New Jersey
APPLESEED

STATEMENT OF RENÉE STEINHAGEN
PUBLIC HEARING HELD ON NOVEMBER 21, 2006

Chairman Johnson and other members of the Advisory Committee on Police Standards: I want to thank you for this opportunity to appear before you at your last public hearing, and to share with you my observations and conclusions about the New Jersey State Police which I have formed over the past sixteen years or so.

I understand that your central question is whether or not the requirements of the 1999 Federal Consent Decree with the Department of Justice regarding racial profiling should be codified. My simple answer is yes, they should.

This conclusion is based, in part, on conversations I have had with persons from the Department of Justice over the years. It is also based on my own observations that the culture of the State Police has not sufficiently changed, and as a result, the removal of the organizational strictures that the Consent Decree has imposed would be detrimental.

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Based on conversations with the Department of Justice, most recently when designing law enforcement and housing inspection protocols for the Freehold police and code inspectors, my understanding is that the consent decree was designed to establish new institutional practices that would be adopted by the State Police when the consent decree expired, which in turn would ensure continuing implementation of reformed practices over time. Because the State Police has a history of working hard to formally meet the goals of a given consent decree in order to get it lifted, and then retreating to the same conduct that caused the imposition of the decree in the first place, I urge you to recommend codification of the 1999 decree.

However, as I will fully explain below, I strongly believe that from the public perspective, codification of the decree, though necessary, is not sufficient to reform the New Jersey State Police. Racial profiling is but one problem of the State Police that emerged in the late 1980's and then again during the mid-1990's. Other problems affecting the organization's ability to serve the public also exist: for example, lack of proper audit procedures and budget accounting systems; misuse of public monies and surplus state property; ethical lapses by high ranking officers (such as permitting members of the

Superintendent's office to run a Superbowl football pool in 2006 at the same time that the State Police was investigating illegal gambling by certain members of the Division and members of the National Hockey League); inequitable distribution of program overtime, and in some instances, double payment of overtime; biased and skewed internal investigations; retaliatory practices directed at whistle-blowers; and arbitrary, and at the same time, discriminatory promotion and specialist assignment practices. These problems, like profiling, are permitted to occur because neither the Governor, the Legislature, nor the public is able to hold the State Police accountable on a systemic, institutional basis. Title 53 gives the Superintendent of State Police total control and discretion over internal personnel ~~and~~ not just logistical decisions. Without delineation of norms, criteria and standards with some level of outside scrutiny built into the internal operations of the State Police, the State Police will continue to go from one public crisis to another.

Former Acting Superintendent Fedorko once said to the troops -- right before Colonel Dunbar was nominated and prior to either the Attorney General's Intermediate and Final Reports and the signing of the consent decree -- "Don't worry, this too shall pass." The public cannot once

again avert its eyes when the ostensible problem goes under cover; it must demand accountability – accountability that can only be secured when State Police personnel systems are changed.

Now, I how I reached this conclusion:

In the Fall of 1991, a young State Trooper walked into my life and told me a story that was to change both our lives. Trooper Samuel Davis, Jr. was referred to me by a prominent New Jersey criminal defense attorney with whom Trooper Davis consulted when he was facing a potential court martial just prior to his fourth year re-enlistment date. Accused of reporting a false work-related injury, Trooper Davis, after much prodding, proceeded to relate to me a sequence of continuing harassment that began from his early days in the State Police Academy.

Through Trooper Davis, I met former Troopers Kenneth Ruff and Darryl Beard who had similar and parallel stories of racially charged hazing and discrimination. All recruited into the State Police in the late 80's, when the New Jersey State Police was trying to meet a 14% minority goal set forth in a 1974 Consent Decree with the Department of Justice, these men were objects of ridicule when they refused to racially profile black citizens (e.g., "We lock people up like you."), were exposed to racially offensive

posters posted at their stations, and were brought up on discipline charges in order to preclude their re-enlistment.

With the assistance of these three men, I met other black troopers and took down their respective stories of harassment and differential treatment; first, in order to independently verify that Trooper Davis' experience was a symptom of systemic discrimination, and later, to build a case for the need for institutional reform. It was with these men, plus twelve others (one of whom I understand has already appeared before you), that I embarked on what we later called our "journey for justice" (before the Senate Judiciary Committee of the New Jersey Legislature), a journey that we sincerely believed would lead to change in the organizational structure of the State Police, its prevailing culture, and the specific personnel who created, facilitated and condoned a racially charged environment within the force; an environment that was responsible for perpetrating racial profiling on the public and racially discriminatory and retaliatory employment practices on its minority members. I am still on that journey, but sixteen years later with a different set of characters-- some of whom are retired, formerly high ranking officers, who are fed up, in their own words, with the "corruption" of the

State Police, and its "subversion" of the 1999 Federal Consent Decree.

