



**SECOND MONITORING REPORT PREPARED BY  
OFFICE OF LAW ENFORCEMENT PROFESSIONAL STANDARDS**

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## EXECUTIVE SUMMARY

The Second Monitoring Report prepared by the Office of Law Enforcement Professional Standards (OLEPS) documents the continuing compliance of the New Jersey Division of State Police with the mandates and requirements of the 1999 Consent Decree. Previous reports noted the evolution of the State Police from an organization that had difficulty adapting to change into an organization that had become self-monitoring and able to develop or revise policies and procedures in response to developing legal principles and a dynamic criminal justice system. A goal of the decree was to encourage the development of the State Police as an organization that could adapt to a changing environment. This report concludes that the State Police continue to achieve that goal for the period January 1, 2009 through June 30, 2009, while the State Police were still subject to the provisions of the Consent Decree.<sup>1</sup>

In preparing this report, staff assigned to OLEPS reviewed 429 motor vehicle stops including videotape reviews of 417 of the stops, gathered statistical data from those reviews and conducted an analysis of the data to determine whether the law enforcement activity undertaken by the State Police during motor vehicle stops was consistent with tasks laid out in the Consent Decree. In addition, the staff evaluated the efforts of State Police management to supervise the activities of subordinate troopers through the Management Awareness Personnel Performance System (MAPPS) and other mechanisms. Furthermore, the staff performed audits of the internal affairs function and the training function to determine the compliance of those units with the Consent Decree. All these activities were performed in accordance with protocol and procedures previously established by the independent monitors.

The Second Monitoring Report has themes that are repeated in the various sections of the report. Most notably, this report details New Jersey State Police procedures, supervision and training in the period immediately following the February 2009 New Jersey Supreme Court ruling in Peña-Flores.<sup>2</sup> The Peña-Flores virtually eliminated probable cause searches without a warrant under the automobile exception to constitutional guarantees of searches only with a warrant. The decision sought to make access to judges and the ability to obtain warrants easier with the availability of telephonic warrants.<sup>3</sup> This decision had an immediate effect on State Police protocols for doing vehicle searches. The new protocols required training from the Academy and

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<sup>1</sup> The 1999 Consent Decree was terminated on September 21, 2009, after a joint motion filed by the Department of Justice and the State of New Jersey. Legislation codifying the reforms (*N.J.S.A. 52:17B-222 et seq.*) creates OLEPS, which has among its functions the monitoring of the State Police as the federal independent monitoring team did under the terms of the Consent Decree.

<sup>2</sup> State v. Peña-Flores, 198 N.J. 6 (2009).

<sup>3</sup> As of this publication, there is no statewide telephonic warrant system.

the resources of the Risk Analysis Core Group (RACG) with the unit supporting MAPPS to help Field Operations with enhanced tracking of consent search requests. The following summarizes the major findings of the report.

### **Peña-Flores Decision's Effects on State Police Procedures and OLEPS Monitoring**

- 1. The Peña-Flores decision led to modifications in State Police procedures regarding vehicle searches when a trooper has probable cause (PC) to believe a crime has been committed.*

State Police procedures developed in early March 2009 following the decision require that search warrants be obtained or, alternatively, consent to search be requested in order to search a vehicle with PC. Prior to the court decision, the existence of probable cause was sufficient to allow a non-consensual search of a vehicle; the court decision made more explicit, and hence limited, the exigent circumstances necessary to proceed without a search warrant. Between the decision and the end of the monitoring period, a total of 333 consent search requests based on probable cause were approved by supervisors and presented to drivers (or occupants) of vehicles in motor vehicles stops. Troopers requested 25 search warrants during the reporting period; 24 applications followed a motorist's declined consent request. The PC consent requests were in addition to the 72 requests made in the six-month period based on the legal standard of reasonable articulable suspicion (RAS), the legal standard applied in all previous reporting periods as necessary for requesting consent to search a vehicle. The total of 405 consent requests is more than three times the highest number reported in any previous six-month reporting period, which was the 134 consent requests in the sixteenth reporting period. (See Section 2.2 in the main text.)

- 2. As the number of consent requests rose during the reporting period, the State Police modified supervisory processes for consent requests that were in place at the time of the Peña-Flores decision.*

During the first OLEPS monitoring period, the State Police changed the approval process for troopers seeking to ask for consent to search a vehicle, so that station commanders (or assistant station commanders), not first-line supervisors, would review all RAS and authorize moving forward with the consent request. In addition, while the State Police had modified its mobile video recording (MVR) review policy in the sixteenth monitoring period to a system of more random incident reviews, the policy still mandated a standard review, as well as a management review, of all incidents that were "critical" to

the Consent Decree, with consent search requests comprising one type.<sup>4</sup> Also, beginning in the sixteenth period, specialized MVR review teams within each troop became responsible for the initial, standard MVR review of critical incidents, rather than front-line supervisors. The increasing volume of consent requests after Peña-Flores thus required approval and review by a relatively small number of State Police supervisory and management personnel. Not surprisingly, all these resources were taxed with the increase in consent requests during the first half of 2009 and going forward. The State Police adjusted their policy of requiring station commanders to authorize consent-to-search requests to apply only to requests seeking authorization based on RAS, giving the authorization of consent request based on PC to first-line supervisors. In an attempt to reduce the workload of the MVR review teams and management reviewers, the State Police sought to have consent requests based on PC to be excluded from the designation as a “critical” incident for monitoring purposes. This proposal was not accepted.<sup>5</sup> (See Sections 2.2 and 2.4 in the main text.)

*3. OLEPS focused only on critical incident reviews for the reporting period to evaluate fully all the consent requests.*

In keeping with the review procedures of the federal independent monitors, OLEPS does MVR reviews of all critical incidents, but in the past had done only a paper review of a portion of the incidents sampled that were considered “non-critical,” albeit still including post-stop law enforcement actions covered by the Consent Decree. However, in order to do video reviews of the increased volume of critical incidents reflecting the consent requests based on PC, the sampling procedures for review were modified to eliminate the random selection of incidents with other post-stop procedures so that resources would permit full review of all critical incidents. Because incidents often include multiple law enforcement procedures, the other post-stop procedures were reviewed to the extent that they occurred in the critical incidents. The resulting sample of 429 motor vehicle stops<sup>6</sup> is 11.7 percent higher than the number of incidents reviewed in the First OLEPS Monitoring Report (covering a full year), and the 417 video reviews conducted are 47.3 percent higher than reflected in the reviews of that report. Only one incident selected for review in the first half of 2009 was not subject to an MVR review by State Police. OLEPS did a video review of that incident and of the available

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<sup>4</sup> By agreement of the State and the federal independent monitors the following actions were designated “critical” for monitoring motor vehicle stops during the Consent Decree: consent search requests, drug canine deployments, and uses of force.

<sup>5</sup> There were several conversations with federal independent monitors, OLEPS (then as OSPA) and State Police. The federal independent monitors continued to hold all consent requests should be considered critical incidents, as does OLEPS.

<sup>6</sup> The sample includes eight incidents for which video recordings were received, but were not deemed “critical.”



416 other incidents also receiving MVR reviews by State Police. (See Section 2.2.) The sampling decisions in conjunction with the addition of a legal standard of probable cause leading to consent requests changed the nature of the driving population sampled<sup>7</sup> and of some of the statistical tests applied here as in recent reports.<sup>8</sup> And, the fact that only one incident did not have any MVR review by State Police personnel means that the findings reported reflect review not just of the activities of troopers, but those of their supervisors in reviewing those activities.

4. *The State Police remains in compliance with all tasks in this reporting period, but the number of errors noted by the monitoring team that were not caught by State Police personnel is higher than in any previous reporting period. This is attributable at least in part to the change in vehicle search procedures following the Peña-Flores decision, and is reflected in warnings being issued for several specific tasks.*<sup>9</sup>

In total, the number of incidents found with procedural or constitutional errors at 248, was higher than in any previous reporting period, even correcting for the increase in OLEPS tape reviews. But, as noted above, the percentage of incidents reviewed by supervisors and management was also higher than in previous reports; all errors were caught by State Police supervisors in 193 incidents prior to OLEPS' review, but not in the remaining 55 incidents. The 55 incidents with errors yield an overall uncaught error rate of 12.8 percent (see Section 2.3) and results in the State Police being placed on warning for several tasks (or parts of tasks) related to Supervision, where compliance under the Consent Decree required that less than six percent of the incidents have an uncaught error to achieve compliance, but also in tasks requiring procedural compliance in at least 90 percent of the incidents. Few of the uncaught errors were found in events that did not involve consent requests.<sup>10</sup>

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<sup>7</sup> That is, the random sampling in previous reports was "stratified" so that sufficient incidents with minority drivers were selected for review and comment. The current sample has proportionately more "white" drivers while the proportion of "Hispanic" drivers is smaller than in previous reports.

<sup>8</sup> The report finds no statistically significant pattern that would indicate race-based decision making on the part of the New Jersey State Police. However, some statistical tests were unlikely to show significance because there were no "non-critical" incidents against which to assess any potential bias in selection of whom to ask for consent, of which incidents will lead to drug canines to be deployed, nor of against whom force might be employed.

<sup>9</sup> During the Consent Decree, the federal monitors and the State established a procedure whereby once Phase II compliance was achieved (see Section 1.2 for phases of compliance), a task would not be placed out of compliance until after two consecutive reporting periods outside the allowable margin of error for the particular task. Thus, for the first reporting period out of compliance, a "warning" is issued.

<sup>10</sup> One exception is the lack of a use-of-force form in one of the 13 incidents involving use of force; the one incident was sufficient to raise the error rate to over seven percent. (See Section 2.5.)



The consent authorization and request procedures per se were not problematic; rather, what appears to be more salient for errors in PC-based consent requests in the time period immediately after the Peña-Flores decision were issues with the procedures for arresting occupants immediately, giving the appropriate Miranda warnings, and, appropriately documenting the events on stop reports. The high number of incidents in which Miranda warnings were not appropriately given (74 stops) and the fact that the issue with the warnings was not appropriately noted by supervisors in more than a fifth of these (16 stops), no doubt reflects the revised search procedure requiring immediate arrest of all occupants with probable cause, but was troubling, especially because Miranda issues were covered in the previous year's (2008) in-service training. (See Section 2.38.) However, OLEPS recognizes that an organization needs time to adjust to a change in procedures. As the OLEPS monitoring team began noting the prevalence of the issue, it discussed the issue with State Police. The monitoring expects the issue to subside in future monitoring reports.

## **Other Findings**

In addition to the clear effects of the Peña-Flores decision on State Police activity, the State Police continued to maintain compliance with other requirements of Consent Decree during the reporting period. The monitoring team continues to comment on issues raised in its previous report, and notes some new areas in need of attention by the State Police.

### *Supervision*

In the First OLEPS Monitoring Report, the monitoring team raised concern about the removal of the responsibility for authorizing consent requests from first-line supervisors to station commanders. Ironically, because of increases in consent search requests with the Peña-Flores decision, as noted above, more decision making was placed back with first-line supervisors who were given the responsibility to approve consent requests based on probable cause. The monitoring team continues to believe that supervision is most effective when conducted by first-line supervisors. While two consent requests based on PC were approved inappropriately during the reporting period, management reviewers caught and corrected them. Overall, the error rate for consent requests based on reasonable articulable suspicion (2.8%) was higher than in those based on PC, which was under one percent. (See Section 2.4.)

Also raised in the previous report was the issue of the low proportion of stops with a supervisor present. The overall rate this period (39.6%) is similar to that found the First OLEPS Monitoring Report. And, the presence of a supervisor at the scene of an unfolding critical incident remains high (59.8%), but is down slightly from that reported

in the last report. (See Section 2.16.) Again, the monitoring team cautions that effective supervision in the long term may be compromised without a presence on the scene.

Thirdly, in this reporting period, the State Police clearly is moving toward digital recording of stops, with six digital stop recordings reviewed by the monitoring team for the period. The number of stops with audio, video, or both audio and video issues, at 49, remains too high, and again likely reflects aging equipment. MVR malfunctions accounted for eight of the 12 incidents for which the monitoring team was unable to view videos. (See Section 2.11.) OLEPS looks forward to the complete shift to digital technology in the near future.

Finally, in the last monitoring report, OLEPS noted improvements in the articulation of reasonable suspicion leading to a consent request and in supervisors' ability to catch problematic articulation, attributing this improvement to the in-service training received in 2007. This trend continues in the first half of 2009. Almost all 72 consent requests based on RAS contained at least one "probative" element among the factors articulated to establish the reasonable suspicion needed to pursue a consent request. (See Section 2.2.2.1.)

### *MAPPS Development*

MAPPS continues to contain all required information and capabilities, resulting in full compliance again for this reporting period. Commencing with this reporting period, MAPPS use is governed by a Standard Operating Procedure (S.O.P. C-11), approved by the federal monitors and incorporating revised policies that previously existed in annually renewed Operations Instructions since MAPPS implementation in January 2004. (See Section 2.17.) The system can be used to review trooper and supervisory performance, compare trooper performance to other members of the trooper's workgroup, and to compare performance across work groups (Section 2.20). MAPPS is being used in performance evaluations and in other supervisory actions in order to document interventions and commendations, thus enhancing the system's repository of performance information available to subsequent supervisors (Section 2.24 through Section 2.26). Appropriate benchmark processes have been established for the MAPPS system, and all five of the New Jersey State Police's field operations troops continue to receive written analytic reports on motor vehicle stops and race that are reviewed by selected command staff at quarterly Risk Management Advisory Panel meetings (Sections 2.27 and 2.28).

During this reporting period, the use-of-force module was added to the system, allowing routine analysis by the RACG within the MAPPS Unit that can be provided to

the Division (Section 2.28). And, troopers now have routine access to much of their own MAPPS information, far beyond the annual requirement of the Consent Decree (Section 2.19).

The monitoring team did note some issues with the availability of certain information in MAPPS and inconsistent application of policies, both of which limit the comprehensive picture of performance MAPPS is intended to present and its use as an early intervention system to correct performance (Section 2.18). MAPPS relies on data maintained by other units within the State Police; a change in the protocol by the Academy for recording attendance at on-duty firearms training during the reporting period was not relayed to the MAPPS Unit and the information was missing in MAPPS for all troopers checked by the monitoring team more than a year later (Section 2.22). MAPPS presents a view of the Academy's training base, but the protocol creating that view in MAPPS needed to be revised to reflect the Academy's change. The units responsible for feeding information to MAPPS should be sure that the MAPPS Unit is aware of any changes to their systems so that accommodations can be made, if required. Secondly, the ability to attribute performance to a specific incident requires that the Computer-Aided-Dispatch (CAD) number associated with a stop appears on all information related to the incident, including trooper interventions and commendations resulting from it. Supervisors need to remember to record appropriately CAD numbers when entering interventions and commendations in MAPPS to allow cross-referencing to all information about the incident (cf. Section 2.21).

The topics on which interventions are taken also need clarity by supervisors. An issue raised in earlier reports by the federal independent monitors was the fact that corrective action appears in the narratives of MVR reviews, with "no action taken" indicated as the outcome of the review (Section 2.24). This remains an on-going issue for the OLEPS monitoring team, which acknowledges a supervisor's understanding of the troopers under their command and what the appropriate level of intervention is for each individual. However, as noted above, most MVR reviews are conducted by troop-level personnel, not first-line supervisors. In addition, in this reporting period, the monitoring team found that the narratives of the MVR reviews of critical incidents did not always clearly state the issues they were raising, such as when questioning was inappropriate leading up to a consent or after an arrest without a Miranda warning. The clarity of issues may be especially important when noted by someone other than the front-line supervisor.

The MAPPS system and the RACG continue to have sufficient resources to maintain compliance with the demands of the Consent Decree and to address other analytic demands of the State Police. That said, in a time of budgetary constraints, the monitoring team remains concerned about future staffing of positions that support the

analytic efforts of the State Police, both enlisted and civilian. The sufficiency of the staffing is not just in terms of numbers, but also in terms of the appropriate training required to support specialized functions.

### *Office of Professional Standards (OPS)*

OLEPS continues to monitor the activities of OPS and finds it remains in compliance the requirements of the Consent Decree (Section 2.32). Of note during the previous reporting period was the implementation by OPS of its Incident Reduction Initiative that continued to evolve in the current reporting period. The initiative hopes to achieve a reduction in the number of complaints through an aggressive program of data collection and analysis. The analysis allows the Division as a whole to proactively address troopers who are unwilling, unable or unfit to perform their duties. The monitoring team awaits the potential integration into the program of the meaningful review process for troopers who are identified with three misconduct investigations in two years, a process that remains otherwise insufficiently articulated (Section 2.30).

The program's focus on identifying patterns of behavior is consistent with the spirit of the Consent Decree and its emphasis on early interventions to modify behavior. As in the previous report, the monitoring team encourages improved integration of the risk identification and the risk analysis functions across the State Police, including this program, to enhance its ability to effectively address emerging issues as they arise.

### *Training*

The State Police remains in compliance with all Consent Decree requirements applicable to the training function for this reporting period.<sup>11</sup> The New Jersey State Police Training Academy's ability to provide effective and meaningful training continues to evolve and improve.

During the reporting period, Peña-Flores demonstrated not only the Academy's role in updating troopers with current case law applicable to search and seizure, but also its capability to identify training issues that arise from the day-to-day activities of the Field Operations Section, develop curriculum and programs to address those issues, and implement the curriculum and programs through in-service training. For 2009, the in-service updated troopers on the court decision and its impact on search and seizure procedures for the Division (Section 2.34). The measurement of the effectiveness of the curriculum at the conclusion of in-service training awaits data from 2010. Attendance at the 2009 in-service training by OLEPS revealed that the required training

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<sup>11</sup> The reporting period for the training requirements encompassed the entire calendar year (2009).

not only in search and seizure, but also for cultural diversity, leadership and ethics was well-presented. Search and seizure topics included participation in interactive scenarios (Section 2.38 and Section 2.39).

A Regional Intelligence Academy (RIA) was established during the reporting period as a collaborative effort of the New Jersey State Police with the New Jersey Office of Homeland Security and Preparedness, and with the Urban Area Security Initiative. The RIA develops intelligence training for law enforcement personnel, emergency management personnel, analysts, corporate executives and policy decision makers. While falling outside the mandate of the Consent Decree, members of the Academy staff assigned to the RIA develop training according to the same training cycle used by the Academy and are commended for doing so (Section 2.34). Unfortunately, the detachment of Academy personnel to the RIA contributes to the monitoring team's concern about low staffing levels actually available for Academy training assignments, a long-standing concern of the federal monitors (Section 2.35).

The Academy is required to maintain formal eligibility requirements and selection processes both for Academy instructors and for troopers who become trooper coaches to new troopers. During MAPPS reviews of troopers who had three misconduct investigations in two years, the monitoring team noted several who attended trooper coach training with open misconduct investigations (Section 2.30). Consequently, the monitoring team reviewed the whole trooper coach selection process in place for the reporting period (Section 2.36). As a result of the review, the monitoring team recommends more attention and transparency to the recording of reasons why or why not someone is recommended to continue in the trooper coach selection process.

### *Inspections, Audit and Quality Control*

OLEPS continues to provide the State Police with an additional tier of review for law enforcement activities related to the Consent Decree. Inspections and Audit personnel from Field Operations and OLEPS continue to review motor vehicle stop reports and video tapes elements for conformance to the requirements of the Consent Decree. OLEPS continues to publish public reports on motor vehicle stops by the State Police (Section 2.48 through Section 2.52).

## Overall Compliance Status

All functions subject to review under the decree including training, supervision, inspections, audits and MAPPS processes are staffed and functioning and all areas again meet the requirements established by the Consent Decree. That said, the monitoring places the State Police on warning for several tasks related to supervision of motor vehicle stops following the Peña-Flores decision and expects improvement in subsequent reports. The goal of the Consent Decree is to encourage the development of a law enforcement organization that is able to monitor its activities and adapt to the changing dynamics of the criminal justice system. OLEPS anticipates the State Police's level of functioning to continue when it conducts reviews in post-Consent Decree periods.

Office of Law Enforcement Professional Standards  
Second Monitoring Report of the New Jersey State Police  
Period Ending June 30, 2009

## 1.0 Introduction

This document represents the third report prepared by the State of New Jersey (the State) assessing the levels of compliance of the Division of State Police (State Police) with the requirements of a Consent Decree (Decree) entered into between the State and the United States Department of Justice in December 1999. This document is the second time the State has assessed compliance without the direct oversight of the independent monitoring team (IMT).

Between the entry of the Decree in December 1999 and December 2007, the IMT issued sixteen reports assessing the efforts of the State Police to comply with the provisions of the Decree. Following the release of the Sixteenth Monitors' Report, discussions were held between the independent monitors, the Department of Justice, the State of New Jersey and the Office of State Police Affairs (OSPA) as to the preparation of the seventeenth report. From those discussions, it was agreed that OSPA would begin to assume the duties previously performed by the independent monitors including the assessment of compliance by the State Police with the provisions of the Decree. In addition, it was agreed that OSPA would prepare a draft of the seventeenth report for the review and signature of the independent monitors.

The seventeenth report, which was issued in April of 2009, marked the first time the State had assessed compliance by the State Police with the terms of the Decree. In preparing the report, OSPA performed all of the activities previously performed by the independent monitors in assessing compliance with the Decree. A draft of the report prepared by OSPA was forwarded to the independent monitors for review. Approval to issue the report was granted by the independent monitors in April 2009.

The seventeenth report concluded that the State Police had achieved compliance with the requirements of the Consent Decree for several reporting periods.<sup>1</sup> More specifically, the report concluded that all functions of the State Police subject to review under the Decree were found to be fully staffed and functioning. In addition, the report concluded that the State Police had become an organization which was self-regulating and was thereby able to "analyze and correct" problematic law enforcement procedures shortly after the problematic procedures were identified.

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<sup>1</sup> The State Police first became compliant with all the requirements of the Consent Decree in the Twelfth Monitors' Report (July 2005).



Based on the conclusions set forth in the seventeenth report, discussions were held between the State of New Jersey and the Department of Justice concerning the termination of the Decree. The State elected to pursue the discussions after the Advisory Committee on Police Standards determined that it would be in the best interests of the State to terminate the Decree provided the State took steps to ensure that the reforms implemented by the Decree were carried forward.<sup>2</sup> Among the steps recommended by the committee was the assumption by the State of the responsibility for assessing compliance with the Decree by the State Police.

The committee report not only encouraged the State to pursue discussion concerning the termination of the Decree, it also helped trigger the enactment of legislation by the State which codified many of the reforms implemented by the Decree.<sup>3</sup> The legislation also created the Office of Law Enforcement Professional Standards (OLEPS) as a successor to the OSPA. In the legislation, OLEPS is directed to perform "such administrative, investigative, policy and training oversight, and monitoring functions" necessary to ensure the integrity of the State Police.

Based on the findings of the seventeenth report and the enactment of legislation codifying the reforms implemented by the Decree, the State and the Department of Justice agreed in August 2009 to file a joint motion to terminate the Decree with the United States District Court. The motion was granted and an order terminating the Decree was entered by the Court on September 21, 2009.

OSPA was succeeded by OLEPS in October 2009. While this report marks the third time the State has assessed the levels of compliance with the Decree by the State Police, it marks the second report prepared by OLEPS. The report reviews activities undertaken by the State Police between January 1, 2009, and June 30, 2009. The reader should note that the State Police remained subject to the requirements of the Decree during the entire reporting period. Furthermore, the independent monitors continued to review policy changes and offer technical advice to the State during the reporting period. However, the federal monitors did not participate in the review process and the preparation of this report. Further, they did not assert any editorial control over the conclusions expressed in this report.

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<sup>2</sup> In August of 2006, Governor Corzine established by executive order the Advisory Committee on Police Standards. The committee was asked to perform several functions including making recommendations to the governor concerning whether the State should join the Department of Justice in moving to terminate the Consent Decree. The committee was also asked to identify those measures that would ensure that the New Jersey State Police maintain the reforms implemented under the Consent Decree.

<sup>3</sup> See *N.J.S.A. 52:17B-222 et seq.*

The report is organized into three sections, identified below:

- Introduction;
- Compliance Assessment; and
- Summary.

The methodology employed by OLEPS in developing the report, definitions used by monitoring team, key dates for the monitoring process, and operational definitions of “compliance” are described in Section One of the report. Section Two of the report, “Compliance Assessment,” includes the findings of the monitoring process implemented by OLEPS and specific examples of compliance and non-compliance observed during the monitoring process. Section Three of the report, “Summary,” provides an overall assessment of the State’s performance for this reporting period.

### **1.1 Overall Status Assessment**

Two specific dates accrue to deliverables for the Decree: the date of entry of the Decree (December 30, 1999), which times deliverables of the State, and the date of appointments of the independent monitors (March 30, 2000), which times deliverables for the compliance monitoring process.

### **1.2 Format for Compliance Assessment**

The IMT reports were organized to be congruent with the structure of the Consent Decree. They reported on the State’s compliance using the individual requirements of the Decree. For example, the first section, the compliance assessment, deals with the requirements, in paragraph 26 of the Decree, relating to a specific prohibition against using “to any degree the race or national or ethnic origin of civilian drivers or passengers in deciding which vehicles to subject to any motor vehicle stop” (Decree at paragraph 26 and comprising Task 26 for reporting purposes here). The remaining components of the Decree are treated similarly. Unless otherwise noted, OLEPS continues this format. Compliance was originally classified in the IMT reports as “Phase I,” and “Phase II;” Section 1.4, below specifies the original definitions of these phases and notes the focus on Phase II compliance in this report.

## 1.3 Compliance Assessment Processes

### 1.3.1 Structure of the Task Assessment Process

The New Jersey State Police provided data to the monitoring team, pursuant to specific requests. During previous reporting periods, all data collected were of one of two types. They were either collected by:

- Selection of a random or stratified random sample; or,
- Selection of all available records of a specific type.

Under no circumstances were the data selected by the monitoring team based on provision of records of preference by personnel from the New Jersey State Police. In every instance of the selection of random samples, State Police personnel were provided lists requesting specific data, or the samples were drawn directly by members of the monitoring team. For this second OLEPS monitoring period, no random sample was selected; all available records of a specific type were reviewed. The reason for this change is discussed below.

The OLEPS monitoring team assessed the performance of the New Jersey State Police on each task outlined in the Consent Decree for the six-month period ending June 30, 2009.<sup>4</sup> The First OLEPS Monitoring Report was published in April of 2010, covering the calendar year ending December 31, 2008.

All determinations of status for the New Jersey State Police are data based, and were formed by a review of the following types of documents:

- Official New Jersey State Police documents prepared in the normal course of business;<sup>5</sup> and/or
- Electronic documents prepared by the State Police or components of state government during the normal course of business.

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<sup>4</sup> Motor vehicle stop activity was assessed through December 31, 2010, the last available date for complete electronic records for motor vehicle stops provided in automated format.

<sup>5</sup> For example, members of the monitoring team would not accept for review as documentation of compliance "special reports" prepared by state personnel describing their activities relating to a specific task. Instead, the monitoring team would review records created during the delivery or performance of that task.

### 1.3.2 Operational Definition of Compliance

For the purposes of the monitoring process in IMT reports, "compliance" consisted of two components: Phase I compliance and Phase II compliance. Phase I compliance was viewed as the administrative piece of compliance. It entailed the creation of policy, procedure, rule, regulation, directive or command to "comply" as required by the text of the Decree. Phase II compliance dealt with the implementation of a specific policy and required that the policy must, by matter of evidence, be followed in day-to-day operations of the New Jersey State Police. It may have entailed the provision of training, supervision, audit, inspection, and discipline to achieve the implementation of a specific policy as designed. In commenting on the State's progress (or lack thereof) in achieving Phase II compliance for a specific task, the federal independent monitors may have commented upon the efficacy of training, supervision, audit, inspection and discipline as applicable to that task.

With the termination of the Consent Decree in September 2009, the monitoring team recognized that the State Police have been in both Phase I and Phase II compliance with all tasks since July 2005. Beginning with the First OLEPS Monitoring Report, Phase I compliance was assumed and will not routinely be commented upon in this or subsequent reports.<sup>6</sup> Rather, compliance status reported reflects the evidence that polices are being followed in the day-to-day operations of the State Police, formerly designated as Phase II compliance. Compliance levels for this monitoring process are reported both through a narrative description and summary (Appendix One). The narrative describes the nature of the task requirement being assessed, a description of the methodology used to assess the task, and a statement of compliance status. It is critical to note, however, that a finding of non-compliance does not mean the State Police are engaging in inappropriate behavior. It simply means the State Police as an organization has not met the criteria for compliance with a specific task during the reporting period.

### 1.3.3 Standards for "Compliance"

The monitoring team continues the standards to which the parties to the Consent Decree agreed. A quantitative standard for "compliance" is used for assessing compliance for all critical, constitutionally relevant tasks stipulated by the Decree that can be quantified. On tasks for which quantitative data can be collected, e.g., the number of Motor Vehicle Stop Reports (MVSRs) that conform to the requirements of the Decree, a standard of greater than 94 percent compliance is used. This means that 95

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<sup>6</sup> Any changes to policy and procedures related to the Consent Decree must be approved by the Attorney General. OLEPS thus will continue to monitor that State Police policy and procedures adhere to the Consent Decree and will report any issues that arise.

percent of the reports reviewed conformed to the requirements of the Decree. For tasks not directly related to constitutional issues, e.g., recording of specific motor vehicle stop events, there is a 90 percent standard.

## **1.4 Flow of the Monitoring Process**

Compliance audits and monitoring processes typically consist of two phases. The first phase focuses on issues of "policy compliance:" the development of policies, rules, regulations and directives to comply. The second phase focuses on issues of operational compliance and institutionalizing change into the day-to-day operations of the agency -- the focal point of on-going monitoring.

In preparing their reports, the independent monitors developed and employed specific methods and practices to determine compliance with the Consent Decree, which were applied in the seventeenth report prepared by the Office of State Police Affairs and approved by the independent monitors. OLEPS followed the same practices for the First OLEPS Monitoring Report. Because the Consent Decree remains in effect for the current reporting period, the OLEPS monitoring team again adhered to the methods and practices previously implemented by the independent monitors to assess motor vehicle stops including critical incidents (Tasks 26 through 39), to review the Management Awareness and Personnel Performance System (Tasks 40 through 54) and to evaluate training (Tasks 97 through 109). The following is a brief outline of the methods and practices implemented by the independent monitors in previous reports and utilized by the monitoring team.

### Motor Vehicle Stops

The Consent Decree mandates that all incidents defined as critical by the State and the independent monitors be reviewed for compliance with the Decree.<sup>7</sup> Each review of a critical incident consists of two phases. In the first phase, an examination is conducted of all of the reports prepared as a result of the incident (stop report, arrest report, etc.). In the second phase, the tape (or digital recording) produced by the motor vehicle recorder during the stop is examined. The review serves two purposes. First, each review determines whether the actions of the State Police were consistent with federal and State constitutional law. Second, each review determines whether the actions of the State Police were consistent with the provisions of the Consent Decree and specific rules and regulations adopted by the State Police.

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<sup>7</sup> As agreed between the State and the independent monitors during the period under the Consent Decree, the following law enforcement activities constitute critical incidents in the context of a motor vehicle stop: a) a consent to search request is made subsequent to a supervisor's approval; b) physical, mechanical, chemical, or deadly force is used; or c) a (drug) canine deployment occurs.

OLEPS continued the practices outlined above. A total of 421 reviews of critical incidents were conducted during the preparation of this report. The number of critical reviews is higher than the number of critical incidents reviewed in any previous monitoring reports. The fact that this number is higher than the previously high total reported in the First OLEPS Monitoring report (179 incidents) is especially notable since that report (and the previous one) encompassed an entire calendar year rather than the more typical six-month reporting period this report is again reviewing. Some critical incidents included more than one law enforcement activity (e.g., consent request, canine deployment, etc.).

In addition to the incidents outlined above, the independent monitors also examined a number of incidents that was drawn from a larger number of motor vehicle stops in which other significant law enforcement activity took place.<sup>8</sup> A review of all reports associated with these stops would be conducted by the independent monitors. In addition, a review of the tapes produced by the motor vehicle recorders during these stops would be conducted for a selected number of stops. For this report, none of these more routine motor vehicle stops with other post-stop procedures were chosen for review by the Office of Law Enforcement Professional Standards.<sup>9</sup> However, the reviews undertaken by OLEPS staff utilized the same practices and statistical analyses implemented by the independent monitors in previous reports.

### Management Awareness and Personnel Performance System

The independent monitors would access MAPPS at various times during the review period to ensure that all relevant information was entered into the system. The monitors also examined whether the State Police undertook appropriate risk management activities based on the information contained in MAPPS. The OLEPS monitoring team did the same in the preparation of this report.

### Training

The independent monitors utilized a seven step process to evaluate the training function within the Division of State Police. That process included the following components: a) needs assessment; b) curriculum development; c) delivery of the program; d) evaluation of the program; e) revision of the curriculum; f) effectiveness of

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<sup>8</sup> The significant law enforcement activities specified by the decree include probable cause arrests, probable cause searches, frisks of the person or vehicle, and the seizure of contraband.

<sup>9</sup> That said, there were eight reviews noted below that were conducted on incidents for which OLEPS received video tapes that were not among those associated with critical incidents.

the program; and g) documentation of training. In conducting its review of the training function, OLEPS utilized the same seven step process.

## **2.0 Assessment of Compliance**

### **2.1 Methodology**

The monitors assessed the State's compliance using practices agreed upon between the parties and the monitors.

The following sections contain a detailed assessment of the degree to which the State Police continues to comply with the tasks to which it agreed on December 30, 1999. The reporting period for this report deals with actions of the State to comply with the Decree between January 1, 2009 and June 30, 2009, and is thus prior to the dissolution of the Consent Decree in September 2009.

First, Tasks 26 through 39 (Section 2.2 through Section 2.16) assess the creation and implementation of the reforms in field operations that address the prohibition from using race-ethnicity in decision making. Compliance with these tasks insures transparency of a trooper's road performance through the collection of data and supervisory review of road activity that is timely and corrective, when needed. The implementation of the Management Awareness Personnel Performance System is then assessed next in Tasks 40-54 (Section 2.17 through Section 2.31) and includes not only the maintenance of data on trooper performance, but also requirements for routine individual and aggregate analysis of the data over time. Tasks 57 through 92 of the Decree dealt with internal investigations and the complaint process; only Tasks 87 and 90 remain under review (Section 2.32). Tasks 93 through 109 (Section 2.34 through 2.47) assess training and its implementation. Finally, Tasks 110 through 124 (Section 2.48 through 2.57) provide for Decree oversight and public information.

