

SELECTED HIGHLIGHTS OF THE INTERIM REPORT OF THE STATE POLICE REVIEW TEAM REGARDING ALLEGATIONS OF RACIAL PROFILING

- ! This Interim Report is limited to the examination of the practice commonly referred to as racial profiling. The Report specifically focuses on activities of state troopers assigned to patrol the New Jersey Turnpike, which is considered to be a major drug corridor. This circumstance provides the incentive and opportunity for the State Police to use drug interdiction tactics that appear to be closely linked to the national racial profiling controversy. (p. 2)

- ! Although this is only an Interim Report and is not the final material that will be developed on this subject, it represents a major step, signaling a recognition of the problem and proposing significant changes in State Police practices and procedures. (p.3)

- ! The Review Team believes that the great majority of state troopers are honest, dedicated professionals who are committed to enforcing the laws fairly and impartially. The Review Team has determined that the State Police has not issued or embraced an official policy to engage in racial profiling or any other discriminatory enforcement practices. In fact, the State Police has undertaken a number of steps to prohibit racial profiling, including issuing Standard Operating Procedures banning such practices; providing in-service training programs and bulletins; requiring state troopers to have reasonable suspicion before requesting permission to search (thereby imposing a prerequisite to consent searches that goes beyond the requirements of state or federal caselaw); and prohibiting the patrol tactic of spotlighting the occupants of motor vehicles at night before deciding whether to initiate a stop. (pp. 3-4)

- ! Despite these official policies and preventative steps, the Interim Report concludes that the problem of racial profiling is real and that minority motorists have been treated differently than non-minority motorists during the course of traffic stops on the New Jersey Turnpike. The problem is more complex and subtle than has generally been reported. (p. 4)

- ! The Interim Report recognizes that to a large extent, conclusions concerning the nature and scope of the problem will depend on the definitions that are used. The Review Team has chosen to define the problem of disparate treatment to include the reliance by a state trooper on a person's race, ethnicity, or national origin in conjunction with other factors in selecting vehicles to be stopped from among the universe of vehicles being operated

in violation of the law or in making any discretionary decision during the course of a traffic stop, such as ordering the driver or passengers to step out; subjecting the occupants to questions that are not directly related to the motor vehicle violation that gave rise to the stop; summoning a drug-detection canine to the scene; or requesting permission to conduct a consent search of the vehicle and its contents. (p. 5)

- ! The Interim Report reveals two interrelated problems that may be influenced by the goal of interdicting illicit drugs: (1) willful misconduct by a small number of State Police members, and (2) more common instances of possible de facto discrimination by officers who may be influenced by stereotypes and thus may tend to treat minority motorists differently during the course of routine traffic stops, subjecting minority motorists more routinely to investigative tactics and techniques that are designed to ferret out illicit drugs and weapons. (p. 7)
- ! The issues and problems addressed in the Interim Report are not limited to the New Jersey State Police. Because this Interim Report embraces a broad definition of the problem of racial profiling and disparate treatment, the specific remedial action steps described in this Interim Report are offered as a guide to other state and local jurisdictions where the racial profiling controversy has surfaced. This Interim Report goes further than any other jurisdiction to date in facing up to this national problem and in proposing the establishment of multi-faceted systems to ensure that laws are enforced impartially by State Police members assigned to patrol duties. (p. 9)
- ! The Review Team recommends that a clear policy for the New Jersey State Police be announced providing that race, ethnicity, and national origin may not be considered at all by State Police members in selecting vehicles to be stopped and in exercising police discretion during the course of a traffic stop, other than in determining whether a person matches the general description of one or more known suspects. This proposed policy goes beyond the requirements of federal law. (pp. 12, 52-56)
- ! The Interim Report describes the sequence of steps that may occur during a typical traffic stop on the New Jersey Turnpike. This is done to demonstrate the decision points that can arise during a traffic stop where a state trooper must exercise reasoned discretion. (pp. 13-22)
- ! The Interim Report describes compiled statistics for stops, arrests, and consent searches conducted by State Police members assigned to patrol the New Jersey Turnpike.