Since effectively the winter of 1991, I was involved with a group of black troopers, ranging in age from their early thirties to their early fifties, in their effort to get various government officials to listen to, honestly investigate, and effectively remedy their claims concerning endemic racism within the State Police. First in 1991, I drafted a complaint on behalf of trooper Davis, which we submitted to the Attorney General's office. This complaint detailed his experiences as a racial minority in the State Police; and through 1992 we met with someone from that office and the State Police to give further evidence.

In November 1992, the 1974 Consent Decree regarding minority hiring was lifted (due to a large number of retirements occurring within a hiring freeze), the State Police imposed a four-year college requirement (that had been prohibited by that Decree, and resulted in a precipitous drop in minority recruitment and hiring), and the State Police initiated an investigation against trooper Davis for allegedly falsifying his complaint to the Attorney General. Upon hearing of this investigation and receiving notice of Trooper Davis' court martial, I filed a Charge of Discrimination on behalf of six troopers with the

Equal Employment Opportunity Commission in April 1993; within days, the number had increased to thirteen, providing the basis for the moniker that followed the troopers from station to station, "The EEOC Thirteen." The Charge, filed on behalf of all Black State troopers, challenged several State Police personnel practices, including promotion, specialist assignments, police training opportunities and discipline. I had become convinced, after spending numerous hours listening to troopers, that how a trooper was treated in the State Police was a question of race. As W.E.B. DuBois once said "It [is] not then a question of crime, but rather one of color that settle[s] a man's conviction on almost any charge."[1]

We filed the class-wide EEOC charge. The NY Daily News put one of the racially offensive posters on its front page; Rodney King was brutally beaten on nationwide television; letters went out to all members of New Jersey's Congressional delegation; and this Charge of Discrimination was instantaneous news. But only for a short time. The troopers and myself testified twice about their claims of racial discrimination before a Congressional subcommittee (once in Washington and once in Brooklyn), the Department

[1]W.E.B. DuBois, The Souls of Black Folk, 129-130 (1903)

of Justice attempted to mediate the case to no avail, the State Police denied the charges and went on a campaign to discredit the troopers, and, after a meeting held between then Assistant Attorney General Waugh (since appointed to a judgeship in the Superior Court) and Troop Commanders regarding the black troopers' allegations of racial profiling and hostile work environment, AAG Waugh wrote a memo to the Acting Attorney General which, in turn, led to an infamous remark on a piece of correspondence, "If ain't broke, don't fix it."

After the summer of 1993, I became embroiled in two related litigations: with the Lawyers Committee for Civil Rights Under Law, I represented Trooper Glenn Johnson, who had gotten suspended without pay and without charges lodged against him the day after we testified before Congress; and with David Rose, former Chief of the Civil Rights Division of the Department of Justice, I represented the NAACP in its efforts to challenge the State Police's hiring and recruitment practices. The first case was not settled for approximately seven years, and the second resulted in a Consent Decree (June 2000) which has since expired without the goals within the decree being satisfied -- though the four-year college requirement is still prohibited.

It was not until June 1996 that the EEOC Thirteen and myself decided to bring a consolidated judicial action against the State Police. The media had averted its eyes, and, from the troopers' perspective, in the State Police it was back to business as always. Subsequent to the filing, a court-ordered mediation failed, with the State Police denying the need to compensate the men for retaliation and discrimination they had experienced as well as the necessity of making systemic changes to its personnel practices. Ironically, I was profiled on the Turnpike at least twice when riding with some of my clients. Trooper Davis was completely vindicated by an Administrative Law Judge in his court martial hearing, only to have Colonel Williams suspend him for several days and try to take away his medical benefits because, as stated to the Union representative, "The rules for Sammy Davis are different;" and the litigation dragged on mired in discovery.

But then, four black boys got shot on the Turnpike, and the issue of racial profiling again exploded in New Jersey. On behalf of the troopers I represented, I amended our complaint to include a constitutional claim to enable my clients to speak out about the relationship between racial profiling and racially discriminatory employment practices. We were successful in overturning the State

Police's regulation about speech, and opened up a new avenue to try to achieve change. The troopers went on to appear on "60 Minutes." We testified before the New Jersey Black and Hispanic Caucus and, later in April 2001, before the New Jersey Senate Judicial Committee, which was investigating whether former Attorney General Peter Veniero lied about the State Police when seeking a seat on the New Jersey Supreme Court. Specifically, the committee was interested in conversations that I had had with the Department of Justice about internal complaints some of my clients had filed regarding racial profiling at Moorestown Station.