### **2.2 Compliance with Task 26: Prohibition from Using Race-Ethnicity in Decision Making**

Task 26 stipulates that:

**26. Except in the "suspect-specific" ("be on the lookout" or "BOLO") situation described below, state troopers shall continue to be prohibited from considering in any fashion and to any degree the race or national or ethnic origin of civilian drivers or passengers in deciding which vehicles to subject to any motor vehicle stop and in deciding upon the scope or substance of any enforcement action or**



**procedure in connection with or during the course of a motor vehicle stop. Where state troopers are seeking to detain, apprehend, or otherwise be on the lookout for one or more specific suspects who have been identified or described in part by race or national or ethnic origin, state troopers may rely in part on race or national or ethnic origin in determining whether reasonable suspicion exists that a given individual is the person being sought.**

Compliance Status: **In Compliance**

### Implementation Summary

Field Operations came into full compliance with Consent Decree Tasks 26 through 39 in the eleventh reporting period as noted in the IMT Report of December 20, 2004. The last tasks to reach "Phase II" compliance (Tasks 35 and 36) were those relating to supervisory reviews of reports and video tapes that result in identifying errors in the field and allowing corrective actions to be taken.<sup>10</sup>

### Methodology

For this reporting period, members of the Office of Law Enforcement Professional Standards (OLEPS) monitoring team conducted structured reviews of the operations of selected New Jersey State Police Road Stations for all troops. These reviews were conducted of motor vehicle stop activities reported during the dates January 1, 2009, through June 30, 2009, inclusive.<sup>11</sup> In the past, reporting periods generally reflected the latest possible date for which automated data were available; however, the timing of the availability of the automated data and the number of consent requests requiring review resulted in a six-month reporting period that was a substantial time before reviews started in the spring of 2010. As part of this review, members of the monitoring team collected and/or reviewed course-of-business data on 429 New Jersey State Police motor vehicle stop incidents. In addition, the team reviewed 417 motor vehicle stop incidents involving law enforcement procedures stipulated in the Decree through mobile video recordings (MVRs),<sup>12</sup> available from cameras mounted in patrol cars and microphones attached to troopers on scene. Supporting documentation was reviewed for each of the

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<sup>10</sup> Appendix One gives the reporting period that each task attained "Phase II" compliance according to the federal monitors, indicating successful implementation in day-to-day operations.

<sup>11</sup> The seventeenth IMT reporting period and the first OLEPS reporting period were the only periods in which a full year of data was analyzed, a fact that led to higher numbers of reported post-stop activities in these periods relative to prior reports.

<sup>12</sup> During this review period, digital recording equipment was being implemented, and six incidents in this period were digitally recorded stop incidents.

motor vehicle stops assessed by the monitoring team. The following paragraphs describe the monitoring team's methodology for data collection and analysis. These descriptions apply to the assessment of compliance of various tasks required by the Decree, and are critically important in the assessment of Tasks 26 through 36.

## Data Requests

Prior to beginning reviews in April 2010 the monitoring team requested of the New Jersey State Police electronic and hard copy (non-electronic) data regarding State Police operations. These data requests included the following electronic-format data:

- Electronic data for all motor vehicle stop activity for the troops selected relating to an incident in which personnel engaged in one of the eight articulated post-stop law enforcement procedures of interest to the Decree, i.e., request for permission to search; conduct of a consensual or non-consensual search of a person or vehicle; ordering occupants out of a vehicle; frisks of vehicle occupants; deployment of a drug-detection canine; seizure of contraband; arrest of the occupants of the vehicle; or use of deadly, physical, mechanical or chemical force.
- Electronic data for all trooper-initiated motor vehicle stop "communications center call-ins" for the stations selected, including time of completion of the stop and results of the stop. (However, because of the focus on critical incidents, these files were not used for focused troops, rather these data were available for the incidents reviewed.)
- The monitoring team also requested copies of documentation created for all consent search requests, canine deployments, and incidents involving use of force by New Jersey State Police personnel statewide, where such events took place in conjunction with a motor vehicle stop, as defined by the Decree. The request covered all these events in the first half of 2009.

The monitoring team was provided with all motor vehicle stop (MVS) records requested (taken from the State's motor vehicle stop report entry system) referred to by the New Jersey State Police as motor vehicle stop "event" records. Computer-Aided Dispatch (CAD) System records were also requested by the monitors for all motor vehicle stop activity for the selected events from January 1, 2009 through June 30, 2009. The requested data were thus the same as previous reporting periods, however the selection process for incidents to review differed from previous reporting periods.<sup>13</sup>

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<sup>13</sup> Past monitoring reports drew sample events for the same time period as for the incidents involving consent requests, canine deployments and uses of force, and, from only two troops on a rotating basis. In the previous two full-year reporting periods, adjustments were made to the selection of the troops selected for "non-critical" events. In this reporting period, OLEPS reviewed only critical incidents, with the exception of tape and report information received on eight incidents later found not to be consent

Data reviewed for the first OLEPS monitoring period included the types of incidents noted in Table One, below.

Table One: Incidents Reviewed For Second OLEPS Monitoring Period  
(January 1, 2009 through June 30, 2009)

Type of Activity	Report Reviews	Tape Reviews <sup>14</sup>
Selected MVS Incidents	429	417
MVS Involving Consent Search Requests	405	393
MVS Involving Canine Deployment	23	23
MVS Involving Use of Force	13	13
Probable Cause Searches of Vehicles	17	17
Probable Cause Searches of Persons	23	23

### Motor Vehicle Stops

Based on the data provided by the New Jersey State Police, the OLEPS monitoring team selected specific law enforcement activities for further assessment and analysis. The overall *sample* of 429 drivers includes all 421 drivers who were subjected to a critical post-stop interaction, i.e., a consent search request, canine deployment or use of force. In addition, the monitors reviewed eight other drivers as part of the driver sample. These drivers had a non-critical post-stop interaction performed during their traffic stop, e.g., exit from a vehicle, frisk, probable cause search of a person, probable cause search of a vehicle, or arrest. In effect, then, 98.1 percent of the report's drivers sample was selected in response to a given New Jersey State Police action and produced a statewide sample.

These records indicated 405 events that resulted in consent search.<sup>15</sup> All incidents involving consent search requests were assessed by reviewing New Jersey State Police reports documenting the consent and execution of the search, and by reviewing the available video records for those consent requests. All but twelve consent search requests were subjected to both documentation and video recording review by the monitoring team.<sup>16</sup> Similarly, the New Jersey State Police deployed drug detection

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requests, canine deployments or uses of force during the duration of a motor vehicle stop on the side of the road.

<sup>14</sup> Tape and report reviews total more than 429 due to the fact that *all* tapes and *most* reports reviewed included more than a single category of law enforcement activity.

<sup>15</sup> Drivers declined 55 consent requests during the reporting period.

<sup>16</sup> Eight consent requests could not be reviewed due to a malfunction of the mobile video and/or audio recording. The recordings for three consent request incidents were not available to the monitoring team due to inadvertent deletions of digital recording data, and one tape was not found.

canine units 23 times during the reporting period, a 34.2 percent decrease from the 70 deployments in the previous period, when adjusted for the full year reviewed in the previous period. The monitoring team reviewed reports and videos from all 23 of these events. All but two of the events with a canine deployment also involved consent search requests, including ten of the 55 consent search requests that were denied. New Jersey State Police personnel reportedly used force in 13 motor vehicle stop incidents during the reporting period, and the monitoring team reviewed all reports and videos from those incidents.

Selected motor vehicle stop incidents and procedures were subjected to one (or more) of two types of reviews performed by the monitoring team.<sup>17</sup> The types of reviews used by the monitoring team are described below, and a summation of the types of review performed by station, are depicted in Table Two, below.

### Type I Event Reviews

A Type I event review consisted of reviewing all available hard-copy and electronic documentation of an event. For example, an event review could consist of reviewing the motor vehicle stop report, associated records in the patrol log, a supporting consent to search report, and associated summonses or arrest records. Each post-stop event consisting of law enforcement procedure of interest to the Decree, i.e., request for permission to search; conduct of a consensual or non-consensual search; ordering occupants out of a vehicle; frisks of vehicle occupants; deployment of a drug-detection canine; seizure of contraband; arrest of the occupants of the vehicle; or use of deadly, physical, mechanical or chemical force was subjected to a structured analysis using a form developed by the monitoring team. Problems with the reporting process were noted and tallied using this form. These data were shared with the New Jersey State Police, and clarifications were requested and received in instances in which there was doubt about the status of an event or supporting documentation. All events for a total of 429 were subject to Type I reviews this period.

### Type II Event Review

A Type II event review consisted of reviewing the associated video for a given motor vehicle stop event, and comparing the actions noted on the tape with the elements reported in the official documents related to the event. These data were collected using a form developed by the monitoring team. These data were shared with the New Jersey State Police, and clarifications were requested and received in instances in which there

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<sup>17</sup> As noted in the First OLEPS Report, three types of reviews were possible during the federal monitoring process. Type III Event reviews were not conducted after eleven consecutive periods in which no unreported incidents were observed and are not included in the discussion here. OLEPS may undertake such reviews in a later monitoring period. See pages 14 and 15 of the First OLEPS Report.

was doubt about the status of an event or supporting documentation. A total of 417 Type II reviews was conducted this period. (Table One above indicates by type of event whether the event review included a video review, making it a Type II review.) This total represents a 47.3 percent increase over the 283 Type II reviews completed for the First OLEPS Monitoring Report. The reader should note that members of the monitoring team reviewed all available video recordings, as well as Motor Vehicle Stop Reports and associated documentation (patrol charts, citations, arrest reports, DUI reports, etc.) for *all* of the following New Jersey State Police activities in the monitoring period:

- All known consent search requests;
- All known uses of force; and
- All known deployments of canine units.

Table Two: Distribution of Monitoring Events by Station

Station	Type I Reviews	Type II Reviews
A040 Bridgeton	19	18
A090 Buena Vista	10	10
A100 Port Norris	12	11
A140 Woodstown	14	14
A160 Atlantic City Expressway	64	61
A310 Bellmawr	23	23
B010 Metro North	2	2
B020 Hope	12	12
B050 Sussex	6	6
B060 Totowa-Sub	36	35
B080 Netcong	24	24
B110 Perryville	8	7
B130 Somerville	10	10
B150 Washington	1	1
C020 Bordentown	25	25
C040 Kingwood	3	2
C060 Hamilton-Sub	9	8
C080 Red Lion	6	5
C120 Tuckerton	3	3
D010 Cranbury	39	39
D020 Moorestown	21	21
D030 Newark	12	12
E030 Bass River	23	23
E040 Bloomfield	4	4
E050 Holmdel	21	19
Other	22	22
<b>Total</b>	<b>429</b>	<b>417</b>

## Assessment

The OLEPS monitoring team continues to review State Police activity for processes that indicate that relatively minor infractions serve as the only precursory violation resulting in requests for consent searches, requests to exit the vehicle, frisks, or other law enforcement procedures. In most of the federal monitors' reports, the vast majority of all sampled searches of persons and vehicles conducted by members of the State Police were "non-discretionary," e.g., searches incident to arrest. Based on revised New

Jersey case law,<sup>18</sup> effective the fifteenth reporting period, the search of a vehicle can no longer be conducted as incident to arrest, leading to a substantial change in the nature of searches of vehicles. "Consent request" became the number one reason for a search of a vehicle in the fifteenth report, and continued to be the most frequent type of vehicle search sampled in the sixteenth and seventeenth reports. In the previous (First OLEPS) reporting period, somewhat fewer, or 47.6 percent, of all sampled searches of vehicles were based on a request for consent to search. [This rate was calculated as 130 consent requests divided by 225 vehicle searches---an event calculation; some events had more than one type of vehicle search.] For the current period, 98.1 percent of incidents with a vehicle search attempted included a consent search request. The main reason for this shift is New Jersey case law, effective in the second OLEPS monitoring period, restricting the exigent circumstances for a warrantless search of a vehicle.<sup>19</sup> The New Jersey State Police has made greater use of consent requests as a result to attempt to search vehicles for contraband. Because of the numbers of such searches, no sampling was done of incidents that may have had only a probable cause search of a vehicle, thereby increasing the proportion consent requests make of the total sample.

Persons in 23 incidents were subject to probable cause searches, and, in 16 of these incidents, individuals were also searched incident to arrest. An additional 378 incidents involved only "non-discretionary" searches incident to arrest, for a total of 401 incidents with searches of persons reviewed this reporting period.

As with the previous four reporting periods, one activity this period was conducted frequently enough for statistical analysis to assess indications of race- or ethnicity-based decision making on the part of the New Jersey State Police: consent requests (n=405). Canine deployments (n=23), which were assessed statistically in the previous three reporting periods, are presented with their statistical results for comparison purposes, however, the number of deployments in this reporting period is too small for many meaningful statistics. Table Three, below, depicts consent request activity for the last ten reporting periods. Figure One depicts these data graphically. The First OLEPS reporting period, as was the seventeenth reporting period, is divided into two six-month groupings to adjust for the full-year reporting period examined for consent requests, making each group equivalent to the length of the 16<sup>th</sup> reporting period. Given the new

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<sup>18</sup> State v. Eckel, 185 N.J. 523 (2006).

<sup>19</sup> In State v. Peña-Flores, 198 N.J. 6 (2009), the New Jersey Supreme Court outlined the circumstances in which law enforcement officers in New Jersey may conduct a search without a warrant under the automobile exception. The court's decision has served to limit the use of exigent circumstances as a basis for the warrantless searches of automobiles. The State Police has since modified its practices and procedures to limit the use of exigent circumstances as a basis to conduct searches of automobiles without obtaining a search warrant.



case law governing the searches of motor vehicles without warrants,<sup>20</sup> the pattern of consent requests seen for the last two reporting periods is not repeated. To capture the change, consent requests for the current period are presented two ways: first, with the total number of requests based on reasonable articulable suspicion (RAS) that are most consistent with the previous reporting periods, and, second, with the total number of consent requests for the period, including those based on probable cause (PC). The 72 consent requests based on RAS are higher than those in second six months of the first OLEPS reporting period, but are similar to the number (79) in the first half of that period.

Table Three: Consent Requests for Past 11 Reporting Periods

Reporting Period	Consent Requests	% Increase/ (Decrease)
IMT 9 <sup>th</sup>	9	--
IMT 10 <sup>th</sup>	7	(22.2)
IMT 11 <sup>th</sup>	12	71.4
IMT 12 <sup>th</sup>	34	64.7
IMT 13 <sup>th</sup>	23	(26.5)
IMT 14 <sup>th</sup>	30	30.4
IMT 15 <sup>th</sup>	94	213.3 <sup>21</sup>
IMT 16 <sup>th</sup>	134	42.5
IMT 17 <sup>th</sup> a <sup>22</sup>	85	(36.6)
IMT 17 <sup>th</sup> b	57	(32.9)
OLEPS 1 <sup>st</sup> a <sup>23</sup>	79	38.6
OLEPS 1 <sup>st</sup> b	51	(35.4)
OLEPS 2 <sup>nd</sup> RAS	72	41.2
OLEPS 2 <sup>nd</sup> Total	405	794.1 <sup>24</sup>

<sup>20</sup> Cf. State v. Peña-Flores, 198 N.J. 6 (2009).

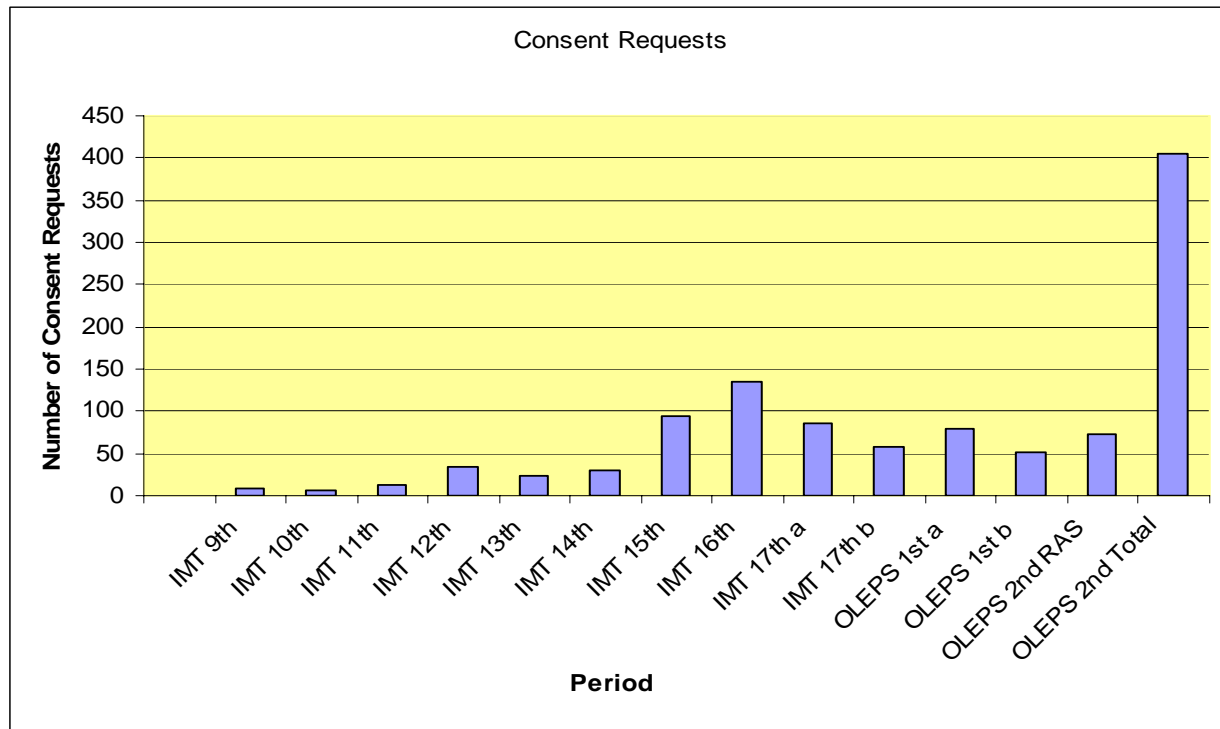
<sup>21</sup> During the fifteenth reporting period, the decision in State v. Eckel, 185 N.J. 523 (2006), removed "search incident to arrest" as a legal justification for search of vehicle.

<sup>22</sup> The 17<sup>th</sup> reporting period is divided into two, six-month periods.

<sup>23</sup> The 1<sup>st</sup> OLEPS reporting period is divided into two, six-month periods.

<sup>24</sup> The difference between the "RAS" consent requests and the total for the current period is because of the 333 consent requests made based on probable cause due to State v. Peña-Flores, which made more specific the exigent circumstances necessary to conduct a search without a warrant under the automobile exception, limiting the use of this exception by the State Police, but increasing consent search requests as a means to search a vehicle with PC.

Figure One: Consent Search Requests by Reporting Period<sup>25</sup>



Clearly, however, the total number of requests is substantially greater than any other period. Following the Peña-Flores decision, OLEPS, then as OSPA, and the State Police discussed with the federal independent monitors whether or not consent requests based probable cause should be considered “critical” events for monitoring purposes, as probable cause requires a higher legal standard than does RAS. It was the position of the federal monitors that all consent requests, regardless of the legal basis of the consent, continue to be regarded as critical events for monitoring purposes.<sup>26</sup>

### Summary of Sampling Differences: Second OLEPS v. Previous Reports

The following list summarizes differences between the methodology used for the sampling and reporting on motor vehicle stops and their supervision for the current period in contrast to previous monitoring periods:

<sup>25</sup> The 17<sup>th</sup> IMT reporting period is divided into two, six-month periods, as is the 1<sup>st</sup> OLEPS period.

<sup>26</sup> OLEPS has had several additional conversations with NJSP in regard to the designation of a consent request based on probable cause as a critical incident. OLEPS continues to maintain all consent request incidents, both based on RAS and PC, are critical incidents for monitoring purposes, consistent with the perspective of the federal monitors as expressed just after the Peña-Flores decision in 2009.

- The Second OLEPS Monitoring Report required a different approach to accommodate resources available to do MVR reviews for all consent searches with their substantial increase in number after the Peña-Flores decision. This revised approach included the decision to review only stop incidents deemed “critical” as agreed between NJSP and the federal monitors: consent requests, use of a drug canine and uses of force, including all consent requests based on probable cause.
- Even without the addition of a “random” sample of non-critical incidents, but still of importance to the decree (i.e., those with some post-stop law enforcement procedures, without a consent request, canine request or use of force),<sup>27</sup> the 429 incidents reviewed are 11.7 percent higher than the total of 384 incidents sampled in the First OLEPS Report, covering a full calendar year (2008).
- All critical incidents receive “Type II” reviews, to the extent that in-vehicle recordings are available, resulting in a 47.3 percent increase in these reviews in the second OLEPS monitoring period when compared to the first OLEPS monitoring period.
  - Because NJSP policy currently mandates MVR supervisory and management reviews of all critical incidents, there is only one incident that was not subject to an MVR review. *Thus, this report is truly about supervisory and management review.*

As seen in Table One, consent search requests for the six-month reporting period occurred in 405 of the motor vehicle stops while the vehicles were at the side of the road, which is more than three times the number of requests reported in the First OLEPS report (130 requests), for all of calendar year 2008. In contrast, the number of incidents with the deployment of a canine (23 stops) and that with a use of force (13 stops) were lower than those reviewed in the previous report, even when compared to half of the numbers reported there for these incidents as an estimate for a six-month period. Consistent with the policy implemented by the New Jersey State Police after the Peña-Flores decision and the fact that no sampling was done of other types of incidents, the number of probable cause (PC) searches of vehicles reviewed (17) is one-tenth the number reviewed in the annual period prior to this report. The number of PC searches of persons is consistent with the return to a six-month reporting period and is slightly more than half the number reviewed for calendar year 2008 (23 searches and 40 searches, respectively).

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<sup>27</sup> That is, prior to the Peña-Flores decision, vehicle searches based on probable cause did not generally involve a consent request.

The description of the sample shows that there are differences from previous samples because the sampled incidents are comprised of the universe of all critical incidents in the reporting period.

- All troops are represented, with a concentration of incidents from Troop A and Troop B (33.1% and 23.1%, respectively, in Table Two). The volume of critical incidents from Troop C yielded the lowest percentage of reviewed incidents (10.7%).
- The critical incidents from the Atlantic City Expressway (Troop A) contributed the highest single total of any station to the monitoring sample.

As noted previously, all but 12 stops were subject to "Type II Reviews," involving both paper and video reviews. Finally, as will be seen in subsequent sections, the racial and ethnic mix of drivers is different from the most recent reports as no attempt was made to over-sample non-white drivers.

Consent requests are highly discretionary activities and further analysis thus focuses on attempting to establish whether they are associated with any race-based decision making. Data in Table Four depict the total number of drivers by race, who were and were not asked for consent to search in the overall sample of 429, and the percentage of drivers by race (in parentheses) for each group. For example, Table Four depicts a sample of drivers *not asked* for consent to search for this period of 24, with 12, or 50.0 percent being white. Similarly, Table Four depicts consent search requests for 168 black drivers, or 41.5 percent of the total of 405 drivers who were *asked* for permission to search their vehicles,<sup>28</sup> a decrease of almost 15 percentage points over the previous period. The data in Table Four show that the highest proportion of consent requests were of white drivers, (by a factor of about four times that of of Hispanic drivers). Black drivers comprised a higher percentage of consent requests in the last two periods compared to the sixteenth period, when they were 39.6 percent of consent requests. Unlike the last three monitoring reports, these data are not statistically significant at the 0.05 level, indicating that the differences may be attributable to chance.<sup>29</sup>

A statistically significant result in the past did not "prove" that the differences observed in post-stop law enforcement actions were attributable to race or ethnicity. The results simply indicated that the outcomes observed this reporting period relating to consent requests have a five-percent (or less) probability that they were due to chance.

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<sup>28</sup> A total of 55 drivers refused consent.

<sup>29</sup> *Chi-Square* analysis of consent request data yielded a *Chi-Square* of 2.533 with two degrees of freedom, and a *p*-value 0.282. The distribution was not statistically significant at the 0.05 level. See Appendix Two for a brief description of degrees of freedom and *p*-values. The *Chi-Square* test was run on **white versus black and Hispanic drivers only**, as inclusion of other categories generated at least one expected frequency less than "5."

Because consent requests comprise such a large proportion of all incidents reviewed in this reporting period, it is not surprising that the results are not significant. The OLEPS monitoring team also applied all statistical analyses on consent requests for this reporting period separately to RAS-based consent requests and to PC-based consent requests; none of these analyses yielded any difference with the significance of *Chi-Square* statistics as presented here and are thus not reported.<sup>30</sup>

Table Four: Consent Requests by Race-Ethnicity of Driver  
2<sup>nd</sup> OLEPS Reporting Period

Race/Ethnicity	No Consent Request (%)	Consent Request (%)
White	12 (50.0)	178 (44.0)
Black	7 (29.2)	168 (41.5)
Hispanic	5 (20.8)	47 (11.6)
Asian Indian	0 (0.0)	3 (0.7)
Other	0 (0.0)	9 (2.2)
Total	24 (100.0)	405 (100.0)

As shown in Table Five, black drivers comprised the highest proportion of drivers in events involving canine deployments, followed closely by white drivers. Table Five shows that a canine deployment occurred for 10 black drivers, or for 43.5 percent of the total of 23 drivers who had a canine unit deployed for *drug detection* purposes during their motor vehicle stop. The same table depicts a total sample of drivers in events *without* a canine deployment for this period of 406, with 181 drivers, or 44.6 percent, being white. Unlike the distribution in the sixteenth report, these data, as in the previous two reports, are *not* statistically significant at the 0.05 level, indicating that the differences may be attributable to chance.<sup>31</sup>

<sup>30</sup> Because the distribution of race and ethnicity of drivers in this reporting period differed from previous periods (i.e., there are proportionately fewer non-white drivers), different aggregations of race/ethnicity were also considered in the various *Chi-Square* analyses presented. In no case was the significance of the *Chi-Square* statistic different from the categories used in previous reports. Thus, only the categories used in previous reports are displayed here for consistency.

<sup>31</sup> *Chi-Square* analysis of these data yielded a *Chi-Square* of 0.707 with two degrees of freedom, and a *p*-value of 0.702. The distribution was not statistically significant at the 0.05 level. See Appendix B for a brief description of degrees of freedom and *p*-values. The *Chi-Square* test was run on **white versus black and Hispanic drivers only, as inclusion of other categories generated at least one expected frequency less than "5."** See Appendix Two, for the data table reporting these data.

Table Five: Canine Deployments by Race-Ethnicity of Driver,  
2<sup>nd</sup> OLEPS Reporting Period

Race/Ethnicity	No Canine Deployment (%)	Canine Deployment (%)
White	181 (44.6)	9 (39.1)
Black	165 (40.6)	10 (43.5)
Hispanic	48 (11.8)	4 (17.4)
Asian Indian	3 (0.7)	0 (0.0)
Other	9 (2.2)	0 (0.0)
Total	406 (100.0)	23 (100.0)

The reader should note that Tables Four and Five compare drivers who are subjected to consent requests and canine deployments to the sampled drivers who *were not* subjected to such post-stop activities, by race and ethnicity and the *Chi-Square* analysis assessed whether or not the comparison was strong enough to be statistically significant. As noted previously, the overall sample of 429 drivers includes 421 drivers who were subjected to a critical post-stop interaction, e.g., a consent search request, canine deployment or use of force, and eight other drivers as part of the driver sample, based on their status as having had a non-critical post-stop interaction performed during their traffic stop, e.g., exit from a vehicle, frisk, probable cause search of a person, probable cause search of a vehicle, or arrest.

**To examine further whether or not these consent request and canine deployment data are related to race or ethnicity—or are attributable to other factors directly related to the specific characteristics of the stops—requires a *qualitative* analysis of the interactions between New Jersey State Police troopers and drivers based on the race and ethnicity of drivers subjected to these specific post-stop interactions. The qualitative analyses related to Task 26 are reported in Section 2.2.1. These analyses reflect new processes, conducted and reported for the first time in the Sixteenth Monitors' Report. Prior reports did not have statistically significant test statistics related to post-stop interactions by race warranting further examination. The reader is reminded that because the sample this period consists almost exclusively of critical incidents, and the fact that no attempt was made to select randomly additional stops with non-white drivers, the analyses by race and ethnicity are not exactly comparable to previous reports. That said, analyses have been added to explore more fully discretionary decision points that may have been affected by the Peña-Flores decision or changes in NJSP procedures that resulted from the decision.**

## 2.2.1 Qualitative Analysis of Stop and Interaction Data

### Background

The fact that individuals stopped by the New Jersey State Police are treated differently is not *prima facie* evidence of race- or ethnicity-based decision making in policing the state of New Jersey. The operative question is *why* individuals are treated differently.

For example, in the sample for the first OLEPS reporting period, New Jersey State Police personnel arrested proportionately more white drivers than black or Hispanic drivers. Table Six depicts arrest data by race and ethnicity for the current period. The distribution of arrest by race and ethnicity is statistically significant, i.e., is unlikely to be attributable to chance. (See Appendix Two for statistical data tables.) In reviewing these data, we find that the proportion of white drivers stopped by New Jersey State Police personnel arrested in this sample was 95.8 percent, compared with 91.4 percent of black drivers and 82.7 percent of Hispanics drivers. An analysis of the qualitative differences in the arrests—or more specifically the *reason* for the arrests—partially illustrates *why* these differences in arrest rates were observed.

Table Six depicts the results of the *qualitative* analysis of arrest data, and indicates the execution of non-discretionary arrests 1.1 percent of the time with white drivers' vehicles because they (or a passenger) had outstanding warrants, non-discretionary arrests 3.8 percent of the time with black drivers' vehicles because they (or a passenger) had outstanding warrants, and non-discretionary arrests of 4.7 percent of Hispanic drivers' vehicles because they (or a passenger) had outstanding warrants. On this measure, stops with black or Hispanic drivers are similar, while stops with white drivers less often lead to non-discretionary arrests. Taking that fact into consideration, the operative question then becomes "How did New Jersey State Police troopers make decisions in the *discretionary aspects* of their interactions with drivers?"

It is in *this area* that drivers seem the most vulnerable to the exercise of discretion. Is there a *qualitative difference in the way troopers exercise discretion* when dealing with drivers of differing races and ethnicities.



Table Six: Arrest Data by Race-Ethnicity of Driver,  
2<sup>nd</sup> OLEPS Reporting Period<sup>32</sup>

Race/ Ethnicity	a. All Drivers Sampled (% of Total)	b. No Arrest (% of a)	c. Arrest (% of a)	d. Warrant -Based Arrests (% of c)	e. Probable Cause- Based Arrests (% of c)	f. No Charges Filed (% of e)
White	190 (44.3)	8 (4.2)	182 (95.8)	2 (1.1)	180 (98.9)	14 (7.8)
Black	175 (40.8)	15 (8.6)	160 (91.4)	6 (3.8)	154 (96.3)	23 (14.9)
Hispanic	52 (12.1)	9 (17.3)	43 (82.7)	2 (4.7)	41 (95.3)	8 (19.5)
As. Indian	3 (0.7)	0	3 (100.0)	0	3 (100.0)	1 (33.3)
Other	9 (2.1)	0	9 (100.0)	0	9 (100.0)	1 (11.1)
Total	429 (100.0)	32 (7.5)	397 (92.5)	10 (2.5)	387 (97.5)	46 (11.9)

With the current review sample, the difference in the composition of driver race and ethnicity and the change in State Police procedures following Peña-Flores, the composition of those arrested is again statistically different from those not arrested. Further, “warrant only” arrests are one-tenth of their proportion of arrests in the First OLEPS Monitoring Report, comprising now 2.5 percent of all incidents in which a driver (or occupant) was arrested. As noted above and in previous reports, “warrant only” (non-discretionary) arrests are more likely to occur in incidents with black and Hispanic drivers; but here the proportion of arrests attributable only to warrants is less than five percent both of incidents with black and of those with Hispanic drivers (3.8% and 4.7%, respectively). And, arrests in stop incidents with white drivers again are more likely to be for probable cause as in previous reports. However, the arrests of white drivers in previous samples were more likely to be the result of drunk driving, while drug-related charges including for possession of contraband or overt criminal activity in view of the arresting trooper are most prevalent in the current pool of arrests.

Prior to the Peña-Flores decision, in incidents where there was probable cause that a crime had been committed, State Police routinely searched the vehicle before effecting arrests. The change in State Police procedures following the decision required immediate arrest with probable cause, and then proceeding with securing a search

<sup>32</sup> *Chi-Square* analysis of the arrest versus no arrest data yielded a *Chi-Square* of 10.227 with two degrees of freedom, and a *p* value of 0.006. The distribution was statistically significant at the 0.05 level. See Appendix Two for a brief description of degrees of freedom and *p*-values. *The Chi-Square test was run on white versus black and Hispanic drivers only, as inclusion of other categories generated at least one expected frequency less than “5.”* See Appendix Two, for the data table reporting these data.

warrant or asking for consent to search the vehicle. In only 25 incidents were search warrants applied for, all but two of which followed a declined consent request.

In incidents where a vehicle search was conducted and probable cause dissipated, no charges were lodged and the vehicle occupants were able to leave the scene. An additional column, "f," has been added to the format of Table Six (used since the 16<sup>th</sup> IMT Report) to review the relationship of race and ethnicity of the driver to the frequency of these "unarrests." Incidents in which all occupants arrested never had charges filed comprise 11.9 percent of all probable cause arrests. The rates of unarrest after a PC dissipates are greater in incidents with non-white drivers than the rate of 7.8 percent of PC arrest incidents with white drivers. This relationship was found to be statistically significant.<sup>33</sup> Thus, in the first half of 2009, sampled white drivers were more likely to be arrested on probable cause, not on warrants and if arrested on probable cause to have charges filed.

To further capture the differences in State Police procedures after the Peña-Flores decision, the OLEPS monitoring team looked in more detail at the probable cause arrest incidents. In 52 of the 387 probable cause arrest incidents, there was also at least one arrest on warrants.<sup>34</sup> These arrests were separated from all PC arrests and those in which no arrest charges were filed. The distribution of these categories by the race and ethnicity of the driver is also statistically significant.