- ▶ These data show that 59.4% of stops that were examined involved whites, slightly more than one out of every four (27.0%) stops involved a black person, 6.9% involved a Hispanic individual, 3.9% involved an Asian person, and 2.8% were identified as other. (pp. 25-26)
- ▶ The data reveal that very few stops (0.7%) result in the search of a motor vehicle. The available data indicate that the overwhelming majority of these searches (77.2%) involved black or Hispanic persons. Specifically, 21.4% of these searches involved a white person, more than one-half (53.1%) involved a black person, and one of every four (24.1%) involved a Hispanic person. (pp. 26-27)
- ▶ 32.5% of arrests involved white persons, 61.7% involved African-Americans, and 5.8% involved persons of other races. (pp. 29-30)

! Based upon the foregoing statistical information, the Review Team made several observations:

- ▶ Minority motorists were disproportionately subject to consent searches. The data concerning consent searches were deemed to be especially instructive because the decision by a trooper to ask for permission to conduct a search is a discretionary one. Given the concerns engendered by this data, the Review Team proposed that the State Police undertake a case-by-case review of every consent search that was conducted on the Turnpike in 1997 and 1998 to determine whether the searches were conducted in accordance with all applicable State Police Standard Operating Procedures and the requirements of law. (pp. 30-31)
- ▶ The Review Team expressed concern about the extent of missing information concerning the racial characteristics of detained motorists in previously-kept manual records. This situation has already been addressed to a large extent through remedial efforts taken by the State Police. (pp 31-32)
- ▶ The Review Team expressed concern with the lack of automation and the inherent problems associated with the existing manual system for recording information, which makes it difficult for supervisors throughout the chain of command to monitor the activities of officers assigned to patrol. The State Police has already begun to implement the Computer-Aided Dispatch/Records Management System (CAD/RMS) that will help to rectify this problem. (pp. 32-33)

- ▶ The Review Team expressed concern that where state troopers were afforded more discretion by virtue of their duty assignment, they tended to focus more on minority motorists. This analysis is consistent with the notion that officers who had more time to devote to drug interdiction were more likely to rely upon racial or ethnic stereotypes than those officers whose principal concern was to enforce specific motor vehicle laws or to respond to calls for service. (pp. 33-34)
 - ▶ The Review Team noted that the significance of the stop statistics could not be determined in the absence of a reliable study of the racial and ethnic characteristics of the persons who travel on the Turnpike to serve as a benchmark. The Review Team therefore proposes to undertake a Turnpike population survey in consultation with the Civil Rights Division of the United States Department of Justice. (pp. 34-35)
 - ▶ The Interim Report concludes that arrest statistics should not be cited for the proposition that minorities are more likely than whites to be engaged in drug trafficking activities. The fact that the arrest rates for whites is comparatively low does not mean that white motorists are less likely to be transporting drugs, but rather that they are less likely to be suspected of being drug traffickers in the first place and, thus, less likely to be subjected to probing investigative tactics designed to confirm suspicions of criminal activity such as, notably, being asked to consent to a search. (pp. 35-36)
- ! The Interim Report discusses a number of conditions that might foster disparate treatment of minorities, recognizing that one need not be a racist to be influenced by stereotypes that might lead an officer to treat minority motorists differently during the course of a traffic stop. The Interim Report concludes that the potential for the disparate treatment of minorities during traffic stops may be the product of an accumulation of circumstances that created and reinforced the message that the best way to catch drug traffickers is to focus on minorities, which may have undermined other messages in both official and unofficial policies prohibiting any form of disparate treatment. These circumstances include:
- ▶ Ambiguities and misunderstandings about the law;
 - ▶ Ambiguities, imprecision, and omissions in Standard Operating Procedures;

- ▶ Conflicting, subtle messages in otherwise bona fide drug-interdiction and gang-recognition training programs;
- ▶ The tautological use of statistics to tacitly validate pre-existing stereotypes;
- ▶ Formal and informal reward systems that encourage troopers to be aggressive in searching for illicit drugs, thereby providing practical incentives to act upon these stereotypes;
- ▶ The inherent difficulties in supervising the day-to-day activities of troopers assigned to patrol; and,
- ▶ The procedures used to identify and remediate problems and to investigate allegations of disparate treatment. (pp. 37-44)