The litigation I had filed on behalf of Trooper Davis and others had now become fully embroiled in a statewide political crisis. My clients accepted their political role, and some of them took a leadership role in the Black Issues Convention. This led to an intimate involvement in the gubernatorial campaign of 2002. One year after Governor James McGreevey took office, with the assistance of the former firm Cochrane, Neufeld and Scheck, we finally settled this case for money and only the promise of a changed regime led by a newly appointed Colonel -- Colonel Santiago.

Of the fourteen men I represented in court, six remain enlisted. Three were compelled to retire because of age, four took early retirement and Trooper Johnson had been terminated in July 1993. All who remain were promoted only one rank since we filed in 1996, and there is significant evidence that discriminatory personnel systems still reign.

The State Police is now trying to get out from the rigors of the 1999 Consent decree -- a decree that they have tried to evade by, at minimum, authorizing during 2004 through 2005 a core group of troopers, informally known as "Torno's Raiders," to pre-inspect stations or units that the Independent Monitor Team had notified the State Police that they were going to visit, -- and the promotion system remains arbitrary. New Jersey Appleseed Public Interest Law Center, of which I am the Executive Director, has accordingly agreed to be co-counsel with William Buckman, the criminal defense attorney who secured a court decision finding the State Police guilty of racial profiling (and who you have heard from earlier today), on several cases in which white and minority troopers alleged discrimination and retaliation for speaking out about wrongdoing and/or discrimination. The circle has closed, and I am ready for yet another round.

This time, Bill and I know a little more and will not settle for less than justice in the form of injunctive relief. Relief that looks like that which the EEOC Thirteen proposed during mediation in the late 90's. Relief that was formulated after reviewing about 35 consent decrees entered into by other State Police or police agencies, and which I am submitting with this testimony. Relief that I hope that you will consider when determining whether and how to codify 1999 Consent Decree.

PLAINTIFFS' PROPOSAL FOR PROSPECTIVE SYSTEMIC RELIEF

Plaintiffs propose the development of new personnel systems for the areas of (1) performance evaluations, (2) discipline, (3) hardship or preference transfers, (4) training courses or schools, (5) specialist positions, and (6) supervisory (rank) promotions. The State Police should hire outside experts to develop validated procedures in accordance with the Equal Employment Opportunity Commission Uniform Guidelines, federal and state law and regulations, and generally accepted professional standards for these six areas. A Review Committee, consisting of one person appointed by the plaintiffs, one person appointed by the State Police, and a third appointed jointly by the parties, should be established to approve the systems developed by the experts, and to monitor their outcomes for the next five (5) years. (**FBI**) Fees for members of the Review Committee should be paid by the State Police. (**FBI**)

The systems developed should include the following general principles:

PERFORMANCE EVALUATIONS

The State Police should employ a validated *Performance Appraisal Rating System (PAR)* (**FBI**) with the following features.

-- more accurate delineation of troopers' ability to perform the duties of his/her assigned job than evaluation form currently in use;

-- greater training for supervisors doing evaluations, including cultural awareness training, than currently existing (**FBI, Illinois**);

-- prohibition of arrest or summons quotas to evaluate performance;

-- numerical conversion scale including specific point deductions for certain levels of discipline (e.g., warning, Blue ticket, etc.)

-- billet rating (e.g., points given for being senior man on the squad)

-- objective criteria to guide decision to give a trooper an award for certain conduct or record of performance (**FBI**);

-- a copy of *PAR* breakdown given to all troopers (**Montana**); and

-- evaluation may be grieved (**West Virgina**)

DISCIPLINE

-- procedures to ensure, to the greatest extent possible, that disciplinary action will not be initiated against any group of troopers at a statistically significantly higher rate than any other group (**FBI; Maryland**);

-- a "Discipline Code" in which a range of penalties are defined for specific violations (e.g., Blue Ticket for losing badge; one day to two week suspension for verbal insubordination; one week to one month suspension for failure to follow a non-major order); where applicable a progressive discipline regimen should be established;

-- if under investigation, trooper should be notified periodically of status of investigation (**FBI**);

-- discipline imposed should be published and kept in central electronic data bank by name, badge number, gender, and race of trooper, violation, and penalty imposed (**Montana**);

-- outside agency performs statistical review of outcomes (**Georgia; Maryland**-internal review); and

-- explicit no retaliation provision for filing discrimination complaint against a supervisor or higher ranking officer(**Maryland**).