In sum, for this reporting period, the criminal activity related to arrest differed from that sampled in previous reports. In part, this difference reflects procedural changes following the Peña-Flores decision, which in turn affected the incidents chosen for review by the monitoring team. As a result, there are fewer "warrant only" arrests reflected in the sample, and a greater representation of drug-related arrests. Statistically different arrest patterns by race and ethnicity are noted, including in the likelihood that charges were actually filed following a PC arrest. While arrest rates *are* different, by race, it appears that they are different based on the *nature* of the interaction and the criminal offenses committed in the troopers' presence, not based on *race*.

Unlike in previous reports, there were no statistically significant differences by race and ethnicity in other post-stop interactions, most especially, in consent requests. Nonetheless, qualitative analyses geared toward assessing the discretionary actions of

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<sup>33</sup> The *Chi*-Square statistic for charges filed versus no charges filed after PC arrest was 8.242, with two degrees of freedom, which was significant at the .05 level. The comparison was made for white, black and Hispanic drivers only; there is one cell with an expected frequency of less than five.

<sup>34</sup> When these warrant incidents are added to those in which there were only arrests on warrants, the proportion of arrests involving warrants is still smaller than that in the previous report (15.9% and 25.2%, respectively).

the State Police are repeated for the current reporting period to assess factors possibly suppressing the effects of race or ethnicity as an operative factor in these interactions.

## 2.2.2 Theoretical Bases for Analysis of Post-Stop

In the Sixteenth Monitors' Report, the details of the theoretical bases for the analysis of post-stop activity were laid out and are only summarized here. The key component of determining whether race- and ethnicity-based decision making is being employed in a police agency revolves around: reviewing the highly discretionary tasks and determining if similarly situated individuals are being similarly treated.

### 2.2.2.1 A Discretionary Model of Policing

Constructing the model of discretionary policing is straightforward:

- Identify routine police tasks subject to potential abuse, e.g., powers of stop, warning, citation, detention, release, frisk, arrest, search, use of force, and seizure;

*The model considers these activities outcome variables, i.e., to the extent that individual drivers are treated differently, any disparity in treatment will come within or among these variables.*

- Identify and define the levels of discretion associated with each of these critical tasks and their respective sub-elements;

*The universe of variables leading to execution of outcome variables (stop, detention, arrest, etc.) are the events commonly referred to as "reason for the stop." These events are considered "input variables," in that they are the events that give rise to the use of law enforcement powers and can be classified into three groups, depending on the amount of discretion associated with them. Theoretically, some activities **will almost always** result in a law enforcement response if they are observed by the police (low discretion); other activities **usually will** result in a law enforcement response if they are observed by the police (median discretion); and, a third class of violations **will less often** result in a law enforcement response if they are observed by the police (high discretion). Appendix Three contains a categorical list of reasons for law enforcement stops.<sup>35</sup>*

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<sup>35</sup> The same list appeared as Annex One in the 16<sup>th</sup> and 17<sup>th</sup> IMT reports, and as Appendix Three in the First OLEPS Report. The federal independent monitors discussed with New Jersey State Police personnel the nature of the "reason for stop" offenses. While there remain some differences in opinion regarding high versus low discretion incidents, the framework presented above is the best available framework obtainable, in the federal monitors' opinion, to assess the exercise of discretion in studied traffic stops. Further work in this area *may require* revision of the reason for stop continuum. For example, motorist

- Identify the critical decision point associated with each level of discretion;

*The critical decision point is the decision point in deciding to take enforcement action on a highly discretionary violation or activity. If discretion will be abused to any significant degree, it will be in areas of enforcement in which high levels of discretion are present.*

- Define abuse of discretion; and

*Law enforcement discretion is abused when it is used differently in relation to protected classes such as race and ethnicity. If both input and outcome variables indicate higher rates for a given race or ethnicity, a strong case could be made for the presence of an abuse of discretionary powers on the part of the enforcing agent.*

- Test for abuse of discretion.

*If there is no abuse of discretion, there would be no difference in stop rates of drivers sampled this reporting period (by race or ethnicity), for highly discretionary violations. There would also be no difference in outcome variables (stop, detention, warning, citation, release, frisk, arrest, search, use of force, and seizure) by race and ethnicity for these highly discretionary violations.<sup>36</sup>*

Table Seven, below, depicts the results of the analysis for sampled drivers stopped by the New Jersey State Police this reporting period and eventually asked for consent to search the vehicle by the *reason* for the traffic stop. The results of the *Chi* -Square analysis are ***not significant***, yielding a test statistic of 1.215 with two degrees of freedom. The test statistic is not significant at the 0.05 level.

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aids are non-discretionary, and are often dispatched rather than being “on-site” events. Activities at rest stop (rest stop overstay, etc.) are often called in by the rest stop managers, not initiated by troopers.

<sup>36</sup> After controlling for intervening variables such as lack of identification, proof of ownership, etc.

Table Seven:  
Consent Request by Race-Ethnicity of Driver and  
Reason for Stop (Level of Discretion)  
2<sup>nd</sup> OLEPS Reporting Period<sup>37</sup>

Race/Ethnicity	High Discretion Stops (1)	Median Discretion Stops (2)	Low Discretion Stops (3)	Mean
White	59	48	71	2.07
Black	49	53	66	2.10
Hispanic	16	16	15	1.98
Asian Indian	0	1	2	2.67
Other	2	2	5	2.33
Total	126	120	159	2.08

*Higher* scores for each driver group (white, black and Hispanic) indicate less use of discretion, i.e., higher scores demonstrate less of a tendency to stop drivers for highly discretionary violations and then request consent to search. The intragroup mean (arithmetical average) is a statistic that allows the inference of the *direction* of any potential bias, as the *Chi-Square* statistic does not impute the direction of any group differences. While the mean is not dispositive of bias, it *does allow* the reader to impute the *direction* of any potential bias. In effect, the *Chi-Square* and the mean, taken together, can be used to help determine whether any potential bias was observed (based on race and/or ethnicity) and the *direction* of that potential bias.

In the 16<sup>th</sup> and 17<sup>th</sup> reporting periods, the *direction* of any potential bias demonstrated by the data in Table Seven actually favored black drivers, i.e., black drivers stopped and eventually asked for consent to search, were stopped for *less* discretionary reasons than white and Hispanic drivers. In the First OLEPS reporting period, there was an overall shift toward lower discretionary reasons for stops as indicated by an increase in the mean for the sample (from 2.09 in the 17<sup>th</sup> to 2.22), and at least a small increase in the mean for each race/ethnicity group of drivers. For the current period, the overall discretion level in the initial reason for stop shows a somewhat lower mean (2.08), returning to about the average level observed in the 17<sup>th</sup> reporting period. The greatest increase in level of discretion this period is noted for incidents with Hispanic drivers who

<sup>37</sup> A *Chi-Square* analysis was run on **white versus non-white drivers**, since the data for white, black and Hispanic drivers yielded cell sizes too small to produce a valid test statistic---even here one cell has an expected value less than five. The statistic of 1.215, with two degrees of freedom is not significant at the 0.05 level. See Appendix Two for a brief description of degrees of freedom and p-values, and for statistical data tables. As noted previously, the analyses were repeated for PC-based separate from RAS-based consent requests. These analyses also showed no significant relationship between race and ethnicity, the discretion in the initial reason for stop, and the legal basis for the consent request.

were asked for consent to search (1.98 here versus 2.18 in the previous period). In general, as in the last several reports, these data do not however suggest that troopers were stopping minority drivers for more discretionary reasons. The “drivers sampled” for this test statistic consisted of all drivers stopped by the New Jersey State Police this reporting period who were asked for consent to search and for whom a reason for the traffic stop was known.

Table Eight, below, depicts the results of the *Chi-Square* analysis for canine deployment stops by reason for the stop for the current reporting period. The drivers sampled for this table included *all* drivers stopped who eventually had a drug-detection canine deployed during their stops. The *Chi-Square* analysis for this table did not yield a valid test statistic.

Table Eight:  
Canine Deployments by Reason for Stop (Level of Discretion)  
2<sup>nd</sup> OLEPS Reporting Period<sup>38</sup>

Race/Ethnicity	High Discretion Stops (1)	Median Discretion Stops (2)	Low Discretion Stops (3)	Mean
White	4	4	1	1.67
Black	4	4	2	1.80
Hispanic	1	2	1	2.00
Asian Indian	--	--	--	--
Other	--	--	---	--
Total	9	10	4	1.78

Again, the *Chi-Square* and the mean, taken together, can be used to determine whether any potential bias was observed (based on race and/or ethnicity) and the *direction* of that potential bias. The *direction* of any potential bias in this reporting period favors black and Hispanic drivers as similar to the seventeenth reporting period, with white drivers stopped and subject to canine deployments stopped for *more* discretionary reasons than non-white drivers. Seventeen black drivers had canines deployed in conjunction with a denied consent request, as did six white drivers and four Hispanic drivers. In the reporting periods, the differences in stop reason discretion across driver groups were also not statistically significant, but the means indicated bias favoring Hispanic drivers in the seventeenth report and white drivers in the sixteenth and first OLEPS reports. The findings for black drivers here are not consistent with the

<sup>38</sup> A *Chi-Square* analysis was run on **white versus non-white drivers**, since the data for white, black and Hispanic drivers were too small to produce a valid test statistic. However, even with the reduced categories, four cells (66.7%) have expected values less than five, meaning that the statistic is not valid. See Appendix Two for a brief description of degrees of freedom and p-values, and for statistical data tables.

previous periods, which indicated somewhat more discretionary reasons for stops among black drivers whose vehicles were later subject to canine deployments than for white drivers.

Table Nine, below, depicts the results of the *Chi*-Square analysis for all motor vehicle stops by reason for the stop. The analysis, as in the last three reporting periods, is ***not significant*** at the 0.05 level, indicating that any differences in scores among races and ethnicities are attributable to chance. The results of the *Chi*-Square analysis yield a test statistic of 2.703 with four degrees of freedom. There is no statistically significant support for the hypothesis that troopers represented in this sample of stopped drivers are stopping vehicles at a higher rate, or engaging in articulated post-stop activities, based on the race or ethnicity of the drivers. Contrary to the previous report which favored white drivers, the *direction* of the analysis favors black drivers, i.e., black drivers stopped were stopped for somewhat *less* discretionary reasons than white and Hispanic drivers. Any suggestion that troopers were stopping minority drivers for more discretionary reasons, i.e., abusing their discretion is again ***not*** supported by the statistical analysis.

Table Nine:  
Sampled Vehicle Stop Rates by Reason for Stop (Level of Discretion)  
2<sup>nd</sup> OLEPS Reporting Period<sup>39,40</sup>

Race/Ethnicity	High Discretion (1)	Median Discretion (2)	Low Discretion (3)	Mean
White	61	50	79	2.09
Black	49	58	68	2.11
Hispanic	17	17	18	2.02
Asian Indian	0	1	2	2.67
Other	2	2	5	2.33
Total	129	128	172	2.10

Table Ten, below, depicts the results of the *Chi*-Square analysis for the *reason* for consent request, when it was based on reasonable articulable suspicion. As with the reason for the stop, reason for consent request was classified into three groups: intangible, tangible, and probative. Intangible reasons included observations such as

<sup>39</sup> A *Chi*-Square statistic of 2.703, with four degrees of freedom is not significant at the 0.05 level. See Appendix Two for a brief description of degrees of freedom and p-values, and for statistical data tables.

<sup>40</sup> ***Other race and ethnicity classifications were deleted from the Chi-Square table as they generate expected frequencies below "5".***



nervousness, failure to make eye contact, uncertainty in answers, and conflicting statements. Tangible reasons included the existence of air fresheners, modifications to vehicle interiors, “boost” cell phones, etc. Probative reasons included artifacts of gang membership (such as tattoos, admitted membership), odor of burnt or raw marijuana in the vehicle, admissions against self-interest, criminal histories related to a tangible crime. In most incidents, there were multiple types of reasons for requesting consent and the table records a probative reason if given, regardless of other reasons stated. That is, there were two incidents in which the only reasons stated for requesting consent were categorized as “intangible;” all incidents with “tangible” reasons articulated also had “probative” reasons given and are displayed in the probative column only.

In the seventeenth reporting period, the results of the *Chi-Square* analysis yielded a test statistic of 3.368 with two degrees of freedom, which was ***not significant*** at the 0.05 level; this result indicated **no** statistical difference in reason for consent request by race and/or ethnicity. The statistical outcome was different in the sixteenth reporting period, when the differences in reasons for consent requests by race and ethnicity yielded a statistically significant *Chi-Square* test. For the current period as for the first OLEPS period, a reliable *Chi-Square* analysis could not be performed.

Table Ten:  
Reason for Consent Request Based on Reasonable Articulate Suspicion  
by Race and Ethnicity  
2<sup>nd</sup> OLEPS Reporting Period<sup>41</sup>

Race/Ethnicity	Intangible (1)	Tangible (2)	Probative (3)	Mean
White	1	0	31	2.94
Black	1	0	30	2.94
Hispanic	0	0	9	3.00
Asian Indian	---	---	---	--
Other	---	---	---	--
Total	2	0	70	2.94

As with the scores for discretion in the reason for stop, *higher* scores above for any driver group (white, black and Hispanic) indicate less use of discretion. Here, higher scores demonstrate a tendency to request consent for more probative reasons. The intragroup mean (arithmetical average) is a statistic that allows the inference of the *direction* of any potential racial or ethnic bias, as the *Chi-Square* statistic does not impute the direction of any group differences. While the mean is not dispositive of bias, it *does allow* the reader to impute the *direction* of any potential bias. In this reporting

<sup>41</sup> A *Chi-Square* analysis was attempted on ***white versus non-white drivers***, because the data for white, black and Hispanic yielded cell sizes too small to produce a valid test statistic, but this analysis also produced expected frequencies of under five for 50 percent of the cells. See Appendix Two.

period as in the previous period, the means of all driver groups are very similar. The *direction* of any potential bias slightly favors Hispanic drivers, i.e., Hispanic drivers stopped and eventually asked for consent to search were asked for *less* discretionary reasons than other drivers. In the previous reporting period, the bias slightly favored black drivers. However, the few Hispanic drivers subject to a consent request are in contrast to the sixteenth and seventeenth reporting periods, in which Hispanic drivers were least likely to have consent requested for probative reasons. Viewed another way, the proportion of drivers for whom a consent was requested for at least one probative reason rose from 73.2 percent in the seventeenth reporting period to 94.5 percent in the first OLEPS reporting period and to 97.2 percent in current period, making little variation for the *Chi-Square* statistic to measure. And, the increase in probative reasons leading to consent requests to search vehicles with Hispanic drivers increased the most----from 54.5 percent in the seventeenth reporting period (18 of 33 consent requests) to 93.9 percent in the first OLEPS period and to 100.0 percent in the current period (Table Ten). The increase in probative reasons for consent requests may be a continuing indicator of the successful in-service training on consent searches in late 2007. The details of this training were discussed in Task 101 in first OLEPS report.

Table Eleven, below, depicts the result of the analysis of the *outcome* of consent requests, by race and ethnicity. Consent requests were characterized as either appropriate (meeting all requirements of the Consent Decree) or inappropriate (*not* meeting Consent Decree requirements). The *Chi-Square* analysis did not yield a reliable statistic. Intragroup means indicate that Hispanic drivers' consent requests tended to be classified as "appropriate" most often; black drivers' and white drivers' consent requests tended to be classified as "inappropriate" more often than those of Hispanic drivers.

As with the reason for the consent request, the distribution of consent request outcomes is more skewed toward one outcome than in the sixteenth and seventeenth reports, with 96.0 percent (390 of 405 consent requests) deemed appropriate after review by the monitoring team. The reader should note that *all but two* inappropriate consent request errors were caught by New Jersey State Police and corrected by supervisory and management processes prior to the time that the monitors selected their traffic stops for review this reporting period. See Section 2.4 below.

Table Eleven:  
Outcome for Consent Request by Race and Ethnicity  
2<sup>nd</sup> OLEPS Reporting Period<sup>42</sup>

Race/Ethnicity	Inappropriate (1)	Appropriate (2)	Mean
White	9	169	1.95
Black	5	163	1.97
Hispanic	1	46	1.98
Asian Indian	---	3	--
Other	0	9	--
Total	15	390	1.96

*Higher* intragroup mean scores for any driver group (white, black and Hispanic) here indicate fewer procedural or Constitutional problems, i.e., higher scores demonstrate less of a tendency to improperly use the consent request process available to enforcement personnel. While the mean is not proof of bias, it *does allow* the reader to impute the *direction* of any potential bias. The *direction* of any potential bias actually slightly favors Hispanic drivers, i.e., Hispanic drivers stopped and eventually asked for consent to search were subjected to fewer procedural or Constitutional problems than white and black drivers. In the sixteenth reporting period, black drivers' consent requests were more likely to be classified as "appropriate," and, those of Hispanic drivers were least likely to be so classified. The averages reported in the seventeenth reporting period were more similar than in the sixteenth period, indicating less difference between driver groups. That trend continues in the previous and current periods, with higher mean scores overall.

As a final quality control check on the varying levels of discretion exercised by New Jersey State Police personnel, a review of daytime v. nighttime stop data would be appropriate. If troopers are abusing their discretion by singling out non-white drivers, one would expect a higher level discretionary activity during daylight hours, when troopers could readily determine the race or ethnicity of the drivers *prior* to executing the stop.

Table Twelve, below, depicts the daytime and nighttime distributions of consent requests (204 daytime and 201 nighttime requests) during the current reporting period,

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<sup>42</sup> A *Chi-Square* statistic of 1.022, with one degree of freedom is not significant at the 0.05 level. The *Chi-Square* analysis was conducted on **white versus non-white** drivers, as the data for white, black and Hispanic drivers yielded cell sizes too small to produce a valid statistic. See Appendix Two for a brief description of degrees of freedom and p-values, and for statistical data tables

according to the discretion in the initial reason for the stop. If troopers effecting the stops covered in this table were abusing their discretion, one would expect the daytime consent requests to show a tendency to follow stops for more discretionary infractions (high discretion stops) with non-white drivers than nighttime consent requests, yielding a *lower mean* for these drivers than for white drivers as displayed in Table Twelve. Conversely, the nighttime stops would be expected to show *no difference* in stop rates vis-à-vis levels of discretion.

In fact, Table Twelve indicates that the daytime stops showed higher discretion in the reasons leading to the stops than did nighttime stops, in contrast to the findings in the previous reporting period. There remains somewhat lower discretion in the reason for stops leading to consent requests of white drivers, which is consistent with findings in the sixteenth report and with non-white drivers subject to higher discretion stops during the day. Nighttime stops of non-white drivers asked for consent to search, however, were stopped initially for lower discretion stops than were white drivers.

Table Twelve:  
Daytime v. Nighttime Consent Requests by Reason for the Stop,  
2<sup>nd</sup> OLEPS Reporting Period<sup>43</sup>

Race/Ethnicity	Daytime Stops				Nighttime Stops			
	High Discretion (1)	Median (2)	Low Discretion (3)	Mean	High Discretion (1)	Median (2)	Low Discretion (3)	Mean
White	36	21	45	2.09	25	27	26	2.04
Black	33	11	34	2.01	16	42	32	2.18
Hispanic	10	4	6	1.80	6	12	9	2.11
Asian Indian	--	--	---	--	0	1	2	2.67
Other	1	1	2	--	1	1	3	2.40
Total	80	37	87	2.03	46	83	72	2.13

In summary, after the qualitative assessment of the input and outcome variables regarding traffic stops this reporting period, the monitoring team could find *no statistical support suggesting* consistent bias in the way various groups of drivers were treated during post-stop law enforcement activities. In contrast to the last three reports, no statistically significant difference was found in the rate of consent requests

<sup>43</sup> A *Chi-Square* statistic of 1.579, with two degrees of freedom for daytime stops is not significant at the 0.05 level. A *Chi-Square* statistic of 3.979, with two degrees of freedom for nighttime stops is not significant at the 0.05 level. The *Chi-Square* analyses were conducted on **white versus non-white** drivers, as the data for white, black and Hispanic drivers yielded cell sizes too small to produce valid statistics.

in the monitoring team's sample by race and ethnicity. The number of consent requests had been declining since their peak in the sixteenth reporting period, but the decline was not marked in the first OLEPS period. The addition of consent requests based on probable cause to those based on reasonable articulable suspicion in this reporting period meant that there were sufficient numbers of requests to produce valid statistical results and then to pursue further analyses to assess if race or ethnicity could lead to bias in trooper decision-making. And, enough RAS consent requests were conducted to assess these records alone, but no differences were found in the statistical significance of the results reported in text when repeated separately for the two legal bases for requesting consent (RAS and PC). The statistically significant difference by race and ethnicity for canine requests found in the sixteenth report was not repeated in any of the succeeding reporting periods. And, in the sixteenth report, there was also a statistically significant difference in the articulable reasons for the consent requests by race and ethnicity, which has not been found subsequently---at least one probative reason now underlies almost all RAS consent requests.

In the sixteenth and seventeenth reports, arrest rates were significantly different by race and ethnicity, but the arrests rates were *not* significantly different in the first OLEPS period. In this reporting period, arrest rates were again significantly different by race and ethnicity. In previous reports, examination of arrests showed little discretion in the arrests of blacks as many were made because of outstanding warrants and that the probable cause leading to the arrests for all groups often came from evidence of drunk driving. However, arrest patterns were very different in the current period, with a very small proportion of the records chosen for review reflecting arrest solely on warrants. The OLEPS monitoring team noted especially the significant difference in the likelihood of release from the scene for black and Hispanic drivers with the dissipation of PC---in all but one case, what dissipated was the odor of burnt or raw marijuana. For the full monitors' sample there was no significant difference by race and ethnicity in the level of discretion exercised in the decision to make the stop.

When the discretion in the reason for stop was examined in stops leading to consent requests, there also were no statistically significant differences by race and ethnicity. That said, the direction of discretion at various decision points did vary, sometimes showing somewhat more highly discretionary reasons for minorities. What is striking in the current data, however, is the continued increase in probative reasons leading to consent requests and the fact that the proportion of consent requests deemed appropriate by the monitoring team increased.

The qualitative analysis did not reveal the use of race or ethnicity in any consistent manner by New Jersey State troopers in regard to motor vehicle stops or post-stop activity. The New Jersey State Police is judged to remain in compliance with this task.

## 2.3 Compliance with Task 27: Monitor and Evaluate Implementation of the Motor Vehicle Stop Criteria

Task 27 stipulates that:

**27. The State Police has adopted a protocol captioned "F-55 (Motor Vehicle Stops)," dated December 14, 1999, which establishes criteria to be followed by state troopers in selecting which vehicles to stop for violation of state motor vehicle laws. This protocol includes the nondiscrimination requirements set forth in ¶ 26 and has been approved by the United States in so far as the protocol identifies practices and procedures required by the Decree. The State shall implement this protocol as soon as practicable. The State shall monitor and evaluate the implementation of the motor vehicle stop criteria and shall revise the criteria as may be necessary or appropriate to ensure compliance with ¶¶ 26 and 129. Prior to the implementation of any revised criteria, the State shall obtain approval from the United States and the Independent Monitor.**

Compliance Status: In Compliance (On Warning)

### Methodology

Compliance with this task was assessed using the Motor Vehicle Stop Report and video review outlined in Section 2.2 above. Video reviews of motor vehicle stops resulting in law enforcement procedures were conducted by State Police supervisors in all but one of the 429 motor vehicle stops selected by the monitoring team this period, constituting a supervisory review rate of 99.8 percent, reflecting New Jersey State Police procedures for a sample of almost exclusively critical incidents. New Jersey State Police policy for video reviews includes provisions for an initial, standard review, geared to a supervisor in the trooper's chain of command, and for management reviews of the supervisor's assessment. However, the majority of the initial supervisory reviews in the ninth reporting period were conducted by secondary supervisory sources—quality assurance reviews, reviews by enlisted personnel assigned to OSPA or by other non-station sources. Station-level supervisors conducted the majority of initial reviews conducted during the tenth through sixteenth reporting periods, although a much larger than usual number of problematic stops *were caught and corrected* at the troop-review level and the OSPA-review level in the sixteenth reporting period than during prior reporting periods. By policy, initial reviews of critical incidents are conducted by dedicated troop-

level reviewers. A total of 334 initial supervisory reviews, or about 78 percent, were conducted by troop-level sources in the current reporting period, which represents an increase of 12 percentage points over the rate reported in the First OLEPS report and is consistent with a sample of almost exclusively critical incidents.<sup>44</sup> Thus, most errors caught by supervisory video review in this reporting period were caught by outside sources, and not by the trooper's first-line supervisor.<sup>45</sup> No reviews in this period were attributed to the enlisted personnel assigned to OSPA; however, they continue to provide guidance and assistance in the review process. See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

## Assessment

Members of the monitoring team noted that field supervisors were present in 39.2 percent of monitored activity this reporting period, maintaining the increased rate observed for the first OLEPS monitoring period when compared to sixteenth and seventeenth review periods. The highest level of in-field supervision since the inception of the Consent Decree, 60.9 percent, was observed in the fifteenth reporting period.

As noted above, supervisors reviewed video tapes in all but one incident reviewed by the monitoring this period.<sup>46</sup> This supervisory review rate yielded 193 events in which New Jersey State Police personnel committed errors related to procedure or the Consent Decree. Supervisors counseled, retrained or otherwise responded to all violations, prior to being notified by the monitoring team of the motor vehicle stops that would be reviewed this period. In reviewing the *same* documents and video tapes, the monitors noted 248 errors in procedures related to the Consent Decree. New Jersey State Police supervisory personnel thus failed to note 55 of these violations. The errors remaining in these 55 events<sup>47</sup> involved:

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<sup>44</sup> The majority of critical events received both an initial supervisory review and a management review. Management reviews are conducted by station commanders (or assistant station commanders). Beginning in the previous reporting period, RAS consent requests required approval of station commanders (or assistant station commanders), so that management reviews are then conducted by Regional Troop Commanders.

<sup>45</sup> The monitoring team also noted that only 8.6 percent of the 428 events receiving an initial supervisory video review did so from the same supervisors reviewing the initial draft of the Motor Vehicle Stop Report. An additional 8.8 percent received a performance notice, generally a commendation, from the same supervisor who reviewed the initial draft of the Motor Vehicle Stop Report.

<sup>46</sup> These reviews are now conducted routinely, although the State Police moved to a more focused and less universal method of stop review in the sixteenth period. The almost universal review of incidents here reflect the focus on critical incidents. All reviews conducted were conducted *before* the monitors notified New Jersey State Police of which MVS incidents would be selected by the monitors.

<sup>47</sup> Some events had multiple errors, including ones that were caught by supervisory review. In addition, there were stop report errors in about ten events that also had another uncaught error, but are reported here only with the other errors.

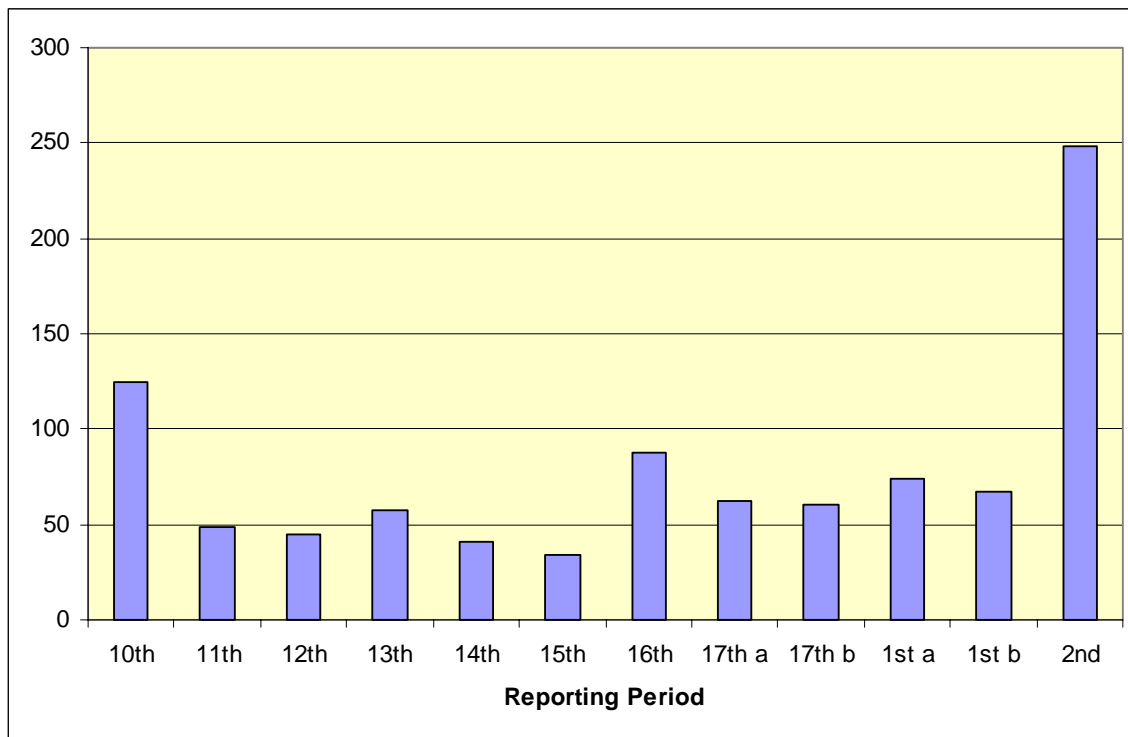


1. Failure to note inappropriate conversation in obtaining consent (two events);
2. Failure to note that a bag was searched without consent and lack of probable cause for arrest (one event);
3. Failure to note that a search was not video taped (three events);
4. Failure to note that a use of force report was needed (one event);
5. Failure to note issues with consent form (six events);
6. Failure of supervisor to recognize inappropriate questioning after arrest without Miranda warning (16 events);
7. Failure to note frisk or search of a person was inappropriate (12 events);
8. Failure to note blank stop report entries or entries that did not match video (16 events); and,
9. Failure to note MVR or audio activation issue (two events).

The monitoring team found no errors in the one event that was not subject to prior supervisory video review. As a result of its supervisory process, the New Jersey State Police noted and corrected all Decree-related errors in 193 events before the monitoring team called them to the attention of the State Police.

The total number of errors this reporting period, at 248, is higher than in any previous period, and included errors in all troops and translates into errors noted in the majority, 57.8 percent, of the sample. Critical events (i.e., consent requests, canine deployments and uses of force) account for 245 errors, with 3 errors in the other eight events. Figure Two depicts the error rates for the last ten reporting periods. To be sure, the OLEPS monitoring team reviewed more video tapes in this reporting period than in any other period; but, the increase in the number of reviews was 40 percent over the previous period, while the total number of events noted with errors increased by 75.9 percent (from 141 events to 248 events).

Figure Two:  
Procedural or Constitutional Errors, by Reporting Period<sup>48</sup>  
10<sup>th</sup> IMT through 2<sup>nd</sup> OLEPS Periods



The most recent, previous spike in errors in the 16<sup>th</sup> reporting period was related to problematic consent requests that appeared to reflect issues with the “drug interdiction” training offered to New Jersey State Police personnel in early 2006 by the Department of Homeland Security (DHS) and the Department of Transportation (DOT).<sup>49</sup> In this reporting period, the spike in errors is in part due to the increased number of events reviewed, but also to the procedures implemented by the New Jersey State Police following the Peña-Flores decision. Among the 24 events in this reporting period that did not involve a consent request, 11 events had an error, for a total error rate of 45.8 percent, well below the 57.8 percent rate for the whole sample. The remaining 237 events in which one or more errors were noted by the monitoring team included a consent request, giving a 57.8 percent rate for all consents. However, the error rate in events that involved a consent request based on RAS was higher than that for events in

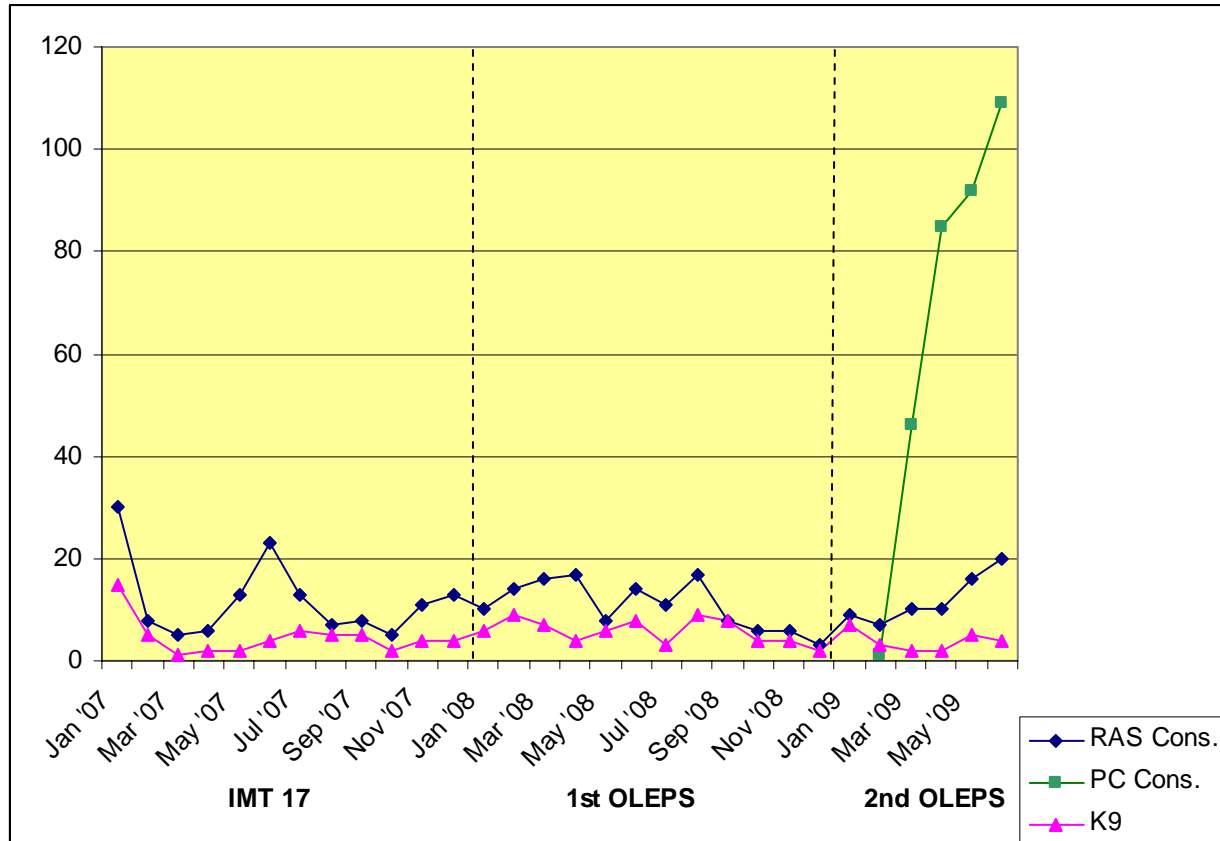
<sup>48</sup> The 17<sup>th</sup> IMT and 1<sup>st</sup> OLEPS reporting periods are divided into two, six-month periods.

