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## NJ troopers implicated in rape face court test

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Two months after a county prosecutor dropped a rape investigation involving New Jersey state troopers, several of the officers are arguing in court that an internal state police review could violate their right to privacy.

In a case that could have a wider impact on employee rights, U.S. District Judge Mary L. Cooper is expected to rule on whether the state police's investigative arm can question the troopers about what happened on the night of Dec. 6, 2007.

Last month, she issued a temporary restraining order preventing state police from questioning six of the troopers. One trooper had already been questioned by the time the order was issued.

At a hearing on Aug. 14, Cooper conceded there didn't seem to be any case law that directly addressed the issue.

The case began when a 25-year-old Rider College student reported to authorities that she had been raped in the Ewing Township home of a trooper after a night out at a Trenton nightclub.

Seven troopers have been suspended with pay since the incident. In July, after a seven-month investigation, the Middlesex County Prosecutor's Office opted not to present the case to a grand jury but did not offer an explanation.

Attorneys representing six of the seven troopers claimed last month that the internal investigation could violate their clients' privacy rights by forcing them to divulge details of their sex lives.

State police are empowered to conduct internal investigations in cases where there are no criminal charges, and troopers are required to sign a document that subjects them to possible termination if they decline to answer any questions.

But the troopers' lawyers argue that there must be limits to the scope of such inquiries.

"The state has to have a compelling interest to show why they should take someone's job for not answering questions about intimate sexual details," said Charles Sciarra, an attorney who filed the initial brief on behalf of one of the troopers, identified only as Trooper No. 1.

The state Attorney General's Office, which oversees the state police, said in court filings that the investigation is necessary to determine if any of the troopers violated departmental regulations governing off-duty conduct, regardless of the lack of criminal charges.

"Public confidence in law enforcement would be eradicated if the public believed that law enforcement was helpless to investigate allegations of wrongdoing by its members," Deputy Attorney General Dermot

O'Grady argued in front of Cooper last month.

Police officers are held to a higher standard of behavior and thus have a reduced expectation of privacy even when they are not working, O'Grady argued in court. He noted that troopers can be punished for abusing alcohol or otherwise behaving "to the personal discredit of the member or to the discredit of the Division."

He also raised the possibility that the troopers might have violated a state police regulation that requires them to aid someone who is helpless.

"It may very well turn out that this individual who was admittedly intoxicated may have been helpless and you can certainly make an argument that someone who is helpless is not in a position to consent one way or another to sexual conduct," he said.

Sciarra scoffed at the suggestion.

"Three-quarters of us walking this Earth are probably here as the result of a little imbibing nine months earlier," he said.

Charles Sullivan, a professor at Seton Hall University School of Law who specializes in employment law, referred to the case of a police officer and two firefighters in New York who were fired for taking part in a parade skit in 1998 that mocked blacks.

The officer and firefighters were off-duty at the time, but a federal appeals court upheld their firing in 2006.

"We know that when police or firefighters bring the department into disrepute, being off the job doesn't protect them," Sullivan said.

He added that New Jersey State Police could reasonably expect to be able to question the troopers if only to compare details and establish any inconsistencies in their accounts.

Attorney Patricia Prezioso, who represents the trooper in whose house the alleged incident occurred, said her client does not object to being interviewed, but she is concerned about how far the questioning could go.

"The concern is whether it's necessary for the interview to go into details of an area that is subject to privacy protection," she said. "I think clearly they could resolve their issues without doing that."

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