-- Any disparate discipline imposed on any trooper will be remedied by correcting of his/her record and reinstatement of pay lost or rank, etc.

HARDSHIP OR PREFERENCE TRANSFERS

-- State Police may not use transfer to a station far from trooper's home as a means of informal punishment;

-- The position of Senior or Lead Man on a squad should be obtained by tenure, and the State Police may not use transfers between squads or stations as a means of preventing minority troopers from obtaining such non-rank promotions (**Montana**);

-- all requests for transfers and involuntary transfers will be kept in a central electronic data bank, including name, badge number, gender, and race of trooper who made request for transfer or was involuntarily transferred, distance from home before and after transfer, whether transfer was voluntary, assignment before and after transfer, and for involuntary transfers, whether person

-- selection process involves calculation of a composite score based on (a) written exam administered by independent proctor and prior publication of manual titles (or distribution of materials) on which test is based; (2) *PARs* for the previous two years before application; (3) educational degrees or certifications, if relevant to the position; and (4) interview with an assessment committee consisting of persons from specialized bureau or unit to which trooper is applying and an outside agency (for example, attorney general's office, Department of Personnel, Division of Civil Rights)(**West Virgina**); and

-- Review Committee monitors statistical data concerning specialist positions to determine, on an annual basis, whether the assignment procedure has an adverse impact on minorities(**FBI**);

-- Previous denials of specialist positions to racial mionorities to be reviewed on request and remedied where appropriate (**Maryland**).

SUPERVISORY(RANK) PROMOTIONS

-- promotional lists that expire every 18 months(**Illinois; West Virgina-12 months; Georgia-12 months**);

-- trooper has to apply for promotion(**Illinois; Montana; West Virgina**);

-- prerequisite for applying for supervisory position: statutory tenure plus two years (sergeant), plus two years more for each higher rank; and minimum score on general knowledge exam for rank to which trooper is applying. Exam is to be administered by outside proctor and should be based on material that is published made available to all prospective applicants on an equal basis prior to the exam(**Montana; West Virgina**).

-- selection process involves calculation of a composite score based on (a) written exam noted above (for each percentile scored above the minimum, applicant is given certain number of points), (b) *PARs* for the previous two years before application; (3) supervisor's simulator exercise (sergeant) or general management in basket assessment test (higher ranks) administered by independent assessor; and (4) recommendations from two supervisors (**Georgia; Montana; West Virgina**)

-- Review Committee monitors statistical data concerning supervisory provisions to determine, on an annual basis, whether

was disciplined within six months prior to transfer (**FBI; Montana**); and

-- Review Committee monitors data to determine statistical impact on minorities (**FBI**).

TRAINING COURSES OR SCHOOLS

-- posting of all available in-service training opportunities both electronically and physically in station(**Georgia; Montana; West Virgina; FBI**);

-- apply to central office through Station Commander, trooper given stamped receipt copy of application that also is placed in trooper's personnel file;

-- opportunity to go to training school should be given on a first come, first serve basis with a trooper limited to two (2) schools per year (not including mandatory training courses);

-- reason for rejection kept on record with a copy given to applicant(**West Virgina; Montana**); and

-- ability to grieve rejection (**West Virgina**).

-- Review Committee monitors statistical data concerning training courses to determine, on an annual basis, whether the selection procedure among troopers who apply to attend training schools has an adverse impact on minorities. (**FBI; North Carolina**)

– Review of request previous denials for training or schools and remedy the previous denials where appropriate at the next opportunity. (**Illinois**-remedy disparaties noted upon internal review)

SPECIALIST POSITIONS

-- Superintendent will identify specific positions with the State Police organization that require specialized skills, knowledge or abilities and will order the development of a job description defining the duties, responsibilities and skills of that position. This job description may not change each time the job is available in order to tailor the description to accommodate the qualifications of the trooper "in mind" for the job.(**West Virgina; Montana; North Carolina**)

-- prerequisite for applying for a specialist position should include (1) statutory tenure; and (2) certain training courses or schools, if any (**Montana; Illinois**).

the promotion selection procedure has an adverse impact on minorities(FBI) (North Carolina-extensive reporting); and

- goal that promotions made in each rank reflect at least the percentage of blacks eligible for promotion to that level of supervisory position, and over time, parity of representation according to their percentage in the State Police(Illinois; North Carolina; Montana).

ENFORCEMENT OF EEO POLICY

Supervisory personnel who exhibit by word or deed any racial discriminatory or retaliatory conduct will be subject to discipline ranging from reprimand through suspension to removal from supervisory position and loss of rank.