<sup>49</sup> The reader is referred to the Fifteenth Independent Monitors’ Report, section 2.4 for a complete treatment of the issues related to DHS and DOT drug interdiction training, to the Sixteenth Independent Monitors’ Report, section 2.3 for a complete timeline of the remedial measures undertaken by the New Jersey State Police, and, to the First OLEPS Report in Task 28 where further actions taken by the New Jersey State Pole to address this training were discussed.

which consent requests were based on PC. Specifically, errors were found in 45 of the 72 events with consent requests based on RAS (62.5%), and in 192 of the 333 events with a consent request based on PC (57.7%). Thus, while the likelihood of errors remains higher for RAS-based consent events, the volume of PC-based consents and the errors noted in them account for large increase in errors noted for the sample as a whole. The high number of uncaught Miranda issues is a clear result of the change in State Police procedures and is troubling, as is the high number of stop reports with errors. OLEPS shared its concern about the Miranda issues with the State Police prior to writing this report as there were a total of 74 incidents in which Miranda issues were noted by the monitoring team, in hope of remediation measures being taken. Because the reporting period encompasses the first several months after the Peña-Flores decision, the monitoring team remains hopeful that these rates will go down over time.

Figure Three, below, depicts the number of consent request activities and drug detection canine deployments, by month, for the seventeenth IMT reporting period, the first OLEPS reporting period, and the current period. For the current period, events with RAS-based consent requests are displayed separately from those in which the legal basis of the consent was probable cause.

Figure Three:  
Consent Request and Drug Detection Canine  
Deployments by Month,  
January 2007 through June 2009<sup>50</sup>



Thus, Figure 3 here picks up the trend noted in the previous report and extends it through the first half of 2009. January was the month of the highest volume for both consent requests and canine deployments in 2007, which continued the high volume noted in the seventeenth report for the end of 2006. With the exception of a one-month spike, it was noted in that report that the data for the full year of 2007 confirmed what the monitors noted in the sixteenth report: that the *frequency* of consent requests had returned to normal rates, consistent with those observed prior to the external drug interdiction training.

<sup>50</sup> In the sixteenth report, Figure Three included Consent Requests for November 2005 through January 2006 that were interpolated from average numbers for the reporting period, data from the sixteenth reporting period, as well as preliminary numbers for January through April 2007. The January through April 2007 data here link the figures in this and the previous report to the sixteenth reporting period.

The 2008 data do not consistently extend the leveling off in the monthly number of consent requests noted for 2007, although no month in 2008 reaches the midyear spike of 2007 and the number of requests tapers off in the last quarter of the year. Canine deployments by month over the two-year period evidenced an increase in frequency, but were decreasing in parallel with consent requests in the last quarter of 2008. The monthly numbers of RAS-based consent requests in the first half of 2009 are consistent with those in the previous report, but do show a consistently increasing line after February. Canine deployments remain at low volume throughout the current reporting period. The addition of the monthly numbers of PC-based consent requests shows graphically the effect of the reduction in the use of non-consensual searches on increasing consent requests.

In the seventeenth report, the monitoring team also commented on the *quality* of the post-December 2006 consent search requests, and, improvement was seen through 2007. In the first OLEPS reporting period, the effects of the training on developing reasonable suspicion that was incorporated into the annual in-service lesson plan delivered in the last quarter of 2007 were noted.<sup>51</sup> The monitors noted two incidents with problematic reasonable articulable suspicion for the first half of 2009, both of which were caught by supervisors prior to review by the OLEPS monitoring team.

The New Jersey State Police continues to review, independently of the monitors, Motor Vehicle Stop Reports (MVSRS) submitted by Division personnel, and continues to correct deficiencies in field. Retraining to address the deficiencies caused by outside training has been delivered. The central point of the Consent Decree is for the New Jersey State Police to identify, analyze and respond to issues related to in-field enforcement. The organization's continuing response to the issues raised in the last several reports shows the organization is capable of correcting issues that arise from unauthorized training, but did not immediately adjust to a change in its vehicle search policy following the Peña-Flores decision. As with addressing the issues brought on by the outside training, some time is needed to address issues once they are noted. The monitoring team's review consists only of incidents in the months immediately after the change. By February 2010, with a year's experience with the changed policy, Miranda issues were brought to the attention of the Academy in its needs assessment interview with Division members assigned to OLEPS. The monitoring team expects to see improvement in the next several monitoring periods.

Fifty-five incidents, from among the 429 reviewed, included errors not caught and remedied by supervisors prior to the monitoring team selecting cases for review this reporting period. The resulting error rate of 12.8 percent, is NOT within the allowable

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<sup>51</sup> See First OLEPS Reports for comments under Tasks 100 and 101.

margin of error. Compliance for this task is defined as "greater than 94 percent." The State Police are placed on warning for this task.<sup>52</sup>

## **2.4 Compliance with Task 28: Request for Consent to Search only upon Reasonable Suspicion**

Task 28 stipulates:

**28. In order to help ensure that state troopers use their authority to conduct consensual motor vehicle searches in a nondiscriminatory manner, the State Police shall continue to require: that state troopers may request consent to search a motor vehicle only where troopers can articulate a reasonable suspicion that a search would reveal evidence of a crime; that every consent search of a vehicle be based on written consent of the driver or other person authorized to give consent which precedes the search; that the scope of a consent search be limited to the scope of the consent that is given by the driver or other person authorized to give consent; that the driver or other person authorized to give consent has the right to be present during a consent search at a location consistent with the safety of both the State trooper and the motor vehicle occupants, which right can only be waived after the driver or other person authorized to give consent is advised of such right; that the driver or other person authorized to give consent who has granted written consent may orally withdraw that consent at any time during the search without giving a reason; and that state troopers immediately must stop a consent search of a vehicle if and when consent is withdrawn (except that a search may continue if permitted on some non-consensual basis).**

Compliance Status: **In Compliance**

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<sup>52</sup> During the Consent Decree, the federal monitors and the State established a procedure whereby once Phase II compliance was achieved (see Section 2.2 above for phases of compliance), a task would not be placed out of compliance until after two consecutive reporting periods outside the allowable margin of error for the particular task. Thus, for the first reporting period out of compliance, a "warning" is issued.

## Methodology

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

## Assessment

The monitoring team reviewed a total of 405 law enforcement actions involving consent requests conducted during the current monitoring period. Fifty-five of these involved consent search requests that were declined. A description of consent request events, by race of driver, is presented in Table Thirteen below.

Tables Thirteen through Seventeen depict data from the 429 incidents reviewed this reporting period by the monitoring team. "Number of Drivers" depicts the number of drivers, by race, in the 429 incidents. The number in parentheses in this column depicts the *percentage* of drivers in the total sample, by race. Thus, for Tables Thirteen through Seventeen, there were 190 white drivers of the total of 429 drivers involved in motor vehicle stops reviewed by the monitoring team this period, constituting 44.3 percent of all drivers in the sample. The next column, "Number" depicts the number of law enforcement procedures observed in the motor vehicle stops reviewed. For example, Table Thirteen depicts 178 consent requests of white drivers, 168 requests of black drivers, 47 requests of Hispanic drivers, and three requests of drivers in other categories of race/ethnicity. In this reporting period, there are additional subcategories in this column for Table 13 to display the number of consent requests for each legal basis (RAS or PC) leading to that request by race/ethnicity of the driver. The last column, "Percent" depicts the percent of drivers of a given race or ethnicity, who were subjected to a given law enforcement procedure. This column will not total to 100 percent. The reviews depicted in this table constituted documentation and/or video tape reviews.

The reader should note that the New Jersey State Police has increased substantially the number of consent search requests during the period of the Consent Decree, with a previous high of 134 in the six-month, sixteenth reporting period. (See Table Three and Figure 1 above.) Unlike in the last several reports, the 405 consent requests reported in Table Thirteen did not yield a statistically significant result when analyzed vis-à-vis race and ethnicity for all drivers sampled v. drivers from whom consent to search was requested. The lack of a significant relationship may in part be attributable to the few other events in the current sample against which to assess the likelihood of a consent request.

All but 47 of the 405 consent requests were completed in conformance with the requirements of this task.<sup>53</sup> A total of 12 errors was noted in the 72 events with a

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<sup>53</sup> Fifty-five drivers refused consent requests.



consent request based on RAS and the remaining 35 errors were in the 333 events having a consent request based on probable cause. Absence of reasonable articulable suspicion accounted for errors in two of the problematic consent requests---a continuing decrease from the 19 of 142 incidents reported with problematic reasonable suspicion in the seventeenth reporting period. Both of these were caught and corrected by supervisory personnel. The probable cause legal standard was not met in two other consent requests, and both of these errors were also caught by supervisors prior to OLEPS review. Another eleven consent requests were deemed "inappropriate" by the monitoring team, generally because of inappropriate questioning used in obtaining the consent. Supervisors caught all but two of these errors. There was one search of a bag prior to obtaining consent among those deemed inappropriate and supervisors did not note this error. In addition, 39 incidents exhibited problems with notification to the person authorizing consent of the right to refuse consent and to be present during the search, with limiting the scope of the search to area for which consent was given, or with whether the consent request or the consent search was taped. Twenty-four events displayed one of these errors and fifteen displayed two or more of the errors. Errors in all but one of these events were caught by supervisors prior to the monitoring team's review.

An error rate of four of 405 consent searches is 1.0 percent. For RAS-based consent requests that are most comparable to those in previous reports, there were two uncaught errors among the 72 events, for a 2.8 percent error rate. There were also two uncaught errors among the 333 events with a consent request based on PC, for an error rate under one percent. Compliance falls within the >94 percent compliance rate agreed to by the parties as the standard for critical tasks outlined by the Consent Decree.

Table Thirteen—Consent Request Activity by Race and Ethnicity  
2<sup>nd</sup> OLEPS Reporting Period

Race/ Ethnicity	a. Number of Drivers (% of Total)	b. Number of Requests for Search <sup>54</sup> by Legal Basis for Request			c. Percent Consent Request by Race/Ethnicity (b as % of a)		
		RAS	PC	Total	RAS	PC	Total
White	190 (44.3)	32	146	178	16.8	76.8	93.7
Black	175 (40.8)	31	137	168	17.7	78.3	96.0
Hispanic	52 (12.1)	9	38	47	17.3	73.1	90.4
Asian Indian	3 (0.7)	0	3	3	---	100.0	100.0
Other	9 (2.1)	0	9	9	---	100.0	100.0
Total	429 (100.0)	72	333	405	16.8	77.6	94.4

<sup>54</sup> Fifty-five consent search requests were refused.

The data in Table Thirteen indicate that consent requests constitute 94.4 percent of the incidents in the monitoring team's sample, compared to 33.9 percent of incidents in the previous reporting period. Overall, the rate of consent requests based on PC (77.6%) is more than four times that of a request based on RAS (16.8%) in this period. The highest rate of consent requests was again observed for blacks in this reporting period, as in the previous two periods. The rate of consent requests for blacks is highest, regardless of the legal basis for the consent, although the rate for RAS-based requests among Hispanics is not that different from that for blacks. (The data in the sixteenth reporting period showed higher consent request rates for *both* blacks and Hispanics by a factor of as much as 2.2 times that of whites.) Most notable, however, is the fact that the consent request rates for all race and ethnicity groups are much more similar in this reporting period.<sup>55</sup> Thus, it is not surprising that these data, as reported in Table Four, in Task 26 above, are *not* statistically significant at the 0.05 level, indicating that the differences are likely attributable to chance.<sup>56</sup> Further analysis, triggered because of the statistically significant *Chi-Square* result in previous reports, indicates that the results of the consent request processes again in this reporting period were likely attributable to the qualitative differences in stop characteristics rather than a racial bias on the part of New Jersey State Police personnel (see Section 2.2). There were no statistically significant differences by race or ethnicity in the reasons for stops of vehicles, or the levels of discretion used in making stops and deploying drug detection canines. In the seventeenth reporting period, there *was no* statistically significant difference by race and ethnicity in the reason for consent requests, in contrast to the significant difference reported in the sixteenth report. In this reporting period, a reliable *Chi-Square* statistic either could not be calculated, or was not significant for these factors. (See Tables Nine through Twelve.)

Prior to Peña-Flores, probable cause (in particular because of the "plain smell" of marijuana) would result in a non-consensual search of a vehicle, generally without formal arrest of occupants unless contraband was found. The Superintendent's memo of March 2009 detailed procedural changes in response to Peña-Flores:

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<sup>55</sup> The reader should note that the consent request rates reported do not reflect the consent request rates for all stopped drivers, but rather the rates for sampled events. Some variation in the rates from reporting period to reporting period no doubt reflects the fact that the monitors always review all consent requests (as well all canine requests and uses of force), but vary the composition (e.g., by troop) of the other sampled events with post-stop interactions each period against which the rates are calculated and of which there are very few this reporting period.

<sup>56</sup> *Chi-Square* analysis of these data yielded a *Chi-Square* of 2.533 with two degrees of freedom. The distribution was not statistically significant at the .05 p-level and was calculated for white versus black and Hispanic drivers only. See Appendix Two for a brief description of degrees of freedom and p-values, and for statistical data tables.

1. Immediate arrest of all vehicle occupants with the probable cause of the smell of raw or burnt marijuana, followed by handcuffing and an advisory statement of Miranda rights before further questioning about the crime;
2. Option to return to station, work with the station criminal investigation officer (CIO) and obtain search warrant; or,
3. Request supervisor's approval for asking for consent; approval possible from sergeants, unlike RAS consents that require station commander's approval before troopers ask permission of vehicle occupants for a consent search;<sup>57</sup>
4. If vehicle occupant denied consent, a canine could be called or an application for search warrant made or both, with a canine "hit" used to bolster existing PC.

Because of changes made by New Jersey State Police to address problematic consent requests noted in the Fifteenth Monitors' Report, field operations already had in place a database to track consent search requests that was adapted to monitor the increasing number of PC-based requests following the Peña-Flores decision. Just after the end of this monitoring period, in August 2009, a field was also added to the motor vehicle stop report data in RMS to allow a distinction between RAS-based and PC-based consent requests. State Police reported to OLEPS during the monitoring period that the increasing volume of the PC-based consent requests strained their supervisory and management resources for maintaining the same level of review accorded RAS-consent requests (i.e., a standard MVR review as well as a management review of each incident). The high number of errors overall for this reporting period (see Task 27 above) is no doubt due in part to the degree of scrutiny most of the sampled events received.

The increased number and rate of errors noted overall do not apply to the rate of uncaught errors in this task with regard to the legal basis and informed consent procedures originally mandated in the 1999 Consent Decree. As noted above, the two uncaught errors constitute less than one percent of the 333 PC-based consent incidents. The uncaught error rate related to this task for RAS-based consent requests is also within the acceptable compliance range, at 2.8 percent of 72 incidents.

The Peña-Flores decision sought to increase searches with warrants; however, longer stops might result from waiting for a search warrant. To date, no statewide system for telephonic warrants has been developed. Longer stops did not seem to be the case, at least as far as time of the stop on the side of the road is concerned. Longer stops were an issue in the consent requests for the federal monitors in the Fifteenth Monitors' Report. On average, incidents with PC-based consent requests in the first half of 2009 were shorter (49.1 minutes) than those with a consent request based on RAS (83.5

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<sup>57</sup> See discussion in the OLEPS First Monitoring Report (pp.41-47) of changes to consent approval process as one aspect of the changes the New Jersey State Police made in response to problematic consent requests noted in the Fifteenth Monitors' Report.

minutes). The difference in these means is statistically significant.<sup>58</sup> The longest stop, 201 minutes, involved a consent request based on RAS and a canine deployment. While the average length of stops involving RAS-based consent requests was much higher than those with PC-based consent requests, the average length is actually less than for consent requests (all RAS-based) noted in the previous report of 92.7 minutes, continuing a decrease in the length of such stops since the issue was raised by the federal monitors.

The monitoring team received anecdotal information that prosecutors or CIO officers often told troopers to ask for consent again after it was denied, rather than to pursue search warrants. OLEPS found documentation for prosecutors or CIO officers approving second consent requests in four incidents only. However, there was a total of 21 consent searches conducted at the station following a denied consent at the scene of the stop, or in 38.2 percent of the 55 incidents in which consent was originally denied. Three of these occurred because an occupant agreed to consent after having denied it on the road.

Additionally, there were 25 requests for search warrants during the reporting period, 21 of which were documented as granted. Of the 25 requests, 19 followed denied PC-based consent requests and five followed denied RAS-based consent requests.<sup>59</sup> On average, for these 25 search warrant requests, the length of time from when the stop was initiated on the side of the road until the incident was fully cleared in CAD<sup>60</sup> was 728.4 minutes or over 12 hours, with 50.5 minutes the average duration of the stop on side of the road. The average duration of CAD time for the five RAS-based consent requests in which search warrants were pursued is longer than that for the 19 PC-based consent requests in which a search warrant was requested: 860.0 minutes versus 655.4 minutes, respectively. For the 21 incidents in which the search warrant was granted, the times increased to 771.6 minutes on average, or to almost 13 hours.

The average CAD length for incidents with arrests that did not include a search warrant request was well below the times for those incidents in which a search warrant was

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<sup>58</sup> The difference between the average (arithmetic mean) stop times for consent requests that were based on PC versus those that were based on RAS was statistically significant ( $p < .001$ ), based on a "t-test" with a value of -12.451 and 403 degrees of freedom. See Appendix Two for a description of degrees of freedom and significance levels that are analogous for the t-statistic reported here, used for data such as minutes on which means can be calculated and that assesses the likelihood that two groups are statistically different.

<sup>59</sup> One search warrant was sought without any consent request on scene.

<sup>60</sup> This difference is statistically significant ( $p < .001$ ), based on a t value of -11.815, with 374 degrees of freedom. The length of time a CAD incident is open in the CAD system may be an imperfect measure of how long vehicle occupants are detained prior to a vehicle search based on a warrant. However, the times present a relative picture of incident length when used in comparison with the corresponding times for incidents without search warrants. Data did not permit the calculation of CAD time in seven incidents, but these incidents are unlikely to affect the averages reported here.

granted. Specifically, for the 355 incidents involving arrests but no search warrant request or other vehicle search at the station, the average CAD length was 255.6 minutes, with an average 52.8 minutes of that occurring at the scene. Thus, on average, CAD incidents were 472.8 minutes longer when a search warrant is pursued, or almost eight hours longer than when arrests are processed without pursuing a search warrant.<sup>61</sup> When consent searches are carried out at the station, the average CAD time falls between these two averages at 434.0 minutes, with 52.8 minutes of that attributable to time at the scene.

In the previous report, the factors that made statistically significant differences in the length of stops involving consent requests were: whether the consent request was denied (taking 110.1 minutes on average) or granted (taking 86.3 minutes on average), and, whether or not a canine was deployed during the stop (with average lengths of stops at 113.9 minutes and 77.7 minutes, respectively). In the current reporting period, there was virtually no difference between the length of stops when consent was granted (55.0 minutes) and when it was denied (56.7 minutes).<sup>62</sup> Canine deployments in the current reporting period followed 21 consent search requests and were associated with stops that were twice as long on average as consent requests that did not involve a canine deployment (106.1 minutes and 52.5 minutes, respectively). The 21 canine deployments occurred in 10 of the 55 incidents in which consent requests were denied by the driver and resulted in a longer average time of 116.6 minutes than for the 11 canines deployed in events where a consent request was granted, taking an average of 96.5 minutes---also substantially longer than for all granted consent requests, but shorter on average than if the canine followed a denied request.<sup>63</sup>

The Fifteenth Monitors' Report related the length of the stop to the discretion in the initial reason for the stop (as moving versus non-moving). In general, as in the

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<sup>61</sup> As noted previously, there were incidents in which all occupants arrested were released, when probable cause dissipated. When times exclude these incidents and only those with at least one processed arrest, the averages are higher. Specifically, the average CAD time for the 305 incidents with a processed arrest but no vehicle search at the station, increases more than twenty minutes to 291.0 minutes, with 50.9 minutes of that covering the average time at the scene.

<sup>62</sup> The difference between the average (arithmetic mean) stop times for consent requests that were declined versus those that were granted was not statistically significant ( $p > .05$ ), based on "t-test" with a value of 0.470 and 403 degrees of freedom. See Appendix Two for a description of degrees of freedom and significance levels that are analogous for the t-statistic reported here.

<sup>63</sup> The difference between the mean stop times for consent requests with versus without canine deployments is statistically significant ( $p < .001$ ), based on "t-test" with a value of -10.910 and 403 degrees of freedom. However, the difference in stop lengths between canine deployments following a declined versus a granted consent request was not statistically significant ( $p > .05$ ), based on a t value of 1.457 and 19 degrees of freedom. See Appendix Two for a description of degrees of freedom and significance levels that are analogous for the t statistic reported here.

previous report, the level of discretion in the initial reason for the stop was not related to the length of the stops for events involving consent requests for the current monitoring period, with the mean stop length for each of the three levels of discretion, but there was more variation by discretion level than reported last year. The highest and lowest discretionary stops in which a consent request occurred were shorter on average than for consent requests evolving in stops for more intermediate levels of discretion (55.2 minutes, 51.8 minutes, and 59.8 minutes, respectively).

The protracted time for questioning noted in the Fifteenth Monitors' Report focused on issues with identification and ownership. In the current reporting period, identification questions were raised in proportionately fewer stops with consent requests than reported in the last report (4.5% and 43.1%), as were ownership questions (6.3% here and 56.9% previously). Pursuit of either of these questions was related to longer stops on average than if they were not.

The nature of the reasonable suspicion presented by troopers that were not approved for a consent request cannot be assessed by the monitoring team,<sup>64</sup> nor can whether there were more rejected by station commanders than would have been by sergeants prior to the change in approval policy for RAS consent requests in the last reporting period.

In the first OLEPS report, there were some remaining concerns about the length of stops when consent requests are involved, but the quality of these events has markedly improved since issues were raised in the Fifteenth Monitors' Report. The monitoring team points again to the tangible success of the 2007 in-service training for helping troopers in the field to articulate probative reasons for pursuing consent requests, and for helping their supervisors to recognize issues related on consent request procedures in need of correction.

## **2.5 Compliance with Task 29a: Recording Requirements for Motor Vehicle Stops**

Task 29a stipulates that:

### **29. Motor Vehicle Stop Data**

**a. The State has adopted protocols (captioned F-55 (Motor Vehicle Stops) dated 12/14/99; C-22 (Activity Reporting System), F-3 (Patrol Procedures), F-7 (Radio Procedures), F-19 (MVR equipment), F-31 (Consent Searches), and a Motor Vehicle Stop Search**

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<sup>64</sup> The monitoring team routinely assesses only consent requests approved by supervisors.



Report dated 12/21/99; and a Property Report (S.P. 131 (Rev. 1/91)) that require state troopers utilizing vehicles, both marked and unmarked, for patrols on roadways to accurately record in written reports, logs, radio communications, radio recordings and/or video recordings, the following information concerning all motor vehicle stops:

1. name and identification number of trooper(s) who initiated the stop;
2. name and identification number of trooper(s) who actively participated in the stop;
3. date, time, and location of the stop;
4. time at which the stop commenced and at which it ended;
5. license number/state of stopped vehicle;
- 5A. description of stopped vehicle;
6. the gender and race/ethnicity of the driver, and the driver's date of birth if known;
7. the gender and race/ethnicity of any passenger who was requested to exit the vehicle, frisked, searched, requested to consent to a vehicle search, or arrested;
8. whether the driver was issued a summons or warning and the category of violation (i.e., moving violation or non-moving violation);
- 8A. specific violations cited or warned;
9. the reason for the stop (i.e., moving violation or non-moving violation, other [probable cause/ BOLO]);
10. whether the vehicle occupant(s) were requested to exit the vehicle;
11. whether the vehicle occupant(s) were frisked;
12. whether consent to search the vehicle was requested and whether consent was granted;
- 12A. the basis for requesting consent to search the vehicle;
13. whether a drug-detection canine was deployed and whether an alert occurred;
- 13A. a description of the circumstances that prompted the deployment of a drug-detection canine;
14. whether a non-consensual search of the vehicle was conducted;



- 14A. the circumstances that prompted a non-consensual search of the vehicle;**
- 15. whether any contraband or other property was seized;**
- 15A. a description of the type and quantity of any contraband or other property seized;**
- 16. whether the vehicle occupant(s) were arrested, and if so, the specific charges;**
- 17. whether the vehicle occupant(s) were subjected to deadly, physical, mechanical or chemical force;**
- 17A. a description of the circumstances that prompted the use of force; and a description of any injuries to state troopers and vehicle occupants as a result of the use of force;**
- 18. the trooper's race and gender; and**
- 19. the trooper's specific assignment at the time of the stop (on duty only) including squad.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.2 above for a description of the methodology used to assess the New Jersey State Police's compliance with this task.

#### Assessment

Effective policies and forms requiring compliance with the reporting requirements of the task have been written, disseminated and implemented into the State Police training process. Use of the Motor Vehicle Stop Report was monitored for 429 incidents involving a post-stop law enforcement activity of interest to the Decree. Use of force, deployment of canines and non-consensual searches received special attention from the monitoring team. The results of these reviews are depicted in Tables Fourteen through Seventeen, below.

#### Use of Force (On Warning)

New Jersey State Police personnel reported using force 13 times during the six-month reporting period. This number reflects less than half of the 34 uses of force in the previous year-long reporting period. The 13 uses of force in this period translate into a use of force in three percent of the sampled incidents. There were three uses of physical force, four uses of chemical force, four incidents in which both chemical force

and physical force were used, one incident in which mechanical force was used, and one incident in which mechanical, chemical and physical force were used.

The monitoring team reviewed the reports for use of force by personnel from the New Jersey State Police and found *one* problem with the reporting process.<sup>65</sup> When confirmed by tape review, the use of force in all but one instance each was found to be appropriate and appropriately reported. The inappropriate use of force was noted by supervisors prior to OLEPS review.

Table Fourteen depicts the data for the 429 incidents reviewed this reporting period by the monitoring team and presents the number and percent of uses of force for each category of drivers' race and ethnicity. The data show that the greatest number of uses of force (8) occurred in incidents with white drivers, followed by the four incidents in which black drivers (or their occupants) were subjected to a use of force and one incident with Hispanic drivers. The number of use-of-force incidents with white drivers continued to be the highest percentage of incidents for any group involving a use of force: 4.2 percent. In contrast, uses of force occurred in 2.3 percent of sampled incidents with black drivers and in 1.9 percent of the incidents with Hispanic drivers. All of these percentages by race and ethnicity are about one-third their respect rates in the previous period, consistent with the drop for the rate in all sampled incidents from 8.9 percent to 3.0 percent.<sup>66</sup>

Table Fourteen: Uses of Force  
2<sup>nd</sup> OLEPS Reporting Period

<b>Race/Ethnicity</b>	<b>a. Number of Drivers (% of Total)</b>	<b>b. Incidents of Use of Force</b>	<b>c. Percent Use of Force by Race/Ethnicity (b as % of a)</b>
White	190 (44.3)	8	4.2
Black	175 (40.8)	4	2.3
Hispanic	52 (12.1)	1	1.9
Asian Indian	3 ( 0.7)	0	---
Other	9 ( 2.1)	0	--
Total	429 (100.0)	13	3.0

<sup>65</sup> Members of the monitoring team assessed use of force reports and incidents for reasonable application of force and compliance with elements 17 and 17a of this requirement of the decree.

<sup>66</sup> The decrease in the rate of uses of force when compared to the previous report is in part due to the increased base number and the predominance of consent searches as critical incidents in the current sample.

One uncaught error out of 13 events constitutes a 7.7 percent error rate, so that this task does not fall within the >94 percent compliance rate that is the standard for critical tasks outlined by the Consent Decree. The fact that one incident with an uncaught error is sufficient to place the State Police on warning for this part of the task reflects the relatively few incidents overall involving the use of force.

### Canine Deployments

The New Jersey State Police deployed drug detection canine units 23 times during the reporting period, or in 5.4 percent of the sampled incidents, which is less than a third of the rate in the previous period. Members of the monitoring team reviewed all available documentation for each canine deployment, and reviewed video tapes of all canine deployments.

The data in Table Fifteen indicate somewhat higher canine “deployment rates” in events with black and Hispanic drivers than for those with white drivers, albeit that all rates are within three percentage-points of each other. The low rates reflect the one-third drop in the rate of canine deployments overall. Canine deployments in events with Hispanic drivers were the only ones to be higher than in the previous report. Unlike the distribution for these deployments by race in the sixteenth reporting period, these data are not statistically significant at the 0.05 level. (See Table Five, p.18.)<sup>67</sup> All canine deployments were based on reasonable articulable suspicion. A qualitative review of these stops shows no statistically significant test statistics for levels of discretion in the reason for stop related to canine deployments. (See Tables Nine through Twelve, above.)

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<sup>67</sup> *Chi-Square* analysis of these data yielded a *Chi-Square* of 0.707 with two degrees of freedom,  $p > 0.05$ . The distribution was not statistically significant.

Table Fifteen: Canine Deployments  
2<sup>nd</sup> OLEPS Reporting Period

Race/Ethnicity	a. Number of Drivers (% of Total)	b. Canine Deployments	c. Percent Canine Deployment by Race/Ethnicity (b as % of a)
White	190 (44.3)	9	4.7
Black	175 (40.8)	10	5.7
Hispanic	52 (12.1)	4	7.7
Asian Indian	3 ( 0.7)	0	---
Other	9 ( 2.1)	0	---
Total	429 (100.0)	23	5.4

With no errors, the New Jersey State Police remains within the >94 percent compliance rate agreed to as the standard for critical tasks outlined by the Consent Decree.

#### Non-Consensual Searches

##### Vehicles

Table Sixteen depicts the results, by race/ethnicity and type of non-consensual vehicle search for the sample of 429 incidents reviewed by the monitoring team this reporting period. The table depicts the types of non-consensual searches, by race/ethnicity of the 86 incidents involving a non-consensual vehicle search. For example, 45 white drivers' vehicles were subjected to non-consensual searches during this reporting period, with seven subjected to probable cause searches, etc. Numbers in parentheses reflect the percentage of type of search, by race. For example, the seven probable cause searches constitute 15.6 percent of all searches of white drivers' vehicles. The reviews depicted in this table constituted video tape and/or documentation reviews.

In previous reports, probable cause searches comprised the most frequently reported type of non-consensual reason that troopers entered a vehicle. Following the Peña-Flores decision, it is not surprising that this is no longer the case. The shift in this reporting period is to a predominance of seizures of evidence in "plain view" (70.9%) as reasons troopers entered vehicles, and the association of these seizures with consent search requests. The seizures were proportionately more frequent among incidents with white drivers (77.8%) than among those with other driver groups. The reported increase in plain view seizures among sampled events does not mean that they have increased on New Jersey roads since the previous report. Rather, in previous reports, non-consensual searches were generally part of the random sample of non-critical events; in this sample, few events were *not* associated with a critical event, most

specifically, with consent search requests. Prior to the Peña-Flores decision, troopers would have routinely searched the vehicle following a plain view seizure, whereas after the decision, they generally need to secure a search warrant, or ask for consent. Since all consent requests were included in the sampled events, the rate of plain view seizures increased in the sample as well. Among the 86 non-consensual searches, there were 66 PC-based consent requests, with 40 events in which troopers based their requests on drug-related PC, including such things as finding drug paraphernalia.

Of the 86 MVSRs reviewed that entailed non-consensual searches of vehicles, members of the monitoring team found one problem that was not first caught and remedied by New Jersey State Police supervisory personnel, for an error rate of 1.2 percent and falling within the >94 percent compliance rate agreed to as the standard for critical tasks.

Table Sixteen: Reasons for Non-Consensual Searches<sup>68</sup> of Vehicles, by Race/Ethnicity of Driver  
2<sup>nd</sup> OLEPS Reporting Period

Race/ Ethnicity	a. Number of Drivers (% of Total)	b. Non- Consensual Vehicle Search (% of a)	c. Probable Cause (% of b)	d. Plain View (% of b)	e. Proof of Ownership (% of b)	f. Other Reason (% of b)
White	190 (44.3)	45 (23.7)	7 (15.6)	35 (77.8)	0 (0.0)	3 (6.7)
Black	175 (40.8)	28 (16.0)	6 (21.4)	18 (64.3)	1 (3.6)	3 (10.7)
Hispanic	52 (12.1)	9 (17.3)	3 (33.3)	5 (55.6)	1 (11.1)	0 (0.0)
Asian Indian	3 ( 0.7)	0 (0.0)	---	---	---	---
Other	9 ( 2.1)	4 (44.4)	1 (25.0)	3 (75.0)	0 (0.0)	0 (0.0)
Total	429 (100.0)	86 (20.0)	17 (19.8)	61 (70.9)	2 (2.4)	6 (7.0)

<sup>68</sup> Several events had multiple non-consensual entries of troopers into vehicles, but only one is reported here. For example, one event with a probable cause search also had a plain view seizure.

## Persons (On Warning)

Table Seventeen depicts non-consensual search-of-person activity by race, specifically for probable cause searches. Twenty-three searches of a person, not incident to arrest, were conducted in this reporting period out of the 429 incidents reviewed or in 5.4 percent of all sampled incidents, representing a decline of 5.0 percentage points from the rate reported in the previous reporting period. A rate of 5.0 percent is 10.8 percentage points lower than that reported for the seventeenth reporting period. Eight of the 23 searches of a person were conducted by a trooper in the absence of the necessary probable cause. Members of the monitoring team found two problems that were not first caught and remedied by New Jersey State Police supervisory personnel, for an error rate of 8.7 percent so that compliance is *not* within the >94 percent compliance rate agreed to as the standard for the critical tasks of the Consent Decree.