! The Interim Report includes a detailed discussion of law and policy on racial profiling and the disparate treatment of minorities. This portion of the Report describes the negative effects of stereotyping on minority communities, which can leave persons of color with a sense of powerlessness, hostility, and anger directed toward the law enforcement community. Notably, the Interim Report concludes that disparate treatment of minorities reinforces a sense of mistrust, leaving minority citizens less willing to serve as jurors, less likely to report crime, and less appreciative of the efforts of the vast majority of the law enforcement officers who serve the public with honest and integrity. (pp. 45-48)

! The Interim Report explains in detail the critical distinction between legitimate crime trend analysis and inappropriate racial profiling, recognizing that sophisticated, race-neutral crime analysis is sorely needed if police agencies are to remain responsive to emerging new threats and enforcement opportunities. (pp. 49-52)

! The Interim Report recognizes that while the phenomenon of racial profiling and other forms of disparate treatment of minorities is real and not just a matter of perception, perceptions concerning the magnitude and impact of the problem are important, and that these perceptions vary widely in that minority and non-minority citizens in this State have markedly different views regarding the nature and scope of the problem. (pp. 56-59)

! The Interim Report recognizes that the racial profiling controversy is by no means limited to the New Jersey State Police, but rather is a truly national

problem, as reflected in the number of bills pending in Congress and state legislatures across the country. (pp. 60-65)

- ! The Interim Report describes at length why it would be inappropriate as a matter of policy for officers on patrol to rely upon crime trend analysis that, at first blush, suggest that racial or ethnic characteristics could serve as reliable risk factors in predicting and responding to criminal activity. The Report explains that many of the arrest and conviction numbers relied upon by some police executives across the nation are tautological and, thus, inherently misleading. Notably, these arrest statistics only refer to persons who were found to be involved in criminal activity and do not show the number of persons who were detained or investigated who, as it turned out, were not found to be trafficking drugs or carrying weapons. In fact, when one considers all of the stops conducted by State Police, searches are quite rare, and searches that reveal evidence of crime are rarer still. To the extent that law enforcement agencies arrest minority motorists more frequently based on stereotypes, these events, in turn, generate statistics that confirm higher crime rates among minorities which, in turn, reinforces the underpinnings of the very stereotypes that gave rise to the initial arrests. (pp. 65-75)
- ! The Interim Report recognizes that one of the glaring problems with many forms of profiling is that the characteristics that are typically compiled tend to describe a very large category of presumably innocent motorists. Consequently, these profile characteristics may be no better in terms of predicting criminal behavior than allowing individual officers to rely on inchoate and unparticularized hunches, which is clearly not permitted under Fourth Amendment caselaw. To prove this point, the Interim Report discusses certain kinds of intelligence information provided by the Federal Government to show that this information may provide very little help to state troopers patrolling the Turnpike in identifying major drug couriers from among the universe of innocent motorists. (pp. 72-75)
- ! The Interim Report concludes that while there is no doubt that federal, regional, state, and local intelligence reports reliably indicate that a large number of minority narcotics and weapons offenders are traveling between urban areas in and through New Jersey, so too are innocent minority motorists engaged in such travels and in far, far greater numbers. (p. 72)
- ! The Interim Report describes in detail the legal and policy difficulties in relying on suspected gang membership or other types of group associations to establish suspicion of criminal activity. The Interim Report makes clear that while police officers are permitted under the law to consider, for

example, gang membership in determining whether there is reasonable, articulable suspicion to initiate a stop or to conduct a protective frisk for weapons, an officer should not be permitted to use the person's race, ethnicity, or national origin in first determining the likelihood that a person is, in fact, a member of any such criminal organization. While many gangs tend to be exclusionary and are comprised of persons of similar racial or ethnic characteristics, the fact remains that the percentage of young minority males who are members of street gangs is so small that no officer could reasonably suspect that a motorist is a member of any such gang based upon the person's race or ethnicity. To do otherwise would be to practice a form of legal bootstrapping, drawing inferences from a fact that has not yet been established. For this reason, the Report recommends that State Police be trained as to the *objective* criteria and indicia of criminal group associations, so that a state trooper would be prepared to articulate why he or she reasonably suspected that a person is a gang member, going beyond the mere fact that the person was not excluded from the possibility of being a member of a particular criminal organization by virtue of his race or ethnic background. (pp. 75-80)

