would be a well-funded and staffed office of police oversight located within state government, but established as an independent office, perhaps "in but not of" an agency or independent similarly to PERC or ELEC.

One great benefit of having such a department, assuming it is given sufficient resources, independence and authority to do its job, is that it could review the actions of both the State Police and the 560+ local police departments. The ACLU-NJ receives many complaints each year about police misconduct from local police departments. At present, we have litigation pending against the Manalapan Police Department on behalf of three African American boys who were stopped and roughed up by the police while their white friends were told to go home. This kind of thing happens every day and few victims know to contact the ACLU for help. We urge the establishment of a police oversight office that has sufficient resources, authority and independence to do its work. There are good models for this kind of system, which you can learn about from experts like Sam Walker.

Our second recommendation is to establish police professional licensing in New Jersey. We know that the Commission has already heard testimony on this topic, but we want to register our support for this critical step towards police professionalism in our state.