Table Seventeen: Probable Cause Searches of Persons,  
by Race/Ethnicity of Driver  
2<sup>nd</sup> OLEPS Reporting Period

Race/Ethnicity	a. Number of Drivers (% of Total)	b. Probable Cause Searches	c. Percent by Race/Ethnicity (b as % of a)
White	190 (44.3)	13	6.8
Black	175 (40.8)	8	4.6
Hispanic	52 (12.1)	2	3.8
Asian Indian	3 ( 0.7)	0	--
Other	9 ( 2.1)	0	--
Total	429 (100.0)	23	5.4

In all, members of the monitoring team noted 248 separate incidents in which constitutional, procedural, reporting, or review issues were evident (see section 2.3, Task 27 above, for a complete listing of the errors in these motor vehicle stop incidents). A total of 193 of these problematic incidents were noted and corrected by retraining or other form of intervention prior to the monitor's noting the behavior. The monitors *noted* a shift in the locus of these self-corrections in the sixteenth reporting period, away from on-scene and station-level review to management (Troop) and OSPA-assigned enlisted personnel review. This shift continued in the seventeenth reporting period, first OLEPS reporting period, and again here, but without any corrections by enlisted personnel then assigned to OSPA. The New Jersey State Police continues in overall compliance with this task. However, warnings are given for errors in reporting use of force and for person searches without appropriate probable cause.

### **2.5.1 Compliance with Task 29b: Expeditious Implementation of Motor Vehicle Stop Criteria**

Task 29b stipulates that:

**b. The protocols listed in ¶29(a) include, inter alia, the procedures set forth in ¶¶ 30, 31, 32, and 33 and have been approved by the United States insofar as the protocols identify practices and procedures required by this Decree. The State shall implement these protocols as soon as practicable.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.2 above for a discussion of the methodology for assessing compliance with this task.

#### Assessment

The review of State Police policies, forms, training, records systems, data entry systems, and CAD processes indicates that the New Jersey State Police are in compliance with the requirements of Task 29b. Effective policies and forms requiring compliance with the reporting requirements of the task have been written, disseminated and implemented into the training process. The development of training for supervisors in the process of scrutinizing motor vehicle stop reports, associated documentation, and systems to facilitate that review, have been completed.

The records reviewed by the monitors all included the names of drivers subjected to post-stop law enforcement procedures of interest to the Decree, i.e., request for permission to search; conduct of a consensual or non-consensual search; ordering occupants out of a vehicle; frisks of vehicle occupants; deployment of a drug-detection canine; seizure of contraband; arrest of the occupants of the vehicle; or use of deadly, physical, mechanical or chemical force. All of these records included the race of the individual subjected to a post-stop law enforcement procedure of interest to the Decree. All of the records included a CAD incident number. In addition, all had the date of the stop, time of the stop, time the stop cleared, and reason for the stop when the incident began as a stop. All records included the gender and race of the driver,



whether a summons or warning was issued (and the category of the violation),<sup>69</sup> and the reason for the motor vehicle stop.

The data analyzed for this reporting period included only those data generated by the electronic reporting process, but including hard-copy output. Accuracy rates for these data, overall, are within the acceptable margin for error for this task. The earliest available electronic data in the New Jersey State Police's database, provided to the monitors, was September 2, 2000, and Phase II compliance for this task was achieved in the second reporting period. (See Appendix One.) This qualifies as "expeditious" implementation.

### **2.5.2 Compliance with Task 29c: Forms to Support Execution of Tasks 31, 32 and 33**

Task 29c stipulates that:

**c. The State shall prepare or revise such forms, reports, and logs as may be required to implement this paragraph and §§ 31, 32, and 33 (and any related forms, reports, and logs, including arrest reports) to eliminate duplication and reduce paperwork.**

Compliance Status: **In Compliance**

#### **Methodology**

The New Jersey State Police continues to revise forms and policies related to this task, and to provide multiple levels of review and quality control practices related to tasks 31-33.

#### **Assessment**

Forms to support execution of tasks 31-33 have been developed and disseminated. The New Jersey State Police has finalized automated data entry at road stations. Conformance to the policies supporting these forms remains at a high level. The forms have been developed and disseminated and are being used by agency personnel, and appear to have improved substantially the level of reporting and compliance with stipulated procedures. This reporting period is the first full period since the

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<sup>69</sup> The monitoring team is aware of issues with the completeness of the traffic enforcement information following the implementation of the new CAD system in the first half of 2008, and with the State Police's efforts to monitor and correct these issues.

implementation of a new CAD system that resulted in the automation of patrol logs, eliminating the need for troopers to keep manual logs while on patrol. By the end of the reporting period, OLEPS (then as OSPA) was notified of the need to change the Motor Vehicle Stop Report to flag the legal basis of consent requests as probable cause or reasonable articulable suspicion.

### **2.5.3 Compliance with Task 29e: Approval of Revisions to Protocols, Forms, Reports and Logs**

Task 29e stipulates that:

**e. Prior to implementation, of any revised protocols and forms, reports, and logs adopted pursuant to subparagraph (d) of this paragraph, the State shall obtain approval of the United States and the Independent Monitor. The United States and the Independent Monitor shall be deemed to have provided such approval unless they advise the State of any objection to a revised protocol within 30 days of receiving same. The approval requirement of this subparagraph extends to protocols, forms, reports, and logs only insofar as they implement practices and procedures required by this Decree.**

Compliance Status: **In Compliance**

#### **Methodology**

During this reporting period, OLEPS (as OSPA) reviewed and approved all protocols and forms provided by the New Jersey State Police, and were notified in advance of planned changes to those protocols and forms. The federal independent monitors also reviewed and approved all relevant protocols and forms.

#### **Assessment**

No issues were noted relevant to this task for this reporting period. Protocols for changing search procedures following the Peña-Flores decision were reviewed by the monitoring team.

## 2.6 Compliance with Task 30: Communications Center Call-Ins

Task 30 stipulates that:

**30. Communication Center Call-In's for Motor Vehicle Stops. The primary purpose of the communications center is to monitor officer safety. State troopers utilizing vehicles, both marked and unmarked, for patrols on roadways shall continue to document all motor vehicle stops, inter alia, by calling in or otherwise notifying the communications center of each motor vehicle stop. All motor vehicle stop information enumerated in ¶ 29(a) that is transmitted to the communications center by state troopers pursuant to protocols listed in ¶29(a), and as revised pursuant to ¶29(d) and (e), shall be recorded by the center by means of the center's Computer Aided Dispatch system or other appropriate means.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task. Compliance with these tasks has been measured under a revised standard, beginning with the tenth reporting period, based on an agreement of the parties to the Consent Decree. The compliance standard for data reporting and recording of traffic stop processes was established at 90 percent.

### Assessment

New Jersey State Police Standard Operating Procedures (S.O.P.s) relating to the call-in of motor vehicle stops meet the requirements of the Consent Decree. In addition, training regarding motor vehicle stops is reasonably designed to affect the necessary behavior on the part of troopers conducting traffic stops. Revisions to New Jersey State Police S.O.P.s, implemented several reporting periods ago, have formed the basis for supervisory review and control of these processes.

Since the first reporting period, the New Jersey State Police has been in compliance with this requirement, based on the monitors' review of electronic CAD data. In

addition, 417<sup>70</sup> video recordings and documentation from 429 vehicle stops were reviewed this period, as were supporting documents, such as CAD abstracts, etc. Compliance with this task was assessed using both the electronic, video, and paper documentation. All data required by paragraphs 29a, are recorded within the CAD records for vehicle stops, or within associated MVSRs.

Of the 429 incidents reviewed by the monitors, 102 included an error in call-in or documentation of a motor vehicle stop. Supervisors caught all but 23 errors relating to documentation of a motor vehicle stop. An error rate of 23 incidents of 429 constitutes 5.4 percent, for a compliance rate of 94.6 percent, within the revised parameter of >90 percent.

### **2.6.1 Compliance with Task 30a: Notice of Call-In at Beginning of Stop**

Task 30a stipulates that:

**a. The initial call shall be made at the beginning of the stop before the trooper approaches the stopped vehicle, unless the circumstances make prior notice unsafe or impractical, in which event the State trooper shall notify the communications center as soon as practicable. The State Police shall continue to require that, in calling in or otherwise notifying the communications center of a motor vehicle stop, state troopers shall provide the communications center with a description of the stopped vehicle and its occupants (including the number of occupants, their apparent race/ethnicity, and their apparent gender). Troopers also shall inform the communications center of the reason for the stop, namely, moving violation, non-moving violation, or other.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

#### Assessment

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<sup>70</sup> Some video taped incidents included more than one post-stop activity of interest to the decree. For example, 21 of the 405 consent requests also included a canine deployment.

Members of the monitoring team also reviewed 417 video tapes of motor vehicle stops to assess the time of the call in. Data indicate that 100 percent of all stops were assigned an incident number and 100 percent list the driver's race and gender; the few incidents with call-in errors regarding initiation of a stop and reason for the stop<sup>71</sup> were all caught by supervisors prior to the monitoring team's reviews. The New Jersey State Police is in compliance with this task.

### 2.6.2 Compliance with Task 30b: Notice Prior to Search

Task 30b stipulates that:

**b. state troopers shall notify the communications center prior to conducting a consent search or nonconsensual search of a motor vehicle, unless the circumstances make prior notice unsafe or impractical.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.2 above for a description of the methodology used to assess compliance with this task.

#### Assessment

This section (regarding notice prior to search of a vehicle) applies only to probable cause and consent searches.<sup>72</sup> Of the 17 probable cause search events and 405 consent searches reported in 410 incidents<sup>73</sup> (with 398 of the 410 events reviewed by video tape), twelve were not called in to New Jersey State Police communications prior

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<sup>71</sup> The reason for stop is noted as "moving" or "non-moving," different from the reason for stop categories discussed in Task 26, Section 2.2, above, where the discretion in the specific reason for stop was analyzed. With the implementation of the new CAD system completed in the first half of the last reporting period, the reason for stop is now documented in more detail within CAD, including the specific observed violation. The monitoring team is aware of the data discrepancies between the broad reason for stop (moving or non-moving violation) and the actual traffic violation recorded; it is also aware of efforts by the State Police to address these discrepancies.

<sup>72</sup> New Jersey case law (*State v. Eckel*, 185 N.J. 523 (2006)) has changed the requirements and practices of "search incident to arrest" of a motor vehicle. New Jersey State Police policy now precludes searches of vehicles incident to arrest. In *State v. Peña-Flores*, 198 N.J. 6 (2009), "probable cause" searches of vehicles without a warrant absent exigent circumstances resulted in additional changes to New Jersey State Police policy further limiting non-consensual searches.

<sup>73</sup> That is, in 11 events there was both a consent request and a PC vehicle search.

to the initiation of the search. Supervisory personnel noted and corrected all of these omissions. A compliance rate of 100.0 percent is within the >90 percent established as the criterion for this task.

### **2.6.3 Compliance with Task 30c: Call-Ins Upon Completion of Stop**

Task 30c stipulates that:

**c. At the conclusion of the stop, before the trooper leaves the scene, the trooper shall notify the communications center that the stop has been concluded, notify the center whether any summons or written warning was issued or custodial arrest was made, communicate any information that is required to be provided by the protocols listed in paragraph 29(a) that was not previously provided, and correct any information previously provided that was inaccurate. If circumstances make it unsafe or impractical to notify the communications center of this information immediately at the conclusion of the stop, the information shall be provided to the communications center as soon as practicable.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

#### Assessment

New Jersey State Police S.O.P.s relating to the call-in of motor vehicle stops meet the requirements of the Consent Decree. In addition, training regarding motor vehicle stops is reasonably designed to affect the necessary behavior on the part of troopers conducting traffic stops. Of the 417 stops reviewed by video tape, all but two complete tapes without audio difficulty were found to have appropriately cleared from the stop. Of the 429 stops reviewed by document review, all but two of these call-ins were present in the CAD abstract, indicating that they had been made by the trooper and contemporaneously recorded. Supervisors caught and corrected these errors prior to the monitoring team's review. The New Jersey State Police is in compliance with this task.

#### 2.6.4 Compliance with Task 30d: CADS Incident Number Notification

Task 30d stipulates that:

**d. The communications center shall inform the trooper of an incident number assigned to each motor vehicle stop that involved a motor vehicle procedure (i.e., occupant requested to exit vehicle, occupant frisked, request for consent search, search, drug dog deployed, seizure, arrest or use of force), and troopers shall utilize that incident number to cross reference other documents prepared regarding that stop. Likewise, all motor vehicle stop information recorded by the communication center about a particular motor vehicle stop shall be identified by the unique incident number assigned to that motor vehicle stop.**

Compliance Status: **In Compliance**

##### Methodology

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

##### Assessment

New Jersey State Police S.O.P.s relating to the call-in of motor vehicle stops meet the requirements of the Consent Decree. In addition, training regarding motor vehicle stops is reasonably designed to affect the necessary behavior on the part of troopers conducting traffic stops.

Computer Assisted Dispatch (CAD) records were also requested by the monitoring team for all motor vehicle stop activity for the selected stations. A sample of CAD records was reviewed electronically, and all were found to have "CAD Incident Numbers." Of the 429 stops reviewed by the monitoring team this reporting period, CAD numbers were present in documentation for all video tapes reviewed, and in 100 percent of all hard copy documents reviewed by the monitoring team that required a CAD number. The new CAD system implemented in the last reporting period automated the assignment of CAD numbers to motor vehicle stops and in the Records Management System for reports associated with motor vehicle stop incidents.



## 2.7 Compliance with Task 31: Reporting Consent to Search Requests

Task 31 stipulates that:

**31. Consent Searches of Motor Vehicles. The State Police shall continue to require that whenever a state trooper wishes to conduct or conducts a consensual search of a motor vehicle in connection with a motor vehicle stop, the trooper must complete a "consent to search" form and report. The "consent to search" form shall contain information, which must be presented to the driver, or other person authorized to give consent before a consent search may be commenced. This form shall be prepared in English and Spanish. The "consent to search" report shall contain additional information, which must be documented for State Police records.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

### Assessment

A MVSR form was completed for all 405 motor vehicle stops that included a consent search request this reporting period, including for the fifty-five incidents in which consent requests were denied. The monitoring team also found evidence that a "consent to search form" was utilized in these 405 events.<sup>74</sup> The information required to be presented (both written and orally) to the driver was so presented correctly in 365 events. Supervisors caught and corrected all but six of the 40 events with errors. Six errors in 405 incidents translated into an error rate of 1.5 percent, well within the acceptable margin of error.

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<sup>74</sup> However, the monitoring team did not receive eight consent-to-search forms from which to assess completeness, nor did it receive routinely both consent forms when a consent that was initially denied was later granted.

## **2.7.1 Compliance with Tasks 31a-c: Recording Consent to Search Requests**

Tasks 31a-c stipulate that:

- a. The State Police shall require that all "consent to search" forms include the following information:**
  - 1. the date and location of the stop;**
  - 2. the name and identification number of the trooper making the request for consent to search;**
  - 3. the names and identification numbers of any additional troopers who actively participate in the discussion with the driver or passenger(s) concerning the request for consent to search;**
  - 4. a statement informing the driver or other person authorized to give consent of the right to refuse to grant consent to search, and that if the driver or other person authorized to give consent grants consent, the driver or other person authorized to give consent at any time for any reason may withdraw consent to search;**
  - 5. a statement informing the driver or other person authorized to give consent of the right to be present during the search at a location consistent with the safety of both the State trooper and the motor vehicle occupant(s) which right may be knowingly waived;**
  - 6. check-off boxes to indicate whether consent has been granted, and if consent is granted, the driver or other person authorized to give consent shall check the appropriate box and sign and date the form; and**
  - 7. if the driver or other person authorized to give consent refuses consent, the trooper or the driver or other person authorized to give consent shall so note on the form and the driver or other person authorized to give consent shall not be required to sign the form.**
- b. A state trooper who requests permission to conduct a consent search shall document in a written report the following information regardless of whether the request for permission to conduct a search was granted or denied:**
  - 1. the name of the driver or other person authorized to give consent to whom the request for consent is**

- directed, and that person's gender, race/ethnicity, and, if known, date of birth;
  - 2. the names and identification numbers of all troopers who actively participate in the search;
  - 3. the circumstances which constituted the reasonable suspicion giving rise to the request for consent;
  - 4. if consent initially is granted and then is withdrawn, the fact that this occurred, and whether the search continued based on probable cause or other non-consensual ground, or was terminated as a result of the withdrawal of consent;
  - 5. a description of the type and quantity of any contraband or other property seized; and,
  - 6. whether the discussion concerning the request for consent to search and/or any ensuing consent search were recorded using MVR equipment.
- c. The trooper shall sign and date the form and the report after each is fully completed.

Compliance Status: **In Compliance**

## Methodology

Members of the monitoring team reviewed report information for 405 consent requests and 350 consent searches,<sup>75</sup> and reviewed video tape recordings of all but twelve<sup>76</sup> motor vehicle stops involving consent requests. Supporting documentation for all consent search requests was reviewed, and the events depicted on 393 video tapes reviewed were assessed in light of the reports generated by the trooper concerning the event. See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

## Assessment

The monitoring team reviewed 405 consent request activities required by this section of the Consent Decree. Of the 405 consent requests, 22 incidents had had errors corrected by supervisory personnel with regard to recording of information. The

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<sup>75</sup> Fifty-five consent requests were refused. About half of these later resulted in consent searches at the station.

<sup>76</sup> Video recordings for eight consent request incidents were not reviewed due to malfunction of equipment and three were not available to the monitoring team. See footnote 17 above.

monitoring team found an additional six errors, for an error rate of 1.5 percent, again with the allowable margin of error.

## **2.8 Compliance with Task 32: Recording and Reporting of Non-Consensual Searches**

Task 32 stipulates that:

**32. Non-consensual Searches of Motor Vehicles (Excluding Vehicle Searches Begun as a Consent Search). A state trooper shall complete a report whenever, during any motor vehicle stop, the trooper conducts a non-consensual search of a motor vehicle (excluding vehicle searches begun as a consent search). The report shall include the following information:**

- 1. the date and location of the stop;**
- 2. the names and identification numbers of all troopers who actively participated in the incident;**
- 3. the driver's name, gender, race/ethnicity, and, if known, date of birth;**
- 4. a description of the circumstances which provided probable cause to conduct the search, or otherwise justified the search;**
- 5. a description of the type and quantity of any contraband or other property seized; and**
- 6. whether the incident was recorded using MVR equipment.**

Compliance Status: **In Compliance**

### **Methodology**

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

### **Assessment**

New Jersey State Police S.O.P.s reasonably address the processes of making and recording non-consensual searches, and training provided to road personnel reasonably prepares them to complete these processes in conformance to the requirements of this task.

Of the 17 MVSRs reviewed that entailed probable cause searches of vehicles,<sup>77</sup> members of the monitoring team found problems with six incidents in which the troopers failed to call in the search prior to conducting it. This error was noted and corrected by supervisory personnel prior to the monitoring team's review in all events. The monitoring team found issues with probable cause in two events and this was addressed in one event prior to the selection of the events for review. The monitors also noted two incidents in which the search was not taped, and supervisors noted the errors prior to video review of the monitoring team. An error rate of 1 in 17 events is 5.9 percent, below the 7.7 percent error rate in the previous report. This rate translates into a compliance rate of 94.1 percent that remains within the >90 percent compliance level for this task.

## **2.9 Compliance with Task 33: Recording and Reporting Deployment of Drug Detection Canines**

Task 33 stipulates that:

**33. Drug-Detection Canines. A state trooper shall complete a report whenever, during a motor vehicle stop, a drug-detection canine is deployed. The report shall include the following information:**

- 1. the date and location of the stop;**
- 2. the names and identification numbers of all troopers who participated in the incident;**
- 3. the driver's name, gender, race/ethnicity, and, if known, date of birth;**
- 4. a description of the circumstances that prompted the canine to be deployed;**
- 5. whether an alert occurred;**
- 6. a description of the type and quantity of any contraband or other property seized; and**
- 7. whether the incident was recorded using MVR equipment.**

Compliance Status: **In Compliance**

Methodology

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<sup>77</sup> Sixty-two plain view searches, two ownership searches and nine other non-consensual searches were also conducted this reporting period. Some events had multiple searches.

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

### Assessment

The policies, forms, training curricula and training processes relative to the deployment of drug detection canines and reporting of these deployments are reasonably designed to guide behavior responsive to Task 33.

Members of the monitoring team examined, by document review, 23 reported drug detection canine deployments effected by the New Jersey State Police. The monitoring team found all canine deployments to have been deployed or reported in a manner consistent with the requirements of procedures and the Decree. With no errors in this reporting period, the New Jersey State Police remain within the >90 percent compliance level for this task.

## **2.10 Compliance with Task 34a: Use of Mobile Video Recording Equipment**

Task 34a stipulates that:

### **34. Use of Mobile Video/Audio (MVR) Equipment.**

**a. The State Police shall continue to operate all patrol vehicles engaged in law enforcement activities on the New Jersey Turnpike and the Atlantic City Expressway with MVR equipment. The State shall continue with its plans to install MVR equipment in all vehicles, both marked and unmarked, used for patrols on all other limited access highways in New Jersey (including interstate highways and the Garden State Parkway), and shall complete this installation within 12 months.**

Compliance Status: **In Compliance**

### Methodology

Members of the monitoring team requested to view video tapes for 429 events for the current reporting period and were able to view 417 tapes or digital recordings.

## Assessment

Members of the monitoring team found evidence of video tape recordings, or documentation of in-field mechanical problems, for all events selected for review this period. The New Jersey State Police remains in compliance with this task.

### **2.11 Compliance with Task 34b-c: Training in MVR Operation and Procedures**

Task 34b-c stipulates that:

**b. The State shall continue to implement procedures that provide that all state troopers operating a vehicle with MVR equipment may operate that vehicle only if they first are trained on the manner in which the MVR equipment shall be tested, maintained, and used. The State shall ensure that all MVR equipment is regularly inspected, maintained, and repaired.**

**c. Except when MVR equipment unforeseeably does not function, all motor vehicle stops conducted by State Police vehicles with MVR equipment shall be recorded by these vehicles, using both the video and audio MVR functions. The recording shall begin no later than when a trooper first signals the vehicle to stop or arrives at the scene of an ongoing motor vehicle stop begun by another law enforcement trooper; and the recording shall continue until the motor vehicle stop is completed and the stopped vehicle departs, or until the trooper's participation in the motor vehicle stop ends (the recording shall include requests for consent to search a vehicle, deployments of drug-detection canines, and vehicle searches). If a trooper operating a vehicle with MVR equipment actively participates in a motor vehicle stop and is aware that the motor vehicle stop was not recorded using the MVR equipment, the trooper shall notify the communications center of the reason the stop was not recorded, which the center shall record in a computerized information system.**

Compliance Status: **In Compliance**



## Methodology

In addition to verifying the existence of a video tape in each patrol vehicle for each incident selected for review this reporting period (see above), members of the monitoring team pulled for review a sample of 429 post-stop law enforcement actions of interest to the Decree. These included 429 events selected from New Jersey State Police databases, and 417 events assessed by reviewing video tapes.<sup>78</sup>

## Assessment

While policies have been implemented requiring video and audio recording of all Decree-related traffic stops, not all stops are recorded in conformance with the Decree. As noted in Section 2.2, MVR malfunctions accounted for eight of the 12 incidents for which the monitoring team could not review a video and based its assessment on reports only.<sup>79</sup> The monitoring team noted no audio or video issues 338 of the 417 events for which videos were reviewed. Some problem was recorded for the remaining 79 videos, or in 18.9 percent of the reviews.

In the previous report, the monitoring team indicated that the New Jersey State Police has effectively resolved problems noted in earlier reports concerning "out of tape" issues and troopers patrolling with inoperative video units. This assessment remains true for the current reporting period as well as only six of 417 incidents reviewed via video resulted in an "out of tape" finding. However, various MVR malfunctions were noted in an additional 24 incidents reviewed by the monitoring team. The agency maintains general compliance with the requirements of the Decree.

A problem, noted for several reporting periods, continues this period. This problem involves technical difficulties with audio recordings during motor vehicle stops. Of the 417 stops reviewed via video this period, 49 additional stops exhibited some form of audio difficulty, and 13 of these also exhibited some form of video difficulty (six more stops exhibited only a video difficulty). These incidents increasingly reflect the advanced age of the video technology and difficulties in maintaining the equipment, rather than trooper-error. The New Jersey State Police's implementation of new digital video systems will reduce these numbers, as well as facilitating video reviews when the monitoring team moves into future reporting periods.

The monitoring team noted 26 events (of 417 reviewed) in which audio or video activation by the trooper was delayed for a reason other than technical difficulties. Supervisors noted and corrected all of these errors. There were also 38 tapes reviewed by the monitoring team in which the troopers turned off audio or video before the end

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<sup>78</sup> All 417 events subject to video review were included in the 429 MVSRs reviewed.

<sup>79</sup> See footnote 17 on page 11.

of the stop. Supervisors noted all of these errors as well. This constitutes a 100.0 percent compliance rate that is within the established >90 percent requirement for this task. The New Jersey State Police remains in compliance with this task.

## **2.12 Compliance with Task 35: Supervisory Review of Trooper Reports**

Task 35 stipulates that:

**35. The reporting trooper's supervisor shall review each report prepared pursuant to §§31-33 within 14 days of the precipitating incident and, as appropriate, in conjunction with that review, may view any associated MVR tape.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.2 above for a detailed description of the data collection and analysis processes used to determine compliance levels for this task.

### Assessment

A review of all available electronic records of motor vehicle stops,<sup>80</sup> completed during the reporting period indicated that all selected events had their supporting motor vehicle stop reports reviewed by supervisory personnel. The monitors assessed all electronic records for MVSRs, and, as in the previous reporting period, determined that greater than 98 percent of all MVSRs received initial supervisory review within 14 days of the event reported in the MVSR. Only 80 percent of all stop reports were approved within that period, or roughly the same percentage reported in the first OLEPS report (81%). However, the completed second-level approval rate reported then reflected almost a five-percentage point decline in second-level approvals from the seventeenth reporting period.

The monitoring team reviewed all completed MVSRs for the 429 selected stops reviewed this period for evidence of reporting or procedural errors that should have been noted by supervisory personnel. Supervisory personnel, prior to the monitors' review, also reviewed all but one tape reviewed by the monitors. From those events also reviewed by supervisors, the monitors noted 23 that exhibited some form of reporting problem that should have been noted by supervisory review, but was not.

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<sup>80</sup> Electronic records were not available for five events.

(Seven events had additional errors that were also not caught before the monitoring team's review.)

A total of 23 events with uncaught errors constitutes an error rate of 5.4 percent, within the allowable ten percent error rate for this task.

## **2.13 Compliance with Task 36: Supervisory Review of MVR Tapes**

Task 36 stipulates that:

**36. The State shall adopt a protocol requiring that State Police supervisors review MVR tapes of motor vehicle stops on a random basis. The protocol shall establish the schedule for conducting random reviews and shall specify whether and in what manner the personnel conducting the review shall prepare a written report on each randomized review of an MVR tape. Prior to implementation, the protocol shall be approved by the United States and the Independent Monitor.**

Compliance Status: **In Compliance (On warning)**

### Methodology

See Section 2.2 above for a description of the methodology used to assess compliance for this task.

### Assessment

S.O.P. F-19 was revised during the seventeenth reporting period, changing the scheduling of MVR reviews and management reviews. During electronic reviews of Supervisor's Review of Motor Vehicle Contact Recordings, members of the monitoring team reviewed 427 supervisors' MVR review reports and 416 of the tapes reflected in these reviews. The monitors noted above in Section 2.3 that non-station personnel conducted about 75 percent of the initial video reviews. Management reviews were conducted both by station-level and troop-level personnel. Thus, many supervisory corrections noted in this reporting period occurred at the troop level, rather than at the station level.

A total of 55 errors were not caught by supervisors among the 428 incidents with MVR reviews. The monitors noted that 32 of the 55 errors were in events initially reviewed by non-station personnel, although 41 had management reviews conducted by station

personnel. The overall error rate for supervisory video review of 55 errors in 428 reviews is 12.9 percent, giving a 87.1 percent compliance rate that is not within the acceptable compliance range of >90 percent.

## **2.14 Compliance with Task 37: Supervisory Referral to PSB of Observed Inappropriate Trooper Conduct**

Task 37 stipulates that:

**37. After conducting a review pursuant to ¶35, ¶36, or a special MVR review schedule, the personnel conducting the review shall refer for investigation by the Professional Standards Bureau ("PSB") any incident where this review reasonably indicates a possible violation of the provisions of this Decree and the protocols listed in ¶29 concerning search or seizure procedures, nondiscrimination requirements, and MVR use requirements, or the provisions of the Decree concerning civilian complaint procedures. Subsequent investigation shall be conducted by either the PSB or the Office of the Attorney General ("OAG") as determined by the State. Appropriate personnel shall evaluate all incidents reviewed to determine the need to implement any intervention for the involved trooper.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.2 above for a description of methodologies used to assess compliance for this task.

### Assessment

The monitoring team has observed "course-of-business" records of continual referrals to OPS of actions or omissions by road personnel, although such referrals have become more rare in recent reporting periods. This is, in the monitors' opinions, directly due to the levels of routine supervision, which have reduced errors on the part of road personnel. The monitoring team noted no incident that should have been referred to OPS during the period, but was not. Rather, the monitoring team found evidence of referrals. The New Jersey State Police is judged to remain in compliance with this task.

## 2.15 Compliance with Task 38: Periodic Reviews of Referral Decisions

Task 38 stipulates that:

**38. The State Police and the OAG shall conduct periodic reviews of referral decisions pursuant to ¶ 37 to ensure appropriate referrals are being made. State Police personnel shall be held accountable for their referral decisions.**

Compliance Status: **In Compliance**

### Methodology

Personnel at the Office of the Attorney General (through its Office of State Police Affairs during the reporting period) and the New Jersey State Police are aware of the requirement to monitor referral decisions pursuant to paragraph 37 of the Consent Decree. Training for all supervisory personnel included a discussion of the requirement to “copy” to the Office of State Police Affairs any referrals to OPS by supervisory personnel.

Referrals have been made to the Office of Professional Standards. Personnel from the OAG are aware of the requirement for periodic audits, and have conducted audits of New Jersey State Police activities during the last reporting period (see section 2.83, below). OLEPS has in place an extensive audit process designed to identify and remedy problematic supervisory processes, including problematic referral decisions. Staff from OLEPS routinely audit field supervisory personnel’s review of field practice, their associated supervisory actions to remedy inappropriate action on the part of law enforcement personnel, and their decisions to (or not to) refer trooper behavior to OPS.

### Assessment

No incidents were noted, during the monitoring period that should have been referred to OPS and were not. The New Jersey State Police remains in compliance with this task.

## 2.16 Compliance with Task 39: Regular Supervisory Activity in the Field

Task 39 stipulates that:

**39. The State Police shall require supervisors of patrol squads that exclusively, or almost exclusively, engage in patrols on limited access highways to**

**conduct supervisory activities in the field on a routine basis.**

Compliance Status: **In Compliance**

Methodology

See Section 2.2 above for a description of methodologies used to assess compliance for this task.

Assessment

The monitoring team reviewed 168 motor vehicle stops that were events at which a New Jersey State Police sergeant was present, constituting field activity in 39.2 percent of all 429 stops selected this period. This rate was consistent with the rate in the previous period (39.6%). Supervisory presence was at 49.4 percent in the sixteenth reporting period and at 61.0 percent in the fifteenth report.<sup>81</sup> For events involving a consent request, a canine deployment, or a use of force during this reporting period, there was a supervisory presence in 59.8 percent of these incidents, down over three percentage points from the last reporting period. A supervisor was present in 22.0 percent of all other incidents, representing an increase from the 14.6 percent reported in the seventeenth reporting period. Nonetheless, critical incidents remain subject to routine supervision in the field.

The New Jersey State Police remains in compliance with this task.

**2.17 Compliance with Task 40: Development of a Management Awareness and Personnel Performance System**

Task 40 stipulates that:

**40. The State shall develop and implement computerized systems for maintaining and retrieving information necessary for the supervision and management of the State Police to promote professionalism and civil rights integrity, to identify and modify potentially problematic behavior, and to**

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<sup>81</sup> On May 16, 2007, Field Operations issued a memorandum restricting which personnel can be considered a "supervisor" on scene. Prior to that date, a Trooper I on scene who had completed the First Line Supervision course in anticipation of promotion to Sergeant could act in a supervisory capacity. After this date that was no longer true.

**promote best practices (hereinafter, the "Management Awareness Program" or "MAP").**

Compliance Status: **In Compliance**

### Implementation Summary

The Management Awareness Personnel Performance System (MAPPS) went on-line January 1, 2004, during the tenth reporting period. Full compliance with all MAPPS tasks (40 through 53 [6])<sup>82</sup> was reached in the *Monitors' Twelfth Report* (July 2005), when State Police demonstrated to the federal monitors the ability to discuss aggregate stop data and address trends. (See Appendix One.) This reporting period is the first since the issuance of the MAPPS Standard Operating Procedure (S.O.P) C-11 on December 31, 2008. S.O.P. C-11 codified MAPPS policies that previously existed in annual Operations Instructions and were being refined since system implementation in 2004. The federal independent monitors approved S.O.P. C-11.

MAPPS tasks require a review that includes two types of assessment: are appropriate data available in a timely manner and stored in a secure way (Tasks 41-6), and, is the system being used as a management tool, according to policy, to inform supervisory and management decision making (Tasks 47-53). Because use of the system often requires "data" to be entered into MAPPS, the two assessments become interrelated.

Organizationally, responsibility for the data in the MAPPS system as implemented under the Consent Decree is spread across multiple entities within State Police. For the most part, the system is a repository of information from other information systems in Division, but accessible in MAPPS through processing developed primarily by an outside vendor that continues with upgrades and enhancements to the system. The vendor is responsive to needs of the MAPPS Unit (within the Office of the Chief of Staff and under the Strategic Initiatives Officer). In its broadest definition, MAPPS as a "system" incorporates its feeder systems as well. Stop data aggregated in MAPPS come from the Computer Aided-Dispatch (CAD) system and the Records Management System (RMS), which are managed by the Information Technology Bureau. Misconduct data and complaints that are handled as performance issues (i.e., Performance Investigation Disposition Reports or PIDRs) come from the IA-Pro database of the Office of Professional Standards. Information in MAPPS on assignments and promotions is fed from the Human Resources Bureau. Training information displayed in MAPPS is a live view of the Academy's database.

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<sup>82</sup> Compliance with Tasks 54 and 55 was obtained by the end of 2001, and was noted in the first report. These tasks required a survey of drivers on the New Jersey Turnpike to obtain estimates of the racial compositions of drivers and permitted additional surveys of other roadways.



Similarly, the reviews of MAPPS data are the responsibility of multiple organizational entities and many reviews themselves are entered into MAPPS, becoming additional performance data available about troopers. All supervisors, regardless of their unit assignment, are required to review MAPPS data and are required by MAPPS policy to note certain reviews in MAPPS (Task 48). All evaluations and quarterly appraisals are to be entered into MAPPS, as are any interventions taken for members, regardless of unit assignment. Most stop data reviews of individuals and video reviews (cf. Tasks 44ff of the Consent Decree) obviously fall primarily to supervisors in the Field Operations Section. Task 52 further requires that action be taken by supervisors to address performance issues. Unit and troop analyses of stop data and trends fall to the MAPPS Unit's Risk Analysis Core Group (RACG) that provides the synthesized data to a command-level panel for review (Tasks 50 and 51). The RACG is also responsible for analyzing MAPPS data for specific units, such as for the Academy on trends that indicate training issues. Patterns of individual misconduct are primarily reviewed by the Office of Professional Standards (OPS), which, by current policy, is responsible for Task 53.

## Methodology

This reporting period, the monitoring team assessed the MAPPS information system to ensure that MAPPS is being used appropriately as a personnel management tool. In all, the monitors noted MAPPS system functionalities for the 429 incidents comprising the sample described above in Section 2.2, and with several independent tests. These tests included assessing available MAPPS information for all 29 troopers subject to meaningful reviews in the first half of 2009 and follow up on 11 troopers subject to these reviews in 2008 as noted in the previous report (see Task 53). Not all of the troopers subject to meaningful reviews were from the Field Operations Section. On an on-going basis, OLEPS monitors MAPPS system issues, and, reviews and approves policy changes. In addition, members of OSPA attended and observed all quarterly Risk Management Advisory Panel meetings, at which MAPPS data and other information are presented to assess existing and potential risks to the State Police that might be mitigated by changes in training, supervision, policy or leadership. The results of these process tests are discussed below, in the analysis of tasks 41-53.

## Assessment

MAPPS has been implemented as an operational system, and as implemented, has all of the individual system capabilities required by the Decree. The live data in MAPPS are the full spectrum of system data anticipated for MAPPS. The application of benchmarking criteria and implementation of the capacities for conducting long-term analyses continue to be observed for the eighth consecutive reporting period. As noted in the specific tasks below, the challenge for the New Jersey State Police, post the

federal Consent Decree, is continuing to optimize the data tools and policies now at its disposal and ensure their integration within MAPPS, as well as across the various units and subunits within the Division.

## **2.18 Compliance with Task 41: Data Included in the MAPPS System**

Task 41 requires that:

**41. The MAP shall consist of the following information:**

- a. all items of information in connection with all motor vehicle stops that are required to be recorded in a written report, form, or log, or reported to the communications center, pursuant to ¶29 and the protocols listed in ¶29 of this Decree, except that duplicate information need not be entered, and information as to whether the incident was recorded with MVR equipment need not be entered if all patrol cars are equipped with MVR unless a patrol car was equipped with MVR equipment that was not functioning;**
- b. information on civilian compliments and other indicia of positive performance; information on misconduct investigations; reports on use of force associated with motor vehicle stops; on-duty and off-duty criminal arrests and criminal charges; civil suits involving alleged misconduct by state troopers while on duty; civil suits in which a trooper is named as a party involving off-duty conduct that alleges racial bias, physical violence or threats of violence; and**
- c. implementation of interventions; and training information including the name of the course, date started, date completed and training location for each member receiving training.**

Compliance Status: **In Compliance**

### **Methodology**

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

## Assessment

The monitors identified 25 specific sets of data required by paragraph 41. Each of the 20 required primary elements, i.e., those not identified as being “narrative elements” which are allowed to be stored outside of MAPPS proper, continue to be found in the MAPPS system. In addition, the five non-primary requirements, identified as “narrative elements” were reasonably available through other systems. The monitors continue to find the system to be capable of processing the required data. The system continues to be reasonably user-friendly and usable. One issue noted below was uncovered, brought to the attention of the New Jersey State Police and eventually corrected.

All items required by subparagraphs “b” and “c” of paragraph 41 are included in the operational MAPPS. However, OLEPS review of the Training Module of MAPPS for the recording of mandated training revealed an issue with the recording of firearms training (“on duty”) for 2009. No entries were found for the required spring and fall firearms training. It was learned from the Training Academy that in order for range masters at diverse sites to enter attendance information at the site, a database change had to be made to the training database (known by the acronym “ACTS”), affecting where the data for the course would be accessed. The MAPPS system accesses the training database and displays it in MAPPS. While the Academy was well-aware of the issue, apparently the MAPPS Unit was never notified so that the system-access programming could be adjusted. When the MAPPS Unit was notified of the issue, it immediately moved to correct the problem. This incident raises the issue of whose responsibility it should be to keep MAPPS entries current (Task 45). OLEPS accessed the MAPPS database to do its review in August 2010 and it appears that no other users of MAPPS in the eight months since the end of 2009 had discovered the lack of the 2009 firearms training information.<sup>83</sup> Auditing protocols for MAPPS might be needed, but if source databases are changing it seems the unit responsible for the source database bears responsibility in notifying the MAPPS Unit when changes might affect data access.

Information on the implementation of interventions is entered in MAPPS, but as noted in the previous report, the computerized link of the interventions to video reviews and more commonly, when required for misconduct cases or PIDRs, does not happen in all cases. The same issue was noted with “Performance Notices” given for commendations in this review period; here the issue is often the lack of CAD number associated with the commendation. Thus, it is not always clear as to what specific event an intervention or commendation was meant to apply, nor, whether interventions have been taken to address specific misconduct or performance issues.

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<sup>83</sup> The Academy has responsibility for tracking the completion of training and notifying supervisors, so supervisors would not need to check MAPPS for this purpose. However, it is somewhat surprising that the missing information was not noted by supervisors conducting historical reviews of MAPPS data when taking on a new position, or when reviewing a new member under their command.

The New Jersey State Police remains in compliance with this task.

## **2.19 Compliance with Task 42: Annual Access to Troopers' Personal MAPPS Data**

Task 42 requires that:

**42. All information in MAP on substantiated misconduct investigations, civilian compliments, and other indicia of positive performance which can be attributed to a specific trooper shall be made available to that trooper on an annual basis upon written request. Nothing in this paragraph shall be construed as granting that trooper access to confidential documents other than those identified in this paragraph, or to any information which cannot be attributed to the trooper requesting the information.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

### Assessment

During this reporting period (February 2009), MAPPS system and policy protocols changed, giving troopers routine and direct access to most of their own MAPPS data, thereby going beyond the access required by this task. (This policy change was approved by the federal monitors in the seventeenth reporting period.) Prior policies gave troopers access to MAPPS data by meeting with supervisors. Training in MAPPS system navigation was provided on-line for troopers without any previous MAPPS experience.

## 2.20 Compliance with Task 43: Production of "Counts" and Percentages for Stop Data

Task 43 requires that:

43. Regarding the motor vehicle stop information identified in ¶29 (a) (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19) and recorded in accordance with the protocols identified in ¶29(a), the MAP shall have the capability to search and retrieve numerical counts and percentages for any combination of the above-referenced information and to run reports for different time periods (e.g., monthly, quarterly, annually) and for individual troopers, squads, and stations. Regarding the motor vehicle stop information identified in ¶29(a)(5A, 8A, 12A, 13A, 14A, 15A, and 17A) and recorded in accordance with the protocols identified in ¶29(a), it will be sufficient that the MAP shall have the capability to access (through cross-referenced paper documents or other method) this descriptive information entered on specific incidents and matters. Regarding the information identified in ¶41(b and c), to the extent technologically feasible, the MAP shall be developed to have the capability to search and retrieve numerical counts and percentages for any combination of the information and to run reports for different time periods and for individual troopers, squads or stations. To the extent that the MAP shall require textual or narrative descriptions of misconduct allegations or other information identified in ¶41(b and c), it will be sufficient that the MAP only have the capability to retrieve this descriptive information.

Compliance Status: **In Compliance**

### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

### Assessment

The primary data elements identified in paragraph 29 a (1-19) can be displayed by “count” and percentage, and reported by different time periods, as required by this paragraph. MAPPS contains the ability to access (in most cases through other available automated systems) the items identified in paragraph 29a (5a, 8a, 12a, 13a, 14a, 15a, and 17a). Aggregations of motor vehicle stop data now include counts and percentages according to more detailed reasons for stop and CAD details now include the statutes for which traffic enforcement was taken, as well as counts of summonses. These new data elements were added to reflect enhanced collection of information on motor vehicle stops possible with the new CAD system implemented in the previous reporting period. MAPPS has the capacity to retrieve and report information regarding misconduct investigations/allegations, civilian compliments, civil suits, uses of force, post-stop interactions, criminal arrests and charges and implementation of interventions. Access to these elements is reasonably effective and efficient, in the opinion of OLEPS.

## **2.21 Compliance with Task 44: Common Control Numbers**

Task 44 requires that:

**44. Where information about a single incident is included within the MAP from more than one document the State shall use a common control number or other means to link the information from different sources so that the user can cross-reference the information and perform analyses.**

Compliance Status: **In Compliance**

### **Methodology**

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

### **Assessment**

The State has identified the “CAD incident number” as the common control number. Use of the CAD incident number has been in effect since early in the Consent Decree process. The CAD incident number is present in MAPPS records as appropriate, but not consistently for all interventions and commendations related to an incident. As noted section 2.16, above, interventions do not always directly link to the review or misconduct case to which they apply, nor do commendations always link to the CAD incident to which they apply. The monitoring team noted no further issues with linking

unique CAD incident numbers that resulted during the implementation of the new CAD system in the previous reporting period.

## **2.22 Compliance with Task 45: Timely Access to MAPPS Data**

Task 45 requires that:

**45. The State shall ensure that information is included within the MAP in an accurate and timely fashion and is maintained in a secure manner.**

Compliance Status: **In Compliance**

### **Methodology**

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

### **Assessment**

Operational plans for inclusion of MAPPS information have been articulated in New Jersey State Police operations instructions in prior reporting periods and now in S.O.P. (C-11) and supporting documentation for this reporting period. Implementation of these procedures has been accomplished, and the system works as designed relative to the requirements of this task. One issue arose in this period with respect to the ability to view on-duty firearms qualifications for 2009 in the Training Module in 2010. In response to this issue, the MAPPS Unit worked with the Information Technology Bureau and with the MAPPS vendor to resolve the issue. (See details under Task41.) No other major issues occurred during the reporting period with the timely availability of specific data in the MAPPS system.

## **2.23 Compliance with Task 46: Development of a MAPPS Plan**

Task 46 requires that:

**46. Within one hundred and eighty (180) days following entry of this Decree, the State shall develop a plan for designing and implementing the MAP including the use of the MAP, a timetable for implementation, and a specification of the information contained in State records pre-dating the implementation of the MAP that can reasonably be incorporated in the MAP. Prior to effectuating the**



**implementation plan, the plan shall be approved by the United States and the Independent Monitor. Within 180 days following the entry of this Decree, the State shall begin conducting the supervisory and management reviews required by ¶¶48-53.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

#### Assessment

With implementation of the MAPPS components during the tenth reporting period, the State has effectuated its MAPPS plan.

### **2.24 Compliance with Task 47: Supervisory and Management Reviews**

Task 47 requires that:

**47. Consistent with the requirements of ¶¶48-53 infra, the State shall develop a protocol specifying the manner in which supervisory and management reviews of individual state troopers, and State Police units and sub-units (e.g., troops, stations, and squads), shall be conducted, and the frequency of such reviews. Prior to implementation, the protocol shall be approved by the United States and the Independent Monitor.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

## Assessment

Operational plans for use of MAPPS information by supervisory and management personnel have been articulated in New Jersey State Police operations instructions and supporting documentation. Implementation of these functions began in January 2004.

For the past eight reporting periods, both the federal monitors and the OLEPS monitoring team have been reviewing the use of supervisory review processes regarding instances in which supervisors have noted a problem with a motor vehicle stop, and created narratives in the MVR reviews contained in MAPPS identifying a problem with trooper actions, noting in MAPPS the action taken regarding the problems as "No Further Action," as opposed to taking an intervention. The issues raised in narratives are not easily retrievable by subsequent supervisors who may then miss a developing pattern of performance that requires more formal remediation, while lists of interventions for specific troopers permit easy access to issues.

The federal monitors discussed this issue in detail with the State, and reviewed MAPPS training documents regarding this process. MAPPS developed and implemented, during the fourteenth reporting period, a "trooper centric" data query system that deals with this issue in part, but does not address clearly issues noted in narratives. OLEPS also notes that misconduct cases in the trooper-centric module are shown based on date of incident, not date of OPS case. This is not optimal for checking the "three-in-two" review policy (Task 53), but also would affect presumably the ability to do the required historical reviews of member for misconduct: Supervisors could easily miss the fact that a member has active misconduct cases that originate from outside the historical review period, or even those relevant to a specific quarterly appraisal or evaluation period. It may make more sense to display two counts of OPS cases: by date of OPS case and with a separate list for display of all active cases within the time frame requested for the trooper centric data.

The monitoring team continues to note "No Further Action" for motor vehicle stops where problems are noted in narratives and to look for repeated problems that are not addressed. No repeated errors were found in this reporting period; only eight troopers were in three or more incidents in which supervisors or OLEPS noted errors, which would be a minimum number of events in which to track repeated errors. As noted in Task 27, of 248 events with errors noted by monitoring team, 193 events had all errors caught by supervisory and management reviewers prior to its review, resulting in a 12.8 percent error rate for the 429 incidents sampled.

### **2.25 Compliance with Task 48: Quarterly Reviews of MAPPS Data**

Task 48 requires that:

**48. At least quarterly, State Police supervisors shall conduct reviews and analyses of data obtained from the MAP and other appropriate sources to ensure that individual troopers and State Police units and sub-units are performing their duties in accord with the provisions of this Decree and associated protocols.**

Compliance Status: **In compliance**

#### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

#### Assessment

Operational plans for use of MAPPS information by supervisory and management personnel have been articulated in New Jersey State Police operations instructions and supporting documentation. Implementation of these procedures has been executed. The monitors have reviewed reports generated in response to this section of the Decree, and find them to be responsive to the requirements of the Decree and to be used effectively as management tools. The monitoring team found evidence of the quarterly MAPPS reviews required of this task, and fairly routine recording of historical reviews of troopers as required by policy upon transfers to new supervisors.

Shortly after the implementation of MAPPS in 2004, supervisors were given the ability to enter "Performance Notices" (PNs) directly into MAPPS, so that the PNs became part of the Performance Module. Thus, "Quarterly Appraisals" that are documented on PNs became part of MAPPS. Annual Evaluations are not entered directly into MAPPS, but are to be scanned into the Performance Module. When MAPPS was checked for the monitoring period, it is clear that supervisors in Field Operations follow the requirements of MAPPS policies almost 100 percent of the time. Of the 28 badge numbers checked specifically for these evaluations, the required quarterly appraisals and annual review were present for all but four troopers. Of these, two had at least appraisals or the annual evaluation. The other two had neither appraisals nor evaluations; both of these troopers held the rank of sergeant, one in Field Operations and one not. MVR reviews for 2009 again were not available for several troopers with stops during the reporting period; the stops tended to occur on overtime details, not in routine assignments.<sup>84</sup>

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<sup>84</sup> The current MVR quarterly review policy is difficult to sample appropriately to ascertain a rate of compliance with it.

## 2.26 Compliance with Task 49: Reporting Capabilities of MAPPS

Task 49 requires that:

**49. To the extent reflected in ¶43, reports of MAP data shall regularly be prepared regarding individual troopers, stations and squads, for use in reviews as appropriate. The reports shall include the following information:**

**a. the number of motor vehicle stops, by race/ethnicity, reason for the stop (i.e., moving violation, non moving violation, other), road, squad, and trooper station; and the number of enforcement actions and procedures taken in connection with or during the course of a motor vehicle stop, by race/ethnicity, reason for the stop (i.e., moving violation, non- moving violation, other), road, squad and trooper station;**

**b. data (including racial/ethnic data) on complaints, misconduct investigations (for each type of investigation, as delineated in ¶73), discipline, intervention, and uses of force associated with motor vehicle stops.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

### Assessment

Operational plans for reporting of MAPPS information within the categories stipulated in this paragraph have been articulated in New Jersey State Police operations instructions and supporting documentation. Implementation of these has been executed. For this reporting period, the monitors reviewed MAPPS reports created in response to this section of the Decree and found them to be effective management tools. The State Police remains in compliance with this requirement of the Decree.

## 2.27 Compliance with Task 50: Comparisons Using Benchmarks

Task 50 requires that:

**50. To the extent reflected in ¶43, analyses of MAP data concerning motor vehicle stops shall include a comparison of racial/ethnic percentages of motor vehicle stops (by reason for the stop (i.e., moving violation, non moving violation, other)) and racial/ethnic percentages of enforcement actions and procedures taken in connection with or during the course of such stops, with a benchmark racial/ethnic percentage if available (see ¶¶54-55); a comparison of racial/ethnic percentages for such stops with the racial/ethnic percentages for enforcement actions taken in connection with or the during the course of such stops; a comparison of racial/ethnic percentages for consent searches of vehicles, and requests for consent to search vehicles, with "find" rates by race/ethnicity for motor vehicle consent searches; a comparison of racial/ethnic percentages for non-consensual searches of motor vehicles with "find" rates by race/ethnicity for motor vehicle non-consensual searches; evaluations of trends and differences over time; and evaluations of trends and differences between troopers, units, and sub-units.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

### Assessment

During the twelfth site visit, MAPPS personnel presented to the monitors detailed documentation regarding benchmarking and trend analysis. The activities related to Task 50 were organized into two separate functions: detailed data analysis using external and internal benchmarking processes, and high-level analysis and decision making regarding issues identified by the analysis by the Risk Analysis Core Group (RACG) within the MAPPS Unit, in which key command staff review and discuss MAPPS data reports and make key decisions to move the organization forward regarding motor

vehicle stop (and other) critical issues. This review and discussion occur at quarterly (or more frequent) Risk Management Advisory Panel meetings.

In 17th Report, the resources for the MAPPS Unit, workload, staffing, technology, and information access all were found to be fully supported by the Division and functioning at a high level. During this reporting period, as in the first OLEPS review period, the resources remained sufficient. OLEPS (then as OSPA) staff attended all Risk Management Advisory Panel meetings and continued to encourage more focused motor vehicle stop analysis presentations, as well as the discussion of a broader array of risk issues (consistent with the proposal for risk management that secured Phase I compliance for Task 51 while under the Consent Decree). The technical capacity of the analysts comprising the RACG within the MAPPS Unit continues to grow, permitting the basic motor vehicle stop analysis to be completed in less time, leaving more time for additional analysis, but additional routine and ad hoc support roles the RACG has for other units within Division also continue to increase. For example, as noted in the previous report, the RACG now prepares routine reports on use of force.

In this reporting period, the MAPPS Unit developed a written procedure to address on-going issues with the data aggregations in the MAPPS Printed Reports module, which had been the core source for producing the reports to satisfy Task 50. A more flexible analytic process has been implemented so that the RACG is able to use data directly from MAPPS' source databases. Procedures for long-term retention and access of data for trend analyses were addressed, as the data will not be accessible in MAPPS in their final analytic form. The Unit again maintained the required report schedule (Task 50) addressing motor vehicle stops and meetings of the Risk Analysis Advisory Panel to address issues the reports might have raised (Task 51) during the reporting period. The previous report noted the Division's attempt to receive a waiver from the state hiring freeze in order to hire a skilled civilian replacement; the waiver application was denied. Yet, a sufficient core civilian staff that would not be subject to transfer is necessary to fulfill the Division's growing analytic needs and is therefore a priority. In the continuing opinion of the monitoring team, the addition of a senior analyst with strong technical report-writing skills would be an excellent addition to the civilian staff.

The State Police remains in full compliance in this area.

## **2.28 Compliance with Task 51: Analysis of Trends**

Task 51 requires that:

**51. To the extent reflected in ¶43, analyses of other data generated by the MAP shall include evaluations of trends and differences over time and evaluations**

**of trends and differences between troopers, units, and subunits.**

Compliance Status: **In Compliance**

Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

Assessment

A central point of the Consent Decree was for the New Jersey State Police to identify, analyze and respond to issues related to in-field enforcement. During the course of the fifteenth reporting period, the New Jersey State Police evolved in its use of the MAPPS/RACG process, moving beyond what was *required* by the Decree to more advanced problem-analytic and problem solving processes using MAPPS and portions of the RACG structure. The organization's response to the issues raised in that period showed a strong response to identifying the issues generated by the training, analyzing the reasons those issues surfaced, and responding with a supervisory and managerial response that, eventually, resolved those issues.

As in the previous reporting periods, the RACG continues to be asked to respond to in-field enforcement issues and misconduct-related issues. As noted above under Task 28, MAPPS maintains a database on all consent requests for Field Operations that was modified to track details of requests based on probable cause following the Peña-Flores court decision. Work began during the seventeenth reporting period on developing a new module for MAPPS (and its associated policies) so that MAPPS now captures and reports on use of force information to assist the Office of Professional Standards. The MAPPS/RACG process also offers support to that office's complaint reduction initiatives (see Section 2.32 below).

In addition, as a result of the RACG meeting process and Task 50 reporting, the RACG worked with Field Operations to enhance the data collection of post-stop interactions recorded in the Motor Vehicle Stop Report. The changes were implemented in January 2008.

The New Jersey State Police re-attained compliance with this task in the sixteenth reporting period, and continued to issue all required reports and analyses through the last three reporting periods. OLEPS reviewed staffing and support for the reporting period and found it to be minimally sufficient to maintain a high level of performance. As noted above, the support for analytic capabilities within the New Jersey State Police must remain a high priority so that sufficient and appropriately trained civilian and



enlisted personnel are able to maintain routine functions at this level---as well to perform an increasing array of new analytic tasks in an organization with escalating data needs to inform its decisions.

During this reporting period, OLEPS (then as OSPA) continued to encourage the State Police to bring an increasing variety of risk issues to the Risk Management Advisory Panel meetings for discussion and resolution. A fully integrated risk management function remains the monitoring team's goal for the Division, thereby avoiding duplication of efforts and preventing broader issues from slipping through the cracks.

## **2.29 Compliance with Task 52: Supervisors to Implement Necessary Changes**

Task 52 stipulates that:

**52. Each supervisor shall, consistent with his or her authority, implement any appropriate changes or remedial measures regarding traffic enforcement criteria, training, and enforcement practices for particular units or subunits or implement any appropriate intervention for particular troopers; conduct any necessary additional assessment or investigation regarding particular units or subunits or particular troopers; and/or make any appropriate recommendations.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

### Assessment

During the current reporting period, members of the monitoring team noted at least 94 instances of supervisory personnel issuing "performance notices" or taking other formal interventions for actions that are inconsistent with policy or established practice. Supervisors also issued commendations in an additional 131 events. Evidence exists to support the fact that supervisory personnel are reviewing trooper activity and issuing performance notices or other "interventions" when inappropriate behavior occurs, in addition to noting issues in the narrative of the MVR review (see Task 47). The monitoring team did note 55 instances, however, where supervisors failed to take corrective action and the warning for Task 27 that resulted requires attention. In

addition, the monitors continued to note the high proportion of corrective action taken by non-station personnel. This trend runs counter to the Consent Decree emphasis on providing first-line supervisors with the tools to manage subordinate troopers in “real time” at the station level.

### **2.30 Compliance with Task 53: Supervisory Review of Troopers with More than Two Misconduct Investigations in Two Years**

Task 53 stipulates that:

**53. A supervisory review shall be conducted regarding any state trooper who within a period of two years, is the subject of three misconduct investigations of any kind initiated pursuant to ¶ 73. Where appropriate, the review may result in intervention being taken. In the event the supervisory review results in intervention, the supervisor shall document the nature, frequency, and duration of the intervention.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.17 above for a description of the methodology used to assess the requirements of this paragraph of the Decree.

#### Assessment

The State Police has developed a system of notifications when a third misconduct investigation occurs in a two-year period. Development of protocols for implementation of this provision has been a primary focus for several reporting periods. During the tenth reporting period, the State had assigned responsibility for this task to the OPS. Data continue to indicate that these reviews are being meaningfully conducted as required by the Decree by OPS. In the sixteenth reporting period, documentary evidence available in MAPPS indicated that supervisory personnel were meeting with troopers who meet the criteria of this task, and, when necessary, discussing any applicable patterns of complaints.

During the seventeenth reporting period, the protocol for these meetings and their subsequent documentation in MAPPS changed. OSPA's review of the MAPPS system for the seventeenth period uncovered a problem with the interface that should link the OPS reviews to supervisors, and to recording any meetings on these reviews in MAPPS.

MAPPS Unit personnel were apprized of the problem. In July 2008, the data for the 2007 OPS meaningful reviews required by this task were entered into the MAPPS system, some for reviews OPS conducted a year earlier; none of the reviews resulted in supervisors being required to meet with subordinates. The failure to maintain timely OPS data as required by Task 45 threatened compliance with this task. However, because no further supervisory action was required by the OPS reviews, the New Jersey State Police remained in compliance with this task.

Protocols for the procedures for doing these reviews were redrawn as a result of the issue raised in the 17<sup>th</sup> Report. They now require OPS to document its meaningful reviews in the Intervention Module in MAPPS and supervisors to note the review and interview with the member in the Journal Module (if no further formal intervention is required). In addition, consistent with Task 45, the MAPPS Unit undertook an examination of all data published in MAPPS from the IA-Pro system and set up new protocols for routine auditing of the IA-Pro data, implemented during the current reporting period.

The OPS process for the 3-in-2 reviews for the reporting period was the same as for the last OLEPS reviews. This process holds reviews until after all three cases are disposed. Thus, MAPPS contained interventions for 15 of the 29 troopers indicated for review in the first half of 2009 by the time of OLEPS review in mid-August 2010. Eleven included a journal entry documenting a supervisor's meeting with the trooper. Again in this time period, OPS reviews are geared toward determining if there are any training issues identified by the three (or sometimes more) cases reviewed, but this assessment is not done until after all cases are closed. IA-Pro information for the reviews documents when additional cases are being added to an existing review; however, in some instances a new tracking record is created.

The monitoring team used the badge numbers of the 28 troopers identified for review to check the availability and currency of information in MAPPS modules for these individuals as required by MAPPS policies. The monitoring team noticed several troopers who had Trooper Coach training during the period, but who had open misconduct investigations related to this task. The trooper coach selection process is discussed below in Section 2.36, Task 98.

The OPS policy in place for the last two periods helped explain the fact that almost 40 percent of troopers reaching the "three-in-two" threshold in the second half of 2008 still had no MAPPS entry in September 2009, when OLEPS completed its review for the previous report. Of the remaining troopers flagged for "three-in-two" reviews in the second half of 2008 that had no MAPPS entry to document the reviews by early September 2009, there still remained three without entries a year later at the time of the current review. Because Task 53 broadly falls under the MAPPS section of the decree, which required implementing an "early warning system" to catch behavior in

need of intervention at the earliest point possible, staff met with OPS to get a better understanding of the rationale for the policy change. During the previous reporting period, OPS undertook a "complaint reduction" initiative (described in Section 2.32). The "three-in-two" reviews are a logical extension of this initiative. OPS is working to incorporate the requirements of Task 53 directly into this initiative, and to be sure that OLEPS is current on any policy changes related to this task. To date, after the reporting period, OLEPS has not received formal written policy to address these changes. However, as January 1, 2010, the internal policy for completing the "three-in-two" reviews changed and no longer requires final disposition of all three misconduct cases before reviews are conducted.

The reviews required by this task were completed according to exiting State Police policy, so the State Police remain in compliance with this task.

### **2.31 Compliance with Task 54: Drivers Survey of the New Jersey Turnpike**

Task 54 stipulates that:

**54. To assist in evaluating data reported from the MAP concerning State Police law enforcement on the New Jersey Turnpike, the State shall develop (for purposes of implementing this Decree) a protocol for conducting a survey of a sample of persons and vehicles traveling on the New Jersey Turnpike to determine the racial/ethnic percentage of drivers on the Turnpike. As appropriate, the survey may identify different benchmark figures for different portions of the Turnpike. Prior to implementation, the protocol shall be approved by the Independent Monitor and the United States. The protocol shall be developed and implemented using a consultant jointly selected by the parties. The survey shall be completed within one hundred fifty (150) days of the entry of this Decree. Both the United States and the State agree that the utility and fairness of the MAP described in this Consent Decree will depend to some degree on the development of accurate and reliable benchmarks that account for all appropriate variables and factors.**

Compliance: **In Compliance**

The State completed the required traffic survey, and released the document to the public in the first year under the Consent Decree.

## 2.32 Office of Professional Standards Requirements

### Implementation Summary

Based on more than two years of documented compliance, and with the agreement of the parties and the monitors, the Department of Justice joined with the State in a petition to the Court to release the Office of Professional Standards (OPS) from those requirements of the Consent Decree relating to internal investigations. The Court granted this motion, and, as such, the independent monitors discontinued monitoring for compliance with the Decree effective July 2004 (the tenth reporting period, cf. Appendix One), with the exception of Tasks 87 and 90. First, OSPA and now OLEPS continues to take specific actions designed to evaluate the receipt, investigation and resolution of misconduct complaints filed against members of the State Police.

**Task 87** requires the State, based on the agreement of the parties and the monitors, to complete investigations of citizens' complaints within 120 days of receipt of the complaint. **Task 90** requires the State to consider the nature and scope of misconduct committed by an individual trooper before imposing discipline. The State shall also consider the information contained in with respect to each trooper before imposing discipline.

Compliance Status: **In Compliance**

### Methodology

Currently, OLEPS monitors the activities of OPS in two ways. First, OLEPS is responsible for reviewing each substantiated disciplinary investigation completed by OPS. The purpose of each legal review is to determine whether there is sufficient evidence to move forward with a disciplinary action. This is accomplished by examining the investigative activities undertaken by OPS and assessing the quality and admissibility of the evidence gathered by OPS. A review of the penalty the State Police proposed for each substantiated investigation is also performed. In conducting its review, OLEPS has full access to MAPPS information concerning the trooper's prior disciplinary history and that information is evaluated in conjunction with the quantum of evidence developed by the investigation before disciplinary charges are filed and the target of the investigation is notified of the recommended penalty. Disciplinary matters cannot move forward unless OLEPS is satisfied that there is enough evidence to prove the disciplinary infraction and the recommended penalty is appropriate to the infraction.

Second, OLEPS conducts audits of OPS investigations on a semi-annual basis, as OSPA has since OPS was released from the Consent Decree in 2004. The audits encompass a broad range of the complaints including not just substantiated complaints but also unsubstantiated and unfounded complaints to determine if the evidence in the case supports the findings. The audits involve a review of all complaints involving racial profiling, disparate treatment, excessive force, illegal or improper searches and domestic violence. In addition to a review of the foregoing complaints, a random sample of all other complaints received by the State Police is selected for review. For each complaint, a complete review of the written investigative file is conducted. Those reviews lead in some instances to a review of all investigative evidence including the audio and video tapes assembled by OPS.

### Assessment

For OPS activity in the reporting period, OLEPS, then as OSPA, reviewed a total of 94 closed investigations conducted by OPS. Of that total, 57 investigations consisted of complaints involving racial profiling, disparate treatment, excessive force, illegal or improper searches and domestic violence. The remaining investigations consisted of a random sample of all other complaints investigated by OPS. OSPA conducted a review of the written files for all 94 investigations. An additional review of the file (audio and video tapes, etc.) was conducted in 6 investigations. Any discrepancies were discussed with OPS. OPS remains in compliance for Task 87 and Task 90.

During the previous reporting period and documented in the First OLEPS Report OPS implemented its "Incident Reduction Initiative." The initiative is not a requirement imposed on OPS by the Consent Decree. The initiative hopes to achieve a reduction in the number of complaints through an aggressive program of data collection and analysis that, it is anticipated, will allow OPS to address proactively troopers who are unwilling, unable or unfit to perform their duties. During the current reporting period, OPS continued to modify the program.

The initiative seeks to collect data governing complaints of trooper misconduct and other performance-related issues and analyze the data to determine whether patterns or practices of misconduct or inappropriate behavior can be predicted and thus interdicted or prevented. Every quarter, the OPS database is reviewed for an eighteen-month period, and troopers with the highest volume of complaints (and for complaints of specific types) are identified; the data produced cover the Division in its entirety, as well as by troop and station. The data are then presented to the relevant commanders for their action as they see fit. The OLEPS monitoring team reviewed one case study for a trooper that overlapped with one identified in its MAPPS review for Task 53. It was learned that the trooper had received extensive supervision over a period of months, with progress noted in MAPPS to correct issues that had previously led to misconduct. There was a marked decline in the complaints received for the trooper.

The program continues to promote the value the Consent Decree placed on early intervention to correct unwanted behavior and promote professionalism.

### **2.33 Training Assessment**

#### **Implementation Summary**

The New Jersey State Police Academy (hereafter Academy) attained compliance in all performance areas as of the fourteenth reporting period. The Superintendent and the command staff continue to demonstrate a commitment to and interest in the training function provided by the Academy.

The Second OLEPS reporting period for Tasks 93 through 109 consists of the period between January 1, 2009, and December 31, 2009. Given that many of the activities at the Academy are protracted (e.g., pre-service training, in-service training, development of courses/lesson plans, measurement of training effectiveness) the reporting period has been extended from six months to 12 months to allow for continuity in OLEPS' review and the identification of emerging trends. Actions noted during the monitoring team site visits are discussed in some detail in the paragraphs below.

### **2.34 Compliance with Task 93: Development and Evaluation of Quality of Training Programs**

Task 93 stipulates that:

**93. The New Jersey State Police shall continue to: oversee and ensure the quality of all training of state troopers; continue to develop and implement the State Police academy curriculum for training State Police recruits, and provide training for academy instructors; select and train state trooper coaches in coordination with and assistance from State Police supervisors; approve and supervise all post-academy training for state troopers, and develop and implement all post-academy training conducted by the State Police; provide training for State Police instructors who provide post-academy training; and establish procedures for evaluating all training (which shall include an evaluation of instructional content, the quality of instruction, and the implementation by state troopers of the practices and procedures being taught).**



## Compliance Status: **In Compliance**

### Methodology

The monitoring team reviewed “normal course of business” records for the Academy, and discussed with the Academy staff specific aspects of training development, delivery and documentation processes for the reporting period. The office also reviewed detailed evaluation processes for this requirement of the Decree, and found them to be professionally developed, articulated, and implemented.

### Assessment

Task 93 is a summary of responsibilities carried out by the Academy staff in order to ensure quality training. In addition to the areas of responsibility conferred by the Consent Decree, it is also the Academy’s responsibility to stay current with case law handed down by the courts to make sure that the training is not in conflict with legal requirements.

During this review period, a court decision was handed down by the New Jersey Supreme Court on February 25, 2009, which affected State Police law enforcement procedures relating to motor vehicle searches under the automobile exception allowing a search without a warrant. In State v. Peña-Flores, the Court ruled that a warrantless search of an automobile is permitted when (1) the stop is unexpected; (2) the police have probable cause to believe that the vehicle contains contraband or evidence of a crime; and (3) exigent circumstances exist under which it is impracticable to obtain a warrant.<sup>85</sup>

The Court stated that “exigency encompasses far broader considerations than the mere mobility of the vehicle,” and that exigent circumstances “must be determined on a case-by-case basis under the totality of the circumstances, with a focus on officer safety and the preservation of evidence.”

The Court felt that providing the police officer with immediate access to a judge to obtain a search warrant by telephonic or electronic means would assist police officers in accurately assessing the presence of exigent circumstance and “guarantee citizens the protection that the warrant requirements affords – an evaluation of probable cause by a neutral judicial officer.”

The decision significantly impacted the process by which State Police conduct searches under the automobile exception in this State. In order to comply with the Court’s

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<sup>85</sup> State v. Peña-Flores, 198 N.J. 6 (2009).

decision, the Superintendent issued protocols to serve as a guide for those troopers involved in motor vehicle post-stop actions. (See Section 2.4 for a description.)

Consequently, the Academy had a responsibility to address the case law that resulted in the newly prescribed protocols through training. This training would be crucial because the Court's decision had direct impact on the Consent Decree, which required compliance by the State Police relative to the guarantee provided by the Fourth Amendment that people have the right to be secure in their persons, houses, papers and effects against unreasonable searches or seizures. Not only would the training be crucial, but it would be critical for the Academy to monitor and evaluate the effectiveness of that training in the field. Further discussion of this training can be found under Tasks 100 and 101.

Also during this review period, the New Jersey State Police joined the New Jersey Office of Homeland Security and Preparedness (OHSP) and the Urban Area Security Initiative (UASI) in a collaborative effort to develop intelligence curriculum used in the training of law enforcement personnel, emergency management personnel, analysts, corporate executives and policy/decision makers through a Regional Intelligence Academy (RIA).

The RIA was created through a grant provided by the United States Department of Homeland Security (DHS) and administered by UASI. Since 9/11, federal and state officials have recognized the importance of intelligence and information sharing as it relates to "all crimes, all hazards, and all threats." A strategic plan for this project was formulated in December of 2008, and the RIA materialized in 2009. As outlined, the RIA will provide the curriculum that is put together by a range of subject matter experts to educate "those involved in detecting, deterring, responding to and analyzing criminal activity relating to terrorism and homeland security across multi-jurisdictional and multi-disciplinary boundaries."

Although the RIA falls outside of the mandate of the Consent Decree, those members of the State Police Academy assigned to the RIA and who are involved in curriculum development do so according to the seven-step training cycle as prescribed by the Standard Operating Procedure governing the Academy, S.O.P. C-25 (Training and Oversight Program):

- Diagnosis and Needs Assessment
- Development of Training
- Delivery of Training
- Evaluation of Training
- Revision of Training
- Evaluation of Operational Implementation
- Documentation of Process

The seven-step training cycle is an evaluation process used in the development of training provided to State Police personnel. This process was agreed to by the federal monitors and the State and used by the Training Bureau in an effort to achieve compliance with the terms of Consent Decree. It is commendable that the Academy staff would elect to incorporate this guiding principle for training that falls outside of the mandate of the Decree. It also suggests that the tasks set forth in the Decree have been integrated as a part of the Academy's normal course of business.

In November 2009, the RIA presented an Executive Level Awareness Seminar for municipal and county law enforcement chiefs and executives. The purpose of the training was to assist the policy makers in the areas of crime prevention/ reduction and deterrence of terrorist activity. Some topics presented by members of the State Police and OHSP included:

- Intelligence vs. Information
- Information Sharing Environment (ISE)
- Suspicious Activities Reports (SARS)
- New Jersey's Terrorism Picture
- Overview of NJ Regional Intelligence Center (ROIC)

Twenty-two law enforcement agencies were represented. The analytical program, Metrics that Matter (MTM) was used to assess the course effectiveness. MTM is the analytical software program utilized by the Academy staff to evaluate and assess training.

The Academy continues to develop and oversee pre-service, in-service and specialized training for State Police personnel. In addition, the Academy continues to follow the established procedure for the evaluation of training.

### **2.35 Compliance with Task 97: Encourage Superior Troopers to Apply for Academy**

Task 97 stipulates that:

**97. The State shall continue to encourage superior troopers to apply for academy, post-academy, and trooper coach training positions.**

Compliance Status: **In Compliance**

## Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

## Assessment

In October of 2008, the Academy posted a Division-wide notice for instructor positions via the Administration Information Center (AIC), which is the State Police computer network. In order to qualify, troopers are required to have at least four years of service, a bachelor's degree, and be compliant with the Division's physical fitness standards. Sixteen individuals submitted resumes in January of 2009 and were interviewed by a Specialist Selection Board consisting of four Academy members and a member who was independent of the Academy. Of the 16, five were chosen to join the ranks of instructors. Prior to teaching at the Academy, the prospective instructors had to undergo a meaningful review, a process by which a trooper's performance history is evaluated, and successfully complete an Instructor Certification Course.

As of December 2009, the organizational chart reflected a total of 56 sworn personnel (including three members detached out) and eight civilians assigned to the Academy. Broken down by rank, the 56 consist of the following:

Captain	1
Lieutenant	5
Sergeant First Class	8
Sergeant	12
Trooper	30

In the total count are eight instructors who are "in but not of the Academy." They do not instruct in either pre-service or post-service training. They are assigned to units that provide training outside of the Academy or provide a service to the membership.<sup>86</sup> Consequently, the full complement of instructors for pre-service and post-service training would be at 48, which includes three detachments.

A note of caution was issued during the past monitoring period regarding staffing levels. The Division must support the Academy in their effort to maintain its staffing levels in order to safeguard the progress the Academy has made in the development of curriculum according to the seven-step training cycle and to sustain a level of training necessary to comply with the mandates of the Consent Decree. It bears repeating that staffing was a grave concern raised by the Independent Monitors to the command staff

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<sup>86</sup> These instructors are assigned to the Regional Intelligence Unit and the Armorer Unit. They include two Sergeants First Class, one Detective Sergeant First Class, one Sergeant and four Troopers.

earlier in the monitoring process. It was not until the Monitors' Tenth Report (July 2004) that an improvement was noted. This was as the result of a two-fold increase in Academy staff to 56 sworn personnel and 10 civilian personnel with five vacancies. It has been reported by previous Academy Commandants that this increase was as the direct result of a verbal agreement between the Office of the Deputy Superintendent for Administration and the Independent Monitors that the Academy would be maintained at a staffing level of approximately 61 without detachments.<sup>87</sup> Prior to this juncture, the Independent Monitors found the Academy to be non-compliant with Task 97 due to "chronic understaffing."

The number of sworn personnel conducting training fluctuates when the Academy conducts pre-service training. During this reporting period, the Law Enforcement Science Unit trained 104 recruits from January 5, 2009, until their graduation on June 26, 2009 (150<sup>th</sup> State Police Class).<sup>88</sup> This unit provides training in criminal science, traffic science and basic police practice and procedure. Of the 22 instructors assigned to provide this training, four were detachments. An additional seven members were detached from other areas of the Division to the Academy to assist the In-Service Unit, Firearms & Self-Defense Unit and Training Support Unit during the 150<sup>th</sup> class.

Those detached typically return to their previous assignments upon the completion of pre-service training. Keep in mind that the Independent Monitors were of the opinion that the Academy should be maintained at a staffing level between 58 and 61 sworn personnel *without* detachments in order to sustain a level of training necessary to comply with the mandates of the Consent Decree. Moreover, during pre-service training, the Academy continues to be responsible for post-service training for Division members, further taxing their resources.

The Academy continues to fulfill the requirements of Task 97 by requesting resumes from those troopers interested in applying for the Trooper Coach program. In February of 2009, a Division-wide posting was placed via the AIC for Trooper Coach positions. Eligibility requirements include three years of continuous service, compliance with the Division's physical fitness standards, current assignment in Field Operations, satisfactory performance rating on the most recent annual evaluation, commitment to integrity, knowledge of State Police policy and successful completion of a three-day Trooper Coach Training and Evaluation Course. Those who qualify must appear before an

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<sup>87</sup> During the time period covered in the Monitors' Sixteenth Report, (October 1, 2006 – March 31, 2007), the Academy Staff consisted of 58 sworn personnel with four detachments, and nine civilians. At that time, the Independent Monitors deemed the Academy to be adequately staffed; however, the RIA had as of yet not materialized and the Armorer Unit was not under the Academy's Table of Organization. Therefore, the 58 count in 2006 and 2007 did not include members of those units.

<sup>88</sup> One hundred forty-four recruits entered the Academy. Of that number, 104 graduated.

interview panel and undergo a meaningful review process. Further discussion regarding this process is covered in Task 98.

### **2.36 Compliance with Task 98: Formal Eligibility Criteria for Training Personnel**

Task 98 stipulates that:

**98. The State shall establish formal eligibility and selection criteria for all academy, post-academy, and trooper coach training positions. These criteria shall apply to all incumbent troopers in these training positions and to all candidates for these training positions, and also shall be used to monitor the performance of persons serving in these positions. The criteria shall address, inter alia, knowledge of State Police policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement trooper, experience as a trainer, post-academy training received, specialized knowledge, and commitment to police integrity.**

Compliance Status: **In Compliance**

#### **Methodology**

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

#### **Assessment**

As mentioned in the previous report, the eligibility and selection process for Academy instructors are outlined in the Training Oversight Program, S.O.P. C-25. The eligibility and selection process for trooper coaches are outlined in the Trooper Coach Training and Evaluation Program, S.O.P. F-12.

Both prospective Academy instructors and Trooper Coaches undergo oral interviews and a meaningful review process, where a trooper's performance history is evaluated. This procedure requires input from the Office of Professional Standards (OPS) as well as the Attorney General's Office of Equal Employment Opportunity (EEO).

During this reporting period, the performance history of approximately 137 Trooper Coach candidates was reviewed by a four member committee – two representatives from Field Operations, one representative from the OPS and one representative from Human Resources. It is the responsibility of each representative to present noteworthy information relating to the candidate's job performance for use during the committee's deliberations. For example, if a candidate had a substantiated misconduct allegation, the OPS representative would present the facts of the case to the committee. If a case was pending, the OPS representative would contact the investigating officer to determine if enough information had been gathered up to that point to indicate the likelihood of whether the allegation might be substantiated. Other factors considered by the committee would be patterns or trends of problematic behavior or, in the case if a substantiated misconduct, how close in proximity to the committee's deliberation did the act occur. At the conclusion of the committee's review, recommendations were forwarded to Field Operations to assist in the final selection of Trooper Coaches.

Of the 137, five candidates were not recommended for the position of Trooper Coach. However, four additional candidates had pending misconduct allegations and were recommended to advance in the selection process after deliberation by the committee.<sup>89</sup> Of the four, two attended Trooper Coach training prior to the committee convening. In this case, the Committee convened on May 20, 2009, after the first Trooper Coach class was held, but before the second class took place. Although in this instance members of the Trooper Coach Committee recommended two candidates subsequent to attending the Trooper Coach course, it would appear to be a waste of resources to have a candidate taken away from an assignment to attend training for a position he or she may not qualify for. Therefore, it is recommended that the Trooper Coach committee meet in advance of the scheduled Trooper Coach training course so that all who are in attendance would have successfully undergone the meaningful review and would be eligible to continue in the selection process.

A request was made by OLEPS staff to review any and all documentation maintained by the Trooper Coach Committee, such as committee minutes, notations of deliberations, voting record and/or individual comments made by committee members, in an effort to determine the committee's reason for recommending or not recommending a candidate. This request was made in part because OLEPS had determined that one of the candidates had an off-duty misconduct allegation substantiated two months prior to when the committee convened. The incident called into question the candidate's integrity. It has been determined that there is no record as to discussions that may have occurred during the committee's deliberation to determine if they were aware of

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<sup>89</sup> During OLEPS' audit of MAPPS, it was revealed that the four troopers were identified for a "three in two review" by OPS and had either attended or were scheduled to attend Trooper Coach training. (Three allegations of misconduct in a two year period triggers a review of a trooper's job performance, see Section 2.50, under Task 53).



the charge and, if so, what arguments were presented for the committee to recommend the trooper's continuation in the selection process.

OLEPS received a document showing a list of the candidates whose job performance was reviewed by members of the training committee. Check marks appeared next to the names of the candidates in columns indicating those who were recommended or not recommended to continue in the selection process. Out of the 137 candidates, comments appeared next to the names of four candidates. One comment explained why a particular candidate was not recommended to continue in the selection process; the other three comments explained why three particular candidates were being recommended. Interestingly, no comments appear next to the names of the remaining four candidates who were not recommended to continue in the process, nor was there any comment next to the name of the candidate who had the substantiated off-duty misconduct, but who was recommended.

OLEPS was advised that no minutes or voting records are maintained by the Training Committee that would render insight into the deliberative process. The Academy should consider making this segment of the selection procedure more transparent, especially in the event of any subsequent challenge that may come to pass based on the committee's recommendation.

Also during this reporting period, a request was made by the Deputy Branch Commander of Field Operations in February 2009, to the Deputy Superintendent of Administration to modify one of the eligibility criteria for Trooper Coaches that would allow Field Operations to include members of the 144<sup>th</sup> and 145<sup>th</sup> classes in the pool of Trooper Coach candidates. The established criterion is for a trooper to have completed three years of continuous service to be considered for the post. Members of the 144<sup>th</sup> and 145<sup>th</sup> would have three years of service one month after the graduation of the 150<sup>th</sup> class. In an effort to expand the pool of potential candidates, permission was granted to allow members of the 144<sup>th</sup> and 145<sup>th</sup> to submit their resumes based on the premises that the "minimal shortfall in the required time of service would not affect the competency of the candidates."

During the last reporting period, the eligibility requirement for continuous service was changed from four years to three years, prior to the graduation of the 148<sup>th</sup> and 149<sup>th</sup> State Police classes. The revision to the eligibility requirements had the intended consequences. The three-year eligibility standard allowed for a full complement of trooper coaches, permitting an additional 100 troopers to be included in the trooper coach selection process. However, moving forward, the Academy should anticipate the retirement eligibility of those sworn personnel from the 102<sup>nd</sup> through the 112<sup>th</sup> classes

who represent the “one-thousand troopers in one-thousand days.”<sup>90</sup> This will have an impact on the number of Trooper Coach applicants by reducing the pool as many specialist positions will open up due to the retirements.

Revisions to S.O.P. F-12 (Trooper Coach Training and Evaluation Program) are currently underway. The revisions will include an update of the minimum eligibility requirements for Trooper Coaches, clarification of the selection process, definition of the role of the reserve trooper coach and further explanation of the meaningful review process. OLEPS has recommended that meaningful reviews be conducted for previously approved Trooper Coaches who have not been assigned a probationary trooper after a defined period of time rather than have them remain qualified for an indefinite period.

With the exception of the comments relating to the meaningful review process conducted by the Trooper Coach Committee, the State Police remain in compliance with the requirements of this Task.

### **2.37 Compliance with Task 99: Training for Academy Instructors**

Task 99 stipulates that:

**99. The State Police shall ensure that all troopers serving as an academy or post-academy instructor, or as a trooper coach, receive adequate training to enable them to carry out their duties, including training in adult learning skills, leadership, teaching, and evaluation. All training instructors and trooper coaches shall be required to maintain, and demonstrate on a regular basis, a high level of competence. The State shall document all training instructors' and trooper coaches' proficiency and provide additional training to maintain proficiency.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

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<sup>90</sup> From June 13, 1985 through February 10, 1989, the State Police was given permission to run ten recruit classes in a span of four years in order to bolster staffing numbers. This coincided with the mounting of federal and state efforts to wage a war against drugs. Up to that point, the State Police were running, on average, one recruit class per year.

## Assessment

The Academy continues to provide training that requires certification and re-certification in a myriad of disciplines for instructors and continues to provide trooper coach training.

There were four Instructor Training Courses (ITC) held in 2009:

- February 23 through March 6
- May 11 through May 22
- September 14 through 25
- November 30 to December 11

A total of 68 sworn personnel successfully completed the course.

There were two three-day Trooper Coach courses conducted in May of 2009. The first was held May 13 through May 15, and the second from May 27 through May 29, in which a total of 135 were successfully trained.<sup>91</sup> There were three one-day Reserve Trooper Coach classes held on March 5, 25, and again on April 2, where a total of 70 troopers were successfully trained.<sup>92</sup>

The Academy continues to track the dates the training is delivered and those members in attendance. Course test scores are maintained in the Academy Computerized Training System (ACTS) database. Proficiency of the Trooper Coach is also determined and documented through critiques provided by the probationary trooper and assistant station commanders.

Step four reports are generated post ITC and Trooper Coach Training.<sup>93</sup> Information contained in the reports is produced from Metrics that Matter (MTM) software used to analyze the course critique data. The information is subsequently used by the Training Bureau to determine what subjects were most useful to the participants, least useful, and areas that need improvement.

A needs assessment report is currently being prepared to identify those performance objectives that received the lowest rating by probationary troopers of the 150<sup>th</sup> class

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<sup>91</sup> Prior to the May course, there were approximately 189 troopers in the pool of Trooper Coaches. However, this number includes troopers that have gone onto other assignments and are either not available or not eligible to continue to serve as a Trooper Coach. The Academy advised that they will update their records so that their numbers reflect only those members who are currently eligible.

<sup>92</sup> In the event that the primary or secondary Trooper Coach is not available to train the probationary trooper on a particular day, a Reserve Trooper Coach is utilized.

<sup>93</sup> Step four of the seven-step training cycle requires that after the delivery of training, the evaluation of that training must be conducted in order to measure knowledge transfer and skill application.

upon the completion of Phase III (360 hours) of the Trooper Coach program.<sup>94</sup> Once completed, this information will be forwarded to the Law Enforcement Science Unit so that the instructors can adjust the pre-service lessons accordingly.

## **2.38 Compliance with 100: Training in Cultural Diversity**

Task 100 stipulates that:

**100. The State Police shall continue to train all recruits and troopers in cultural diversity, which shall include training on interactions with persons from different racial, ethnic, and religious groups, persons of the opposite sex, persons having a different sexual orientation, and persons with disabilities; communication skills; and integrity and ethics, including the duties of truthfulness and reporting misconduct by fellow troopers, the importance of avoiding misconduct, professionalism, and the duty to follow civilian complaint procedures and to cooperate in misconduct investigations. This training shall be reinforced through mandatory annual in-service training covering these topics.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

### Assessment

Tasks 100 and 101 address training relating to cultural diversity, ethics, leadership, and the constitutional requirement of the Fourth Amendment (search and seizure). The Academy combines training in these areas during the annual in-service training program. See comments also under Task 101 (assessment).

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<sup>94</sup> The probationary trooper is trained and evaluation by the Trooper Coach for a total of 480 hours. The 480 hours are divided into four 120-hour training phases. By the completion of 360 hours, or Phase III, it is expected that the probationary trooper will be performing in all performance objectives at that juncture of the program.

The Academy continues to provide cultural diversity, ethics and leadership in-service training. Training is subsequently evaluated to determine transfer of knowledge and implementation in the field. The Academy has maintained compliance with the requirements of this Task.

The In-Service Training Unit is responsible for providing all post-academy training for Division members. The lesson plans and training developed by the members of the In-Service Unit are based on an organizational needs assessment to include ethics, cultural diversity, leadership, and Fourth Amendment issues. The staff also provides training that will effectively reduce organizational risks.

The Training Support Unit is responsible for drafting a data collection plan outlining how transfer of knowledge and field implementation is to be measured. In-service topics in 2009 were measured using the Return on Investment (ROI) methodology.<sup>95</sup> In this context, ROI measures the monetary value of training as it relates to the desired job impact. To calculate the ROI, the Division has to identify the financial benefit it gains from a specific type of training and subtract that from the amount it costs to develop, produce and deliver the program. Practically speaking, this can be difficult to establish; however, such a measure is important to assure that the Division is spending money on training that “works.” Departments have to justify their budgets. This measure is used by the Division to achieve justification as well as to set future training budgets.

There are four levels of evaluations used by the Training Support Unit to determine the effectiveness of the training:

Level I – Assesses the participants’ reaction to the materials presented; how was the information received? This measurement will be done through post event surveys captured by MTM.<sup>96</sup>

Level II – Assesses how much was learned by the participant through pre/post testing. Assessment of any scenario-based training is gathered from instructor’s score cards.

Level III – Assesses the transfer of knowledge by determining if what was learned is being applied by the participants in the course of their duties. This measurement is gathered through follow-up surveys captured by MTM.

Level IV – Assesses training by measuring specific objective data comparisons. For example, in an effort to determine if training has had an impact in the reduction of

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<sup>95</sup> Also referred to as Kirkpatrick’s Four Levels of Evaluation.

<sup>96</sup> Noted in Kirkpatrick’s four level model is that “positive reaction (by the participant) does not guarantee learning, a negative reaction almost certainly reduces its possibility.”

improper searches, pre-training data will be compared to post-training data gathered from MAPPS and MVR reviews.<sup>97</sup>

Because in-service training concludes toward the end of the calendar year, an ROI analysis inclusive of field implementation cannot be completed until objective data comparison becomes available. Typically, the data do not become available until the following calendar year. Once the data are analyzed, a Level IV, also known as a Step 6 report, is generated. If the training did not have the desired results, it is so noted in the in-service Level IV ROI analysis and the lesson plan and/or presentation is revised accordingly.

The in-service training was conducted from September through December of 2009. A total of 2,965 enlisted personnel were trained. The Academy elected to maintain both lecture and scenario-based training for the 2009 program. This method was used in both the 2007 and 2008 in-service training and was well received by the membership.

For the 2009 program, the Academy elected to bifurcate the in-service training into two segments. The first segment focused on Ethics and Cultural Awareness and was delivered the morning of the annual State Police physical fitness test (requirements are established in S.O.P. C-20). The second segment (beginning on October 12) focused on Leadership, and Arrest, Search & Seizure. The rationale for presenting the in-service in two segments was to allow for more classroom time on the topics of Ethics and Cultural Awareness and more scenario-based training on the topics of Leadership and Arrest, Search & Seizure. Although presented in the first segment, the topics of Ethics and Cultural Awareness were reinforced during the second segment in the scenario-based training.

OLEPS staff attended the first segment of in-service training in September 2009. On the topic of Ethics, Cultural Awareness and Immigration, the instructor was well versed and had an interesting approach to topics that are traditionally not well received by members of the Division. He immediately engaged the participants by asking them to explain, in their own words, bias-based policing. He offered examples of preconceived notions many individuals have about others, primarily based on one's culture and values. He spoke from his observations, such as his Polish grandmother's bias towards law enforcement based on her experiences with the police in her country. He asked several participants who were not born in this country to talk about their experiences and how their cultural values impact their perceptions. The instructor encouraged dialogue and questions.

The instructor used a PowerPoint, but never read from the slides. He continually kept

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<sup>97</sup> Level IV translates to Step 6 in the seven-step training cycle. Both require an object measurement to determine the effectiveness of training.

his audience engaged. He addressed stereotypes, "ethnocentrism" (one's belief that their culture is superior to others), immutable characteristics and police enforcement actions.

The instructor addressed the Attorney General's Directive regarding immigration (2007-3). He cited statistics regarding the current immigrant population. He stated that 20 percent, or one out of five New Jersey residents are immigrants. Of the 20 percent, 45.9 percent are Hispanic. He noted that coincidentally, the most recent class graduating from the State Police Academy is representative of the immigrant population in this state. Of those who graduated, 18.6 percent were born outside of the United States.

During the discussion, the instructor asked the participants why they believed that immigrants are less likely to be on public assistance. The response given was that immigrants are more likely to be in this country illegally. The instructor seized the opportunity to send a strong message that troopers cannot use an individual's race or ethnicity as a basis to assume illegal status. He made it clear that troopers are not immigration officers; their mission is to enforce New Jersey State laws. He also mentioned that the Attorney General's Directive does not use the term "illegal immigrants." These individuals are referred to as "unauthorized immigrants."

There was a marked difference in the tone and approach to this block of instruction compared to the 2008 presentation. During OLEPS' review of the 2008 Cultural Awareness presentation, we found that this was a difficult block of instruction to deliver as participants indicated in past course critiques some level of annoyance or resentment in having to sit through this mandated training year after year. It is the least favorite topic for the participants, which seemed to have had an impact on the overall tone of last year's presentation. An instructor's demeanor can influence how participants view the subject matter. During the 2008 in-service, the instructor hurried through the instruction with little regard to engaging the class in any meaningful discussion. Based on past critiques, an exchange with the audience on this topic is of greater benefit for the participants than presenting a straight lecture.

As a consequence of the 2008 presentation, OLEPS recommended that consideration be given to having a ranking member of the State Police deliver the Cultural Diversity and Ethics block. It was our opinion that an instructor with rank would signify to the membership the importance of the subject matter.<sup>98</sup> We applaud the care and deliberate effort that went into the 2009 presentation. The block of instruction, which was delivered by a lieutenant, encouraged meaningful discussion among the attendees.

An Ethics instructional block regarding the protocols and procedures relating to the use of Mobile Vehicle Recorders (MVR) was presented. The training was precipitated by the

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<sup>98</sup> In 2008, this block of instruction was given by a member of the Academy who held the rank of Tpr. II.



results of the Quarterly Trend Analysis Reports generated by the Office of Strategic Initiatives (MAPPS Unit) and by the number of complaints received by OPS regarding MVR procedures. Specifically, the most consistently noted deficiencies are failure to activate the MVR and failure to maintain activation throughout contact. This training was previously presented during 2008 in-service. A level IV measurement of the 2008 in-service revealed that issues with the use of MVR equipment continue to exist despite training that was conducted. Consequently, the Academy revised the lesson plan and presented it once again during this year's in-service. This is an example of the Academy's ability to determine the impact of training by measuring field implementation resulting in the necessary adjustments.

The final three presentations were on Official Corruption, Stress Management, and Terrorism Tactics and Trends. Although excellent topics that were well presented, they are not mandated training under the terms of the Consent Decree and were presented in a format that did not require audience participation.

At the conclusion of the presentations, participants were administered an examination. The scores were immediately entered into MTM, an analytical software program utilized at the Academy to evaluate and assess training. If there is an indication that a particular test question is often missed, the instructors can "tweak" the lesson plan, or the delivery of the lesson, to clarify the point in "real time." An MTM survey is administered to the participants prior to their leaving, and a follow-up survey is sent to them via e-mail 45 days after the in-service.

A Level IV measurement will be conducted for Cultural Awareness and Competency block to determine if the training had an impact in the reduction of improper referrals to Immigration and Customs Enforcement. A Level IV measurement will also be conducted for the MVR Policy and Procedures block to determine if the training had a reduction in the percentage of MVR infractions. A report of the ROI analysis will be issued in 2010, prior to in-service training.

The 2008 in-service ROI analysis was conducted by the Training Support Unit in collaboration with a civilian administrative analyst assigned to the Office of Strategic Initiatives. The following information regarding the 2008 in-service training was reported in 2009.<sup>99</sup>

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<sup>99</sup> In 2008, Field Operations and Special Operations trained together, to the exclusion of the general membership. This was done in response to a problem measuring in-field impact when conducting the 2007 course evaluations. Since the Academy was unable to segregate the data according to troopers' assignments, it trained according to organizational disciplines so the Academy staff would be able to look at data that would more accurately reflect job impact.

Level I Assessment: The evaluation was based on the participants' responses to the following categories: business results (can lesson be directly applied to current assignment), courseware (course materials such as handouts), class environment, instructor, knowledge and skills gained, learning effectiveness, perceived value, and scenario feedback. All measurements exceeded the benchmarks. The top ranked category was scenario feedback. The lowest ranked category was business results.

Level II Assessment (testing): Eleven scenarios were presented during the 2008 in-service which included leadership, cultural awareness, ethics, and arrest, search and seizure. All measurements exceeded the benchmarks. The highest average scores were those scenarios based on vehicular pursuits, the lowest average scores were those scenarios involving the application of Miranda (see comments under Task 27).

Level III Assessment (transfer of knowledge): This measurement represents 25 percent of the total number of participants who attended the 2008 in-service.<sup>100</sup> Of those who responded to the survey, 57 percent were from the non-operational branch of the Division, 43 percent were from the operational branch (Field Operations and Special Operations). Of all those responding, 56.3 percent stated that they were able to apply the training with six weeks of in-service. Thirty-two percent responded that they had not as yet applied what was learned, but would if needed. Eleven percent did not expect to utilize the knowledge or skill gained through training. The top ranking question for all members was "as a direct result of the training, I was able to properly apply Miranda to an individual in a custodial setting." The lowest ranking question for all members was "as a direct result of the training, I overcame a cultural or behavioral barrier during a public contact by effectively communicating to explain or evaluate the situation."

Level IV Assessment (implementation in the field): The Training Support Unit has determined that the data needed to satisfy the stipulations of the 2008 in-service data collection plan were not yet available as of June 2009, and that they did not anticipate the data to become available until early 2010. The anticipated data will be gathered from the 2008 OPS Annual Report, MAPPS, and from the Pursuit Review Board. The Academy is looking to see a 10 percent reduction in candor issues that result from administrative investigations, unsafe operation of troop car complaints, MVR infractions, improper reporting of frisk vs. search relating to post motor vehicle stop actions and attitude and demeanor complaints.

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<sup>100</sup> Follow-up surveys were sent to 2,895 participants and the Academy received 737 responses. This was a marked improvement over the 202 responses received from the 2,807 participants of the 2007 in-service (7.1%). The responses to the surveys are anonymous in order to elicit candid responses; therefore, it is difficult to track those individuals who did not respond. The Academy is seeking ways to improve the response rate. However, the Level IV measurement captures a more accurate and complete picture of field implementation because the impact of training is measured by objective data void of subjective input.

The Training Support Unit submits a written data collection plan to ensure that the assessment of in-service training programs is consistent from year to year. All training is documented and maintained in the Academy Computerized Training System (ACTS).

### **2.39 Compliance with Task 101: Recruit and In-Service Training on Fourth Amendment and Non-Discrimination Requirements**

Task 101 stipulates that:

**101. The State Police shall continue to provide recruit and annual in-service training on Fourth Amendment requirements. In addition, the State shall provide training on the non-discrimination requirements of this Decree as part of all academy and in-service patrol-related and drug-interdiction-related training, including training on conducting motor vehicle stops and searches and seizures. An attorney designated by the Attorney General's Office shall participate in the development and implementation of this training.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

#### Assessment

Tasks 100 and 101 address training relating to cultural diversity, ethics, leadership, and the constitutional requirement of the Fourth Amendment (search and seizure). The Academy combines training in these areas during the annual In-Service training program. See comments also under Task 100 (assessment).

The Academy continues to provide recruit and annual in-service training on Fourth Amendment requirements, including motor vehicle stops, and searches and seizures. All search and seizure lesson plans are reviewed by attorneys assigned to the Division of Criminal Justice prior to in-service training.

OLEPS staff attended the second segment of in-service training in November 2009. At that time, a member of the Criminal Science Unit began this block of instruction by outlining the lesson's objectives. The instructor's goal was to make sure that the

participants (1) understood the facts and holding of recent case law with an emphasis on Peña-Flores; (2) understood the interim protocol issued by the Superintendent regarding post-stop motor vehicle search action; and (3) discussed frequently asked questions by troopers regarding procedural concerns.

The instructor was extremely thorough in his presentation and was well-prepared for anticipated questions. He presented hypothetical scenarios that made for thought-provoking dialogue. He also cautioned against any comments by troopers that may be perceived as coercive during a post-stop interaction where the occupants of a vehicle fail to give consent to search.

After the presentation, the participants were placed in groups where they took part in interactive scenarios. The instructors' after-action critiques of the participants were conducted in a positive manner. Suggestions, questions and comments from those observing proved to be as valuable as the instruction itself.

The leadership component of the training, Response to the Active Shooter – A Lesson in Leadership, was a collaborative effort by the In-Service, Firearms & Self Defense, and Managerial Development Training Units. Due to the recent shootings on college campuses and public facilities, many law enforcement centers are instructing on the topic of rapid response. This lesson, presented through lectures and scenarios, highlighted the need for troopers to assume leadership roles as initial responders to the scene prior to the arrival of an entry team or command staff.

The training was designed to be as realistic as possible. The Academy staff transformed one of the buildings into an elementary school and dispatched the participants into an "active shooter" scenario. The participants were outfitted with equipment used in simunitions training, which included the use of their own weapon substituting live ammunition with cartridges containing colored soap so that the trooper was allowed to experience the actual sound and recoil of a weapon. When they entered the facility, they were faced with mayhem, including loud noises and screams that were pumped through the halls via a PA system. There were cameras placed in strategic locations in the building in order for staff to observe and gauge the reaction of the participants.

This block of training drew positive feedback from both the participants and instructors. Similar training will be conducted by Field Operations at various locations throughout the state. The results of that training will be measured against the in-service training objectives to determine field implementation.

The monitoring team continues to note progress made by the Academy in its ability to measure implementation of training and to sustain compliance with the terms of the Consent Decree. A Level IV measurement will be conducted for Arrest, Search and

Seizure block with the goal of a 95 percent compliance rate for post-stop critical incidents.

#### **2.40 Compliance with Task 102: Training Protocols for the Trooper Coach Process**

Task 102 stipulates that:

**102. Before the next recruit class graduates from the State Police academy, the State Police shall adopt a protocol regarding its trooper coach program. The protocol shall address the criteria and method for selecting trooper coaches, the training provided to trooper coaches to perform their duties, the length of time that probationary troopers spend in the program, the assignment of probationary troopers to trooper coaches, the substance of the training provided by trooper coaches, and the evaluation of probationary trooper performance by trooper coaches. Prior to implementation, the protocol shall be approved by the Independent Monitor and the United States.**

Compliance Status: **In Compliance**

##### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

##### Assessment

The Academy came into compliance with this task in January of 2002 (Fifth Independent Monitors' report). The Academy drafted and submitted the revised Trooper Coach Training and Evaluation Program, S.O.P. F-12, for review by the Planning and Logistical Support Bureau. Initially, the revised S.O.P. included changing the current eligibility requirements from four years to three years, and that the final determination of Trooper Coaches and Reserve Trooper Coaches rest with the Field Operations Commanding Officer. Since that time, S.O.P. F-12 continues to undergo revisions by the Academy with recommendations from OLEPS.