- ! The Interim Report recognizes that the findings of the Review Team may be cited by some defendants who will seek to overturn or preclude their convictions by claiming selective enforcement. While the Review Team cannot prevent defendants from raising these issues in future motions to suppress, it recommends that the State be prepared to fully and fairly litigate the question whether any particular defendant was a victim of unconstitutional conduct warranting the suppression of evidence. The county prosecutors will be asked to examine closely any case involving a State Police member in which the defendant claims selective enforcement, and prosecutors will be asked to recommend to the Division of Criminal Justice how these cases should be handled, considering the individual facts and circumstances of each case. (pp. 80-82)

- ! The Interim Report makes clear that the Review Team is by no means suggesting an abandonment or repudiation of New Jersey's drug enforcement efforts and suggests that the enforcement of our drug laws must remain an urgent priority of the State Police and law enforcement agencies. The Interim Report explains the necessity for taking decisive steps to ensure strict compliance with all search and seizure and equal protection rules, and the need to make clear to the New Jersey State Police and all other law enforcement agencies of the need to embrace the notion that the so-called "war on drugs" must be waged with not against the communities that the New Jersey State Police and other law enforcement agencies are sworn to protect. (pp. 82-85)

- ! The Interim Report recognizes that highway interdiction constitutes only one small facet of this State's efforts to address the so-called supply side of the drug problem and recommends that a revised drug enforcement strategy closely examine these issues so as to ensure that drug enforcement resources and efforts are focused so as to have the greatest possible impact of the problem while at the same time ensuring that the tactics employed by the New Jersey State Police do not alienate minority communities, since this would only deny other law enforcement agencies opportunities to enlist the support of these communities and thereby to gain access to information necessary to identify, apprehend, and successfully prosecute those drug profiteers who prey upon minority communities. (p. 85)
- ! The Interim Report recommends a series of detailed remedial steps that should be initiated to ensure that all routine traffic stops made by the State Police are conducted in an impartial, even-handed manner. Some of the policies and procedures described in these action steps are new, while others represent a reaffirmation or clarification of existing State Police policies and practices. The Review Team expects that all well-intentioned troopers will understand that procedures of the type recommended in the Interim Report will serve many purposes and will actually help to protect constitutionally-compliant officers, insulating them from unfair and unfounded allegations of selective enforcement. Notably, the Interim Report would establish a comprehensive and multi-faceted early warning system that would serve not only to detect potential problems, but that would serve to deter violations from occurring in the first place. (pp. 86-90)
- ! The Interim Report recognizes that ultimately, the cornerstone of this comprehensive system is to enhance *professionalism* through enhanced *accountability*. The comprehensive system proposed in the Interim Report would send a strong message that racial profiling and other forms of disparate treatment of minorities will not be tolerated but, as importantly, will provide an opportunity to demonstrate conclusively that the overwhelming majority of state troopers are, indeed, dedicated professionals who perform their sworn duties with integrity and honor. (pp. 90-91)
- ! The Interim Report spells out the goals and objectives of this comprehensive early warning system. (pp. 91-92)
- ! The Interim Report recommends the following specific action steps:
 - ▶ Recommends that the Attorney General issue an updated statewide drug enforcement strategy to ensure the most efficient, effective, and coordinated use of resources by focusing drug enforcement efforts on

carefully-identified impact cases and by making certain that the drug enforcement tactics used by one agency do not unwittingly interfere with or undermine the enforcement efforts of other agencies. The updated strategy would evaluate the effectiveness of the use of highway interdiction tactics as part of New Jersey's comprehensive drug enforcement efforts and would review the effectiveness of the use by state troopers of the consent-to-search doctrine. (pp. 92-94)