## 2.41 Compliance with 103: Provision of Copies of the Decree to all State Troopers

Task 103 stipulates that:

**103. The State Police shall as soon as practicable provide copies and explain the terms of this Decree to all state troopers and employees in order to ensure that they understand the requirements of this Decree and the necessity for strict compliance. After the State has adopted new policies and procedures in compliance with this Decree, the State shall provide in-service training to every state trooper regarding the new policies and procedures and the relevant provisions of this Decree. The State shall incorporate training on these policies and procedures into recruit training at the State Police Academy.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

### Assessment

The New Jersey State Police achieved compliance for this task in September 2000 and has provided recruit classes with an explanation of the terms of the Consent Decree since then. The Training Bureau continues to teach the concept (and prohibition) of bias-based policing as well as ethics and cultural diversity.

Information impacting the Decree, including the issuance of new orders or recently enacted legislation, continues to be forwarded to its membership through the "Read & Acknowledge Program" (an electronic database found on the State Police Intranet and used to provide notification as well as to receipt acknowledgment from its membership), the AIC and/or the Operation Information Center (OIC). Search and Seizure cases appear in the OIC; however, the site needs to be monitored because it does not contain the most recent case law.

The "Read & Acknowledge Program" was the method utilized when the New Jersey Supreme Court handed down the Peña-Flores decision subsequent to a memorandum issued by the Superintendent. Lesson plans were drafted addressing the newly enacted

legislation and were thoroughly presented during the 2009 in-service (see comments under Task 101).

It is the Academy's intention to continue presenting a block of instruction relating to the Consent Decree during pre-service, even after the dissolution of the Decree.

## **2.42 Compliance with 104: Systems Improvement Processes for Police Training**

Task 104 stipulates that:

**104. The State shall establish systems for State Police units, sub-units, and supervisors to provide information and refer particular incidents to the Training Bureau to assist the Training Bureau in evaluating the effectiveness of training and to detect the need for new or further training.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

### Assessment

The Academy continues to hold quarterly Training Committee meetings, which began in its current format during 2006. Representatives of numerous bureaus and units are invited to attend to give oral reports regarding current activities of their respective sections that impact training. Problems or concerns are also shared to determine what remedial steps the Training Bureau can take relating to the impact or effectiveness of training. These concerns are presented by way of data and through anecdotal comments. Areas in need of improvement are identified and placed in a needs assessment report for use by instructors to develop specific training programs.

Those bureaus/units represented at the quarterly meetings during this monitoring period included:

- Training Bureau
- Special Operations
- Special Investigations
- Division of Human Resources



- Field Operations
- Administration
- State House Complex Security
- Identification and Information Technology
- OPS
- MAPPS
- OSPA (enlisted personnel)
- Organized Crime Control
- Information Technology Section
- Counter Terrorism
- Casino Unit

Issues and training requests presented during meetings that implicate the Consent Decree and that were addressed included:

- Request for comprehensive training regarding the impact of Peña-Flores relating to post-stop motor vehicle searches.
- Notification that Effective Patrol Techniques Lesson Plan changed to incorporate Peña-Flores.
- Concern in the increase of consent searches since Peña-Flores.
- Need for clarification regarding telephonic search warrants relating to motor vehicle post-stop actions.
- Request for Hidden Compartment and Armed Suspects Training.
- Request for training on the Digital Video Recorder (DIVR) that is replacing the MVR.
- Request for additional self-defense, batshield active-shooter training.
- Request for additional training for Field Operations supervisors.
- Request for P.A.T.R.I.O.T. (Pro-Active Recognition and Interdiction Operations and Tactics) training for Intelligence Section personnel.
- Review of S.O.P. C-25 (Training Oversight Program) to reflect outside training protocols.
- Completion of Domestic Violence training via on-line training (NJ Learn).
- Identification of members who are non-compliant with mandatory training, make-up training and retesting.
- Request for additional Instructor Training Certification Courses.
- Request for Urban Patrolling Class.
- Successful incorporation of firearms scores in ACTS database.
- Updates on the progress of the 150<sup>th</sup> recruit class.

One of the responsibilities of the In-Service Unit is to provide remedial training for those troopers experiencing difficulties in their job functions. The curriculum used during remedial training is tailored for each trooper based on what has been identified as an area of need.

As the result of motor vehicle tape reviews and MAPPS entries during this monitoring period, seven troopers were recommended for and received remedial training in the following areas:

- Attitude and Demeanor
- Vehicular Pursuit
- Safety/Tactics
- Search and Seizure
- Miranda
- MVR Procedures
- Transporting Prisoners

The Academy has maintained a line of communication with the various bureaus throughout the Division and continues to identify both global and specific training needs which are acted upon accordingly. The Academy continues to be compliant with the requirements of this Task.

#### **2.43 Compliance with 105: Provision of Training for Supervisors**

Task 105 stipulates that:

**105. The State Police shall provide all supervisors with mandatory supervisory and leadership training which (in addition to the subjects addressed in ¶¶100 and 101) shall integrity and prevent misconduct. The State Police shall provide the initial training required by this paragraph within one year from entry of the Decree and thereafter shall provide supervisory training on an annual basis.**

Compliance Status: **In Compliance**

##### **Methodology**

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

##### **Assessment**

The Managerial Development Unit is responsible for supervisory training for all troopers who are advancing in rank to “promote police integrity and prevent misconduct.” This unit was specifically created to comply with tasks 105 and 106 of the Consent Decree.

This mandated supervisory training is provided through the First Line Supervision Course (Sergeant), Mid-Level Management (Sergeant First Class), Executive Leadership (Lieutenant), and Executive Leadership Series (Captains and above).

First Line Supervisor – Delivered to all members who attain the rank of Sergeant or Detective Sergeant. Training includes topics relating to self assessment, leadership styles, team building, EEO supervision awareness, and improving work group performance and operation.

Mid-Level Management - Delivered to all members who attain the rank of Sergeant First Class. This training assists in the transition to station commander or unit head. Training topics include leadership principles, crisis leadership, introduction to strategic planning, EEO supervision awareness, and motivational techniques.

Executive Leadership - Delivered to all members who attain the rank of Lieutenant. Training topics include visionary leadership, project management, strategic planning, conflict management, employee assistance program, management accountability, and a leadership evaluation using the Leadership Profile 360 assessment tool created by Dr. William E. Rosenbach.

Phase Training - Delivered to Captains, Majors and Lieutenant Colonels.

- Phase I Labor Relations/Conflict Negotiation
- Phase II Organizational Administration
- Phase III Leadership Development and Self Awareness
- Phase IV Strategic Planning
- Phase V Expectation of Leadership and Service

All of the above courses include topics relating to internal investigative and disciplinary procedures as well as EEO supervision awareness. In addition, there is a Level IV measurement of what impact the supervisory and leadership training has on “organizational professionalism.” Specifically, the Academy gathered data showing the number of misconduct and performance incidents that are recorded annually, and strive for a 10 percent decrease in misconduct allegations and performance incidents as a result of the instruction. The Academy remains in compliance with this Task.

## **2.44 Compliance with Task 106: Training for Newly Promoted State Troopers**

Task 106 stipulates that:

**106. The State shall design and implement post-academy training programs for all state troopers who are advancing in rank. The State shall require**

**troopers to successfully complete this training, to the extent practicable, before the start of the promoted trooper's service in his or her new rank, and in no event later than within seven months of the promoted trooper's service in his or her new rank.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

#### Assessment

The Managerial Development Unit develops and oversees specific leadership and management courses for all members who advance in rank from sergeant through lieutenant colonel (see task 106). The unit is encouraged to forge relationships with institutions of higher learning so that emerging trends relating to leadership, supervision and management can be incorporated into instruction to ensure that "best practices" is the "standard of instruction."

The Academy continues to provide post-Academy training for those troopers who advance in rank. From March 2009 through December 2009, a total of 211 members were trained in the following:

Course	Dates	Members Trained
First Line Supervision	April 20-May 5	42
Mid-Level Management	April 14-17	34
	July 27-30	29
	December 14-17	28
Executive Leadership (Lieutenant)	August 3-7	31
	October 26-30	28
Executive Leadership Series (Captains and above)	March 11	19

Also during this monitoring period, a Basic Supervision Course for Sergeants was held on March 30 through April 3. The course was delivered by State Police instructors to approximately 15 law enforcement personnel from outside agencies. This course is only presented to outside law enforcement upon request.

Data collection plans are drafted for all managerial and leadership courses and the training is put through a Level IV (Step 6) assessment. Leadership Assessment Surveys (LAS) and Leadership Assessment Supplemental Surveys (LASS) are used as measuring tools. The LAS is designed to determine how members of the Division perceive the leadership qualities of their supervisors. The LASS is designed to determine how participants perceive their own leadership characteristics or qualities. The survey is administered to participants before the course begins and 45 days after the course has ended.

Other measurement tools include Leadership Success Charts (LSC) pertaining to vision, communication and strategic planning and Situational Leadership II Diagnosis Reports (SL II Model Reports) used to establish leadership styles based on the individual subordinate needs. Quarterly trends collected from MAPPS are used as objective measures.

Based on the Level IV measurements of First Line Supervisor and Mid-Level Management training, the Academy did not achieve the benchmarks set for an increase in organizational leadership (LAS scores) and a decrease in misconduct allegations (by 10 percent). However, the Academy exceeded the benchmarks set for an increase in organizational efficiency and effectiveness and a decrease in the number of performance incidents (10 percent).

One of the issues cited in the report is the "continuing trend of a low response rate to follow-up surveys." It was recommended that an email reminder be sent to the participants and their supervisors to improve the response rates. It is troubling that this trend continues, especially in the context that the training is geared towards developing the leadership skills of those troopers advancing in rank and assuming supervisory roles. As a supervisor, one bears the responsibility of administering organizational directives, ensuring that those directives are being followed and serving as a role model for junior troopers.

The Academy continues to monitor whether or not a member who has advanced in rank has received the appropriate training no later than seven months in their new position through querying information found in the Human Resources database as well as information on the individual member found in ACTS. If a trooper fails to attend one of these mandated courses, the trooper's supervisor is notified by the Academy staff. The Academy remains in compliance with this Task.

## 2.45 Compliance with Task 107: Provision of Specialized Training

Task 107 stipulates that:

**107. The State shall design and implement post-academy training programs for all state troopers who are newly assigned to a State Police troop, station, or assignment where specialized training is necessary in order to perform the assigned duties.**

Compliance Status: **In Compliance**

### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

### Assessment

In the Sixth Report, the Independent Monitors declared that Task 107 primarily applied to those troopers who returned to patrol from specialized assignment. Consequently, training processes for post-Academy “newly assigned” troopers were implemented during the seventh reporting period. Evaluation processes related to the impact in the field of this training were implemented during the fourteenth reporting period and approved by the Independent Monitors.

During this monitoring period, training was established for new detectives assigned to the Organized Crime and Intelligence Management Bureaus that included the drafting of affidavits, surveillance techniques, and the handling of confidential sources. Although this training did not involve troopers returning from other assignments to patrol, the training provided was specialized and necessary in order for the troopers to perform the assigned duties.

No changes were noted in the Academy process related to this task. The State Police remain in compliance.

## 2.46 Compliance with 108: Inclusion of Training Data in MAPPS Program

Task 108 stipulates that:

**108. The State Police shall continue to maintain records documenting all training of state troopers. As part of the MAPPS, the State Police will track all**

**training information, including name of the course, date started, date completed, and training location for each member receiving training. The MAPPS will maintain current and historical training information.**

Compliance Status: **In Compliance**

#### Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

#### Assessment

OLEPS staff was given independent access to the ACTS database in order to examine the extent of information captured for each training event as well as to examine historical data. A list of courses and those members of the Division in attendance from January 1, 2009 through December 31, 2009 was provided for OLEPS review.

The MAPPS Training Module was also queried to determine if the annual mandated training was captured. MAPPS maintains access to current and historical training information in ACTS. While querying the MAPPS Training Module, OLEPS staff discovered a pattern of missing firearms training records for many troopers in the sample set. A check of the ACTS database revealed that training information missing in MAPPS was captured in ACTS. Furthermore, there were issues with tracking the qualification scores of troopers qualifying with multiple weapons.

According to Academy staff, in order to allow different range masters to enter the attendance information directly into ACTS, some change was made to the database table accessing the on-duty firearms course information. The MAPPS unit was contacted by OLEPS to advise them of the interface issue in the event an update was needed to the MAPPS query of the ACTS database (see Task 41, Section 2.18 for further comment).

The Academy remains in compliance with this Task.

### **2.47 Compliance with Task 109: Establishment of a Central Repository for Training Records**

Task 109 stipulates that:

**109. The State Police shall maintain, in a central repository, copies of all academy, post-academy and**



**trooper coach training materials, curricula, and lesson plans.**

Compliance Status: **In Compliance**

Methodology

See Section 2.34, above for a discussion of the methodology for assessing compliance with this task.

Assessment

The State Police continues to be in compliance with this task. All lesson plans, PowerPoints, letters of approval (as they relate to lesson plans), for both Pre-Service and In-Service, and any training conducted by the Academy are maintained in a centralized database on the Academy's server.

**2.48 Compliance with Task 110: Creation of the Office of State Police Affairs**

Task 110 stipulates that:

**110. The Attorney General of New Jersey shall create an Office of State Police Affairs ("office"). The office shall have the responsibility to ensure implementation of the terms of this Consent Decree and provide coordination with the Independent Monitor and the United States concerning the State Police and matters related to the implementation of the Consent Decree. An Assistant Attorney General shall head the office. The office's responsibilities shall include auditing the manner in which the State receives, investigates, and adjudicates misconduct allegations; auditing the State Police's use of MAP data; and auditing state trooper performance of the motor vehicle stop requirements discussed in the Consent Decree. The office also shall be responsible for providing technical assistance and training regarding these matters. The office shall have such additional responsibilities as may be assigned by the State Attorney General.**

Compliance Status: **In Compliance**

## Assessment

The State of New Jersey and the Office of Law Enforcement Professional Standards (OLEPS) have assumed the duties previously performed by the independent monitors. These activities were carried out in the seventeenth reporting period by OLEPS as the Office of State Police Affairs under the supervision of the independent monitors. More specifically, this report memorializes the activities OLEPS has undertaken to review and assess the efforts of the State Police to maintain compliance with the Consent Decree during the first six months of 2009. Distribution of this report will communicate the results of these efforts to interested parties including the Attorney General, the Superintendent of the State Police, the appropriate elected and appointed government officials as well as the citizens of the State of New Jersey.

### **2.49 Compliance with Task 111: Audits of Motorists Subjected to Motor Vehicle Stops**

Task 111 stipulates that:

**111. The office shall implement an auditing system for contacting a sample of persons who were the subject of motor vehicle stops and enforcement actions and procedures connected to a motor vehicle stop, to evaluate whether state troopers conducted and documented the incidents in the manner prescribed by State Police rules, regulations, procedures, and directives, and the requirements of this Decree.**

Compliance Status: **In Compliance**

## Methodology

Twice during the calendar year, the Office of State Police Affairs conducted surveys of motorists who were the subject of motor vehicle stops or other enforcement actions related to a motor vehicle stop. The purpose of the surveys is to determine whether the motor vehicle stops or other enforcement actions were conducted in a manner consistent with State Police rules, regulations and procedures and the requirement of the Consent Decree. The surveys are sent by U.S. mail to randomly selected motorists who return their responses in postage paid return address envelopes. The responses are reviewed by the office and arrangements are made to interview those motorists who indicate a negative interaction with the State Police. Information of note from the reviews and the interviews are made available to the State Police.

## Assessment

The monitoring team conducted no motorist surveys during the reporting period.<sup>101</sup> Just after the end of this reporting period (July 2009), OSPA staff met with members of the State Police Information Technology Bureau. At that meeting, State Police offered the possibility of automating the incident selection, as well as the production of the letters. This period was also the transitioning period to the new CAD system and it was discovered that not all contact information necessary for the mailing of the surveys was available to OSPA, if surveys were not done within a time frame close to the incident. Thus, when an automated system was not in place by October 2009, OSPA, now OLEPS, resumed its manual selection process for the surveys with the most recent data available at that time (September 2009). Compliance is based on previous reports, with the understanding that twice a year reports resumed just after the end of the reporting period.

### **2.50 Compliance with Task 112: Internal Audits of Citizen Complaint Processes**

Task 112 stipulates that:

**112. The office's audits of the receipt, investigation, and adjudication of misconduct allegations shall include audits of the tapes of the complaint/comment toll-free telephone hotline established by ¶62; the use of testers to evaluate whether complaint intake procedures are being followed; audits of audio tape and videotape interviews produced during the course of misconduct investigations; and interviews of a sample of persons who file misconduct complaints, after their complaints are finally adjudicated.**

Compliance Status: **In Compliance**

## Methodology

The monitoring team audits the hotline as part of its semi-annual audits of the Office of Professional Standards.

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<sup>101</sup> A memo reporting on the survey conducted of stops in September 2008 was completed in June 2009, but the data were reported in the previous report reporting on stop activity for 2008.

## Assessment

For first half of 2009, the audit revealed 76 calls were received on the hotline. Seven calls (10%) were randomly chosen for review, plus an additional call classified as Consent Decree related, for a total of eight calls. The review revealed that the calls were correctly classified and that case files were opened for each call. The State Police remains in compliance with this task.

### **2.51 Compliance with Task 113: Full and Unrestricted Access for the Office of State Police Affairs**

Task 113 stipulates that:

**113. The office shall have full and unrestricted access to all State Police staff, facilities, and documents (including databases) that the office deems necessary to carry out its functions.**

Compliance Status: **In Compliance**

## Assessment

The Office of State Police Affairs had full and unrestricted access to all State Police staff, facilities and documents during the reporting period.

### **2.52 Compliance with Task 114: Publication of Semi-Annual Reports of Aggregate Traffic Stop Statistics**

Task 114 stipulates that:

**114. The State Police shall prepare semiannual public reports that include aggregate statistics on State Police traffic enforcement activities and procedures broken down by State Police station and the race/ethnicity of the civilians involved. These aggregate statistics shall include the number of motor vehicle stops (by reason for motor vehicle stop), enforcement actions (including summonses, warnings, and arrests) and procedures (including requests for consent to search, consent searches, non-consensual searches, and uses of force) taken in connection with or during the course of such stops. The information regarding misconduct investigations**

shall include, on a statewide basis, the number of external, internal, and total complaints received and sustained by category of violation. The information contained in the reports shall be consistent with the status of State Police record keeping systems, including the status of the MAP computer systems. Other than expressly provided herein, this paragraph is not intended, and should not be interpreted, to confer any additional rights to information collected pursuant to this Decree.

Compliance Status: **In Compliance**

#### Assessment

The Office of State Police Affairs filed aggregate data reports with the United States District Court for New Jersey on January 23, 2009, and for the reporting period governed by this report. Errata were published to update these reports in February 2011. The reports are available for inspection at [www.nj.gov/lps/decreehome.htm](http://www.nj.gov/lps/decreehome.htm) (January through April are included in the 19<sup>th</sup> Aggregate Data Report published by OSPA), and at [www.nj.gov/lps/decreehome-post.htm](http://www.nj.gov/lps/decreehome-post.htm) (May and June 2009 data are found in the OLEPS' First Public Report of Aggregate Data).

### **2.53 Compliance with Task 115: Appointment of Independent Monitor**

Task 115 stipulates that:

**115. Within ninety (90) days after the entry of this Decree, the State and the United States shall together select an Independent Monitor who shall monitor and report on the State's implementation of this Decree. The Monitor shall be acceptable to both parties. If the parties are unable to agree on an Independent Monitor, each party shall submit two names of persons who have experience as a law enforcement officer, as a law enforcement practices expert or monitor, or as a federal, state, or county prosecutor or judge along with resumes or curricula vitae and cost proposals to the Court, and the Court shall appoint them Monitor from among the names of qualified persons submitted. The State shall bear all costs of the Monitor, subject to approval by the Court.**

Compliance Status: **In Compliance**

#### Assessment

The State continued to retain the services of Public Management Resources, Inc. and Lite, DePalma, Greenberg and Rivas as independent monitors during the reporting period. Their services terminated when the Consent Decree was dissolved in September 2009.

### **2.54 Compliance with Task 118: Full and Unrestricted Access for Monitors**

Task 118 stipulates that:

**118. The State shall provide the Monitor with full and unrestricted access to all State staff, facilities, and non-privileged documents (including databases) necessary to carry out the duties assigned to the Monitor by this Decree. In the event of an objection, the Court shall make the final determination regarding access. In any instance in which the State objects to access, it must establish that the access sought is not relevant to monitoring the implementation of the Consent Decree, or that the information requested is privileged and the interest underlying the privilege cannot be adequately addressed through the entry of a protective order. In any instance in which the State asserts that a document is privileged, it must provide the United States and the Monitor a log describing the document and the privilege asserted. Notwithstanding any claim of privilege, the documents to which the Monitor shall be provided access include: (1) all State Police documents (or portions thereof) concerning compliance with the provisions of this Decree, other than a request for legal advice; and (2) all documents (or portions thereof) prepared by the Office of the Attorney General which contain factual records, factual compilations, or factual analysis concerning compliance with the provisions of this Decree. Other than as expressly provided herein, with respect to the Independent Monitor, this paragraph is not intended, and should not be interpreted to reflect a**

**waiver of any privilege, including those recognized at common law or created by State statute, rule or regulation, which the State may assert against any person or entity other than the Independent Monitor.**

Compliance Status: **In Compliance**

#### Methodology

The independent monitors were accorded full and unrestricted access to personnel from the New Jersey State Police and the Office of State Police Affairs (for the independent monitors' oversight of the seventeenth reporting period) during the reporting period.

#### Assessment

All documents requested by the independent monitors were provided in a timely and well-organized manner. There was no data analysis by the independent monitors during the reporting period requiring the production of data.

### **2.55 Compliance with Task 122: State to File Routine Progress Reports**

Task 122 stipulates that:

**122. Between ninety (90) and one hundred twenty (120) days following entry of this Consent Decree and every seven months thereafter until this Consent Decree is terminated, the State shall file with the Court and the Monitor, with a copy to the United States, a status report delineating all steps taken during the reporting period to comply with each provision of this Consent Decree.**

Compliance Status: **In Compliance**

#### Assessment

No status reports were produced in the reporting period. With the assumption of monitoring duties by OSPA and then OLEPS, status reports are redundant with the production of monitoring reports.



## 2.56 Compliance with Task 123: State to Maintain all Necessary Records

Task 123 stipulates that:

**123. During the term of this Consent Decree, the State shall maintain all records documenting its compliance with the terms of this Consent Decree and all documents required by or developed under this Consent Decree. The State shall maintain all misconduct investigation files for at least ten years from the date of the incident. The State Police shall maintain a trooper's training records and all personally-identifiable information about a trooper included in the MAP, during the trooper's employment with the State Police. Information necessary for aggregate statistical analysis shall be maintained indefinitely in the MAP for statistical purposes. MVR tapes shall be maintained for 90 days after the incidents recorded on a tape, except as follows: any MVR tape that records an incident that is the subject of an pending misconduct investigation or a civil or criminal proceeding shall be maintained at least until the misconduct investigation or the civil or criminal proceeding is finally resolved. Any MVR tape that records an incident that is the subject of a substantiated misconduct investigation, or an incident that gave rise to any finding of criminal or civil liability, shall be maintained during the employment of the troopers whose conduct is recorded on the tape.**

Compliance Status: **In Compliance**

### Methodology

Members of monitoring team have requested and reviewed in excess of one thousand documents, records and recordings in preparing this report.

### Assessment

All documents requested from the New Jersey State Police during the first half of 2009 were provided in a timely and well-organized manner (seventeenth monitoring period). That said, there were delays in receiving the automated data for this reporting period

as new data extraction protocols were developed for the new CAD system and the revisions to the MVSR.<sup>102</sup> There were also delays in receiving all video and paper documentation for the final sample. All data reviewed have been kept in a fashion that allows retention, retrieval and assessment. In addition, the State Police continue to observe the retention schedules set forth in this task.

## **2.57 Compliance with Task 124: Unrestricted Access for the Department of Justice**

Task 124 stipulates that:

**124. During all times while the Court maintains jurisdiction over this action, the United States shall have access to any State staff, facilities and non-privileged documents (including databases) the United States deems necessary to evaluate compliance with this Consent Decree and, within a reasonable time following a request made to the State attorney, shall, unless an objection is raised by the State, be granted such access and receive copies of documents and databases requested by the United States. In the event of an objection, the Court shall make a final determination regarding access. In any instance in which the State objects to access, it must establish that the access sought is not relevant to monitoring the implementation of the Consent Decree, or that the information requested is privileged and the interest underlying the privilege cannot be adequately addressed through the entry of a protective order. In any instance in which the State asserts that a document is privileged, it must provide the United States and the Monitor a log describing the document and the privilege asserted. Notwithstanding any claim of privilege, the documents to which the United States shall be provided access include: (1) all State Police documents (or portions thereof) concerning compliance with the provisions of this Decree, other than a request for legal advice; and (2) all documents (or portions thereof) prepared by the Office of the Attorney General which contain factual records,**

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<sup>102</sup> See Section 2.2 for implications in sampling for the current report.

**factual compilations, or factual analysis concerning compliance with the provisions of this Decree. Other than as expressly provided herein with respect to the United States, this paragraph is not intended, and should not be interpreted to reflect a waiver of any privilege, including those recognized at common law or created by State statute, rule or regulation, which the State may assert against any person or entity other than the United States.**

Compliance Status: **In Compliance**

#### Assessment

The Department of Justice was afforded the opportunity for full and unfettered access to all relevant documents, materials and data during the reporting period.

### 3.0 Summary

The Second Monitoring Report prepared by the Office of Law Enforcement Professional Standards (OLEPS) documents the continuing compliance of the New Jersey Division of State Police with the mandates and requirements of the 1999 Consent Decree. Previous reports noted the evolution of the State Police from an organization that had difficulty adapting to change into an organization that had become self-monitoring and able to develop or revise policies and procedures in response to developing legal principles and a dynamic criminal justice system. A goal of the decree was to encourage the development of the State Police as an organization that could adapt to a changing environment. This report concludes that the State Police continue to achieve that goal for the period January 1, 2009 through June 30, 2009, while the State Police were still subject to the provisions of the Consent Decree.<sup>103</sup>

In preparing this report, staff assigned to OLEPS reviewed 429 motor vehicle stops including videotape reviews of 417 of the stops, gathered statistical data from those reviews and conducted an analysis of the data to determine whether the law enforcement activity undertaken by the State Police during motor vehicle stops was consistent with tasks laid out in the Consent Decree. In addition, the staff evaluated the efforts of State Police management to supervise the activities of subordinate troopers through the Management Awareness Personnel Performance System (MAPPS) and other mechanisms. Furthermore, the staff performed audits of the internal affairs function and the training function to determine the compliance of those units with the Consent Decree. All these activities were performed in accordance with protocol and procedures previously established by the independent monitors.

The Second Monitoring Report has themes that are repeated in the various sections of the report. Most notably, this report details New Jersey State Police procedures, supervision and training in the period immediately following the February 2009 New Jersey Supreme Court ruling in Peña-Flores.<sup>104</sup> The Peña-Flores decision virtually eliminated probable cause searches without a warrant under the automobile exception to constitutional guarantees of searches only with a warrant. The decision sought to make access to judges and the ability to obtain warrants easier with the availability of telephonic warrants.<sup>105</sup> This decision had an immediate effect on State Police protocols for doing vehicle searches. The new protocols required training from the Academy and the resources of the Risk Analysis Core Group (RACG) with the unit supporting MAPPS

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<sup>103</sup> The 1999 Consent Decree was terminated on September 21, 2009, after a joint motion filed by the Department of Justice and the State of New Jersey. Legislation codifying the reforms (*N.J.S.A. 52:17B-222 et seq.*) creates OLEPS, which has among its functions the monitoring of the State Police as the federal independent monitoring team did under the terms of the Consent Decree.

<sup>104</sup> State v. Peña-Flores, 198 N.J. 6 (2009).

<sup>105</sup> As of this publication, there is no statewide telephonic warrant system.

to help Field Operations with enhanced tracking of consent search requests. The following summarizes the major findings of the report.

### **Peña-Flores Decision's Effects on State Police Procedures and OLEPS Monitoring**

- 1. The Peña-Flores decision led to modifications in State Police procedures regarding vehicle searches when a trooper has probable cause (PC) to believe a crime has been committed.*

State Police procedures developed in early March 2009 following the decision require that search warrants be obtained or, alternatively, consent to search be requested in order to search a vehicle with PC. Prior to the court decision, the existence of probable cause was sufficient to allow a non-consensual search of a vehicle; the court decision made more explicit, and hence limited, the exigent circumstances necessary to proceed without a search warrant. Between the decision and the end of the monitoring period, a total of 333 consent search requests based on probable cause were approved by supervisors and presented to drivers (or occupants) of vehicles in motor vehicles stops. Troopers requested 25 search warrants during the reporting period; 24 applications followed a motorist's declined consent request. The PC consent requests were in addition to the 72 requests made in the six-month period based on the legal standard of reasonable articulable suspicion (RAS), the legal standard applied in all previous reporting periods as necessary for requesting consent to search a vehicle. The total of 405 consent requests is more than three times the highest number reported in any previous six-month reporting period, which was the 134 consent requests in the sixteenth reporting period. (See Section 2.2 in the main text.)

- 2. As the number of consent requests rose during the reporting period, the State Police modified supervisory processes for consent requests that were in place at the time of the Peña-Flores decision.*

During the first OLEPS monitoring period, the State Police changed the approval process for troopers seeking to ask for consent to search a vehicle, so that station commanders (or assistant station commanders), not first-line supervisors, would review all RAS and authorize moving forward with the consent request. In addition, while the State Police had modified its mobile video recording (MVR) review policy in the sixteenth monitoring period to a system of more random incident reviews, the policy still mandated a standard review, as well as a management review, of all incidents that were "critical" to the Consent Decree, with consent search requests comprising one type.<sup>106</sup> Also,

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<sup>106</sup> By agreement of the State and the federal independent monitors the following actions were designated "critical" for monitoring motor vehicle stops during the Consent Decree: consent search requests, drug canine deployments, and uses of force.

beginning in the sixteenth period, specialized MVR review teams within each troop became responsible for the initial, standard MVR review of critical incidents, rather than front-line supervisors. The increasing volume of consent requests after the Peña-Flores decision thus required approval and review by a relatively small number of State Police supervisory and management personnel. Not surprisingly, all these resources were taxed with the increase in consent requests during the first half of 2009 and going forward. The State Police adjusted their policy of requiring station commanders to authorize consent-to-search requests to apply only to requests seeking authorization based on RAS, giving the authorization of consent request based on PC to first-line supervisors. In an attempt to reduce the workload of the MVR review teams and management reviewers, the State Police sought to have consent requests based on PC to be excluded from the designation as a "critical" incident for monitoring purposes. This proposal was not accepted.<sup>107</sup> (See Sections 2.2 and 2.4 in the main text.)

*3. OLEPS focused only on critical incident reviews for the reporting period to evaluate fully all the consent requests.*

In keeping with the review procedures of the federal independent monitors, OLEPS does MVR reviews of all critical incidents, but in the past had done only a paper review of a portion of the incidents sampled that were considered "non-critical," albeit still including post-stop law enforcement actions covered by the Consent Decree. However, in order to do video reviews of the increased volume of critical incidents reflecting the consent requests based on PC, the sampling procedures for review were modified to eliminate the random selection of incidents with other post-stop procedures so that resources would permit full review of all critical incidents. Because incidents often include multiple law enforcement procedures, the other post-stop procedures were reviewed to the extent that they occurred in the critical incidents. The resulting sample of 429 motor vehicle stops<sup>108</sup> is 11.7 percent higher than the number of incidents reviewed in the First OLEPS Monitoring Report (covering a full year), and the 417 video reviews conducted are 47.3 percent higher than reflected in the reviews of that report. Only one incident selected for review in the first half of 2009 was not subject to an MVR review by State Police. OLEPS did a video review of that incident and of the available 416 other incidents also receiving MVR reviews by State Police. (See Section 2.2.) The sampling decisions in conjunction with the addition of a legal standard of probable cause leading to consent requests changed the nature of the driving population

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<sup>107</sup> There were several conversations with federal independent monitors, OLEPS (then as OSPA) and State Police. The federal independent monitors continued to hold all consent requests should be considered critical incidents, as does OLEPS.

<sup>108</sup> The sample includes eight incidents for which video recordings were received, but were not deemed "critical."

sampled<sup>109</sup> and of some of the statistical tests applied here as in recent reports.<sup>110</sup> And, the fact that only one incident did not have any MVR review by State Police personnel means that the findings reported reflect review not just of the activities of troopers, but those of their supervisors in reviewing those activities.

4. *The State Police remains in compliance with all tasks in this reporting period, but the number of errors noted by the monitoring team that were not caught by State Police personnel is higher than in any previous reporting period. This is attributable at least in part to the change in vehicle search procedures following the Peña-Flores decision, and is reflected in warnings being issued for several specific tasks.*<sup>111</sup>

In total, the number of incidents found with procedural or constitutional errors at 248, was higher than in any previous reporting period, even correcting for the increase in OLEPS tape reviews. But, as noted above, the percentage of incidents reviewed by supervisors and management was also higher than in previous reports; all errors were caught by State Police supervisors in 193 incidents prior to OLEPS' review, but not in the remaining 55 incidents. The 55 incidents with errors yield an overall uncaught error rate of 12.8 percent (see Section 2.3) and results in the State Police being placed on warning for several tasks (or parts of tasks) related to Supervision, where compliance under the Consent Decree required that less than six percent of the incidents have an uncaught error to achieve compliance, but also in tasks requiring procedural compliance in at least 90 percent of the incidents. Few of the uncaught errors were found in events that did not involve consent requests.<sup>112</sup>

The consent authorization and request procedures per se were not problematic; rather, what appears to be more salient for errors in PC-based consent requests in the time period immediately after the Peña-Flores decision were issues with the procedures for arresting occupants immediately, giving the appropriate Miranda warnings, and, appropriately documenting the events on stop reports. The high number of incidents in

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<sup>109</sup> That is, the random sampling in previous reports was "stratified" so that sufficient incidents with minority drivers were selected for review and comment. The current sample has proportionately more "