- ▶ Recommends that the Department of Law and Public Safety publish on a quarterly basis aggregate statistics detailing by State Police station the proportion of minority and non-minority citizens who are subject to various actions taken by State Police members during the course of traffic stops. (p. 94)
- ▶ Recommends the establishment of a comprehensive and automated early warning system and enhancement of the computerization of records to ensure the prompt identification of individual troopers whose performance suggests a need for further review by supervisory personnel. (pp. 94-96)
- ▶ Recommends the development of a comprehensive new Standard Operating Procedure spelling out all of the steps and criteria to be used by State Police members in initiating and conducting traffic stops. (pp. 96-100)
- ▶ Recommends the development of a comprehensive new Standard Operating Procedure spelling out the procedures and criteria for requesting permission to search and in conducting consent searches. (pp. 100-102)
- ▶ Recommends that in light of the concerns raised by the consent search data examined by the Review Team, the State Police conduct a case-by-case review of all consent searches made by State Police members assigned to the Turnpike in 1997-1998 to determine whether all reporting requirements and Standard Operating Procedures were complied with. (p. 102)
- ▶ Recommends that the State Police enhance and modify their training programs to make certain that the policies regarding racial profiling and the disparate treatment of minorities proposed in this Interim Report are understood by all State Police troopers who are assigned to patrol, their supervisors, and dispatchers. (pp. 102-104)

- ▶ Recommends that the State Police develop specific criteria for summoning drug-detection canines or equipment to the scene of a traffic stop that would recognize the psychological impact on persons who are subjected to this procedure and that would ensure that canines are dispatched quickly so as not to violate the rule that requires that investigative detentions be brief. (p. 104)
- ▶ Recommends that a policy be instituted that would require a state trooper assigned to patrol duties to inform the dispatcher when feasible of the trooper's intention to conduct a probable cause search. (p. 104-105)
- ▶ Recommends that the State Police establish specific criteria explaining when and under what circumstances a State Police member should make a custodial arrest rather than issue a summons. (p. 105)
- ▶ Recommends that the Division of Criminal Justice and the county prosecutors make available deputy attorneys general and assistant prosecutors to serve as police legal advisors on a 24-hour, 7-day per week basis to answer search and seizure, custodial interrogation, and other legal questions raised by State Police members assigned to patrol duties. (p. 106)
- ▶ Recommends that the Director of the Division of Criminal Justice in consultation with the county prosecutors establish a comprehensive reporting system whereby the State Police are notified whenever evidence seized during the course of a patrol stop by a State Police member is suppressed by a court or would likely be suppressed by a court were the matter to be prosecuted. (pp. 106-107)
- ▶ Recommends that the State Police develop an inventory and impoundment policy explaining when and under what circumstances State Police members may inspect the contents of a disabled vehicle. (pp. 107-108)
- ▶ Recommends interim procedures concerning the handling of internal affairs investigations of selective enforcement allegations, requiring that all allegations of discriminatory practices by State Police members be reported to the Review Team and further requiring that no internal investigation into selective enforcement allegations be concluded until the results have been reviewed by the Division of Criminal Justice. (pp. 108-109)

- ▶ Recommends that the Division of Criminal Justice, in consultation with the county prosecutors, develop uniform procedures and criteria for handling selective enforcement litigation involving State Police members. (p. 109)
- ▶ Recommends the development of a legislative initiative to create new official misconduct offenses to deal specifically with the use of police authority to knowingly or purposely violate a citizen s civil rights. (pp. 109-110)
- ▶ Recommends that the Attorney General s Office in consultation with the Civil Rights Division of the United States Department of Justice undertake a population survey of the persons who travel on the New Jersey Turnpike to serve as a benchmark that will be integrated into the early warning system that can be used to trigger heightened scrutiny and supervision of the exercise of police discretion where an automated audit suggests that an individual trooper or group of troopers have stopped a disproportionate percentage of minority motorists. (pp. 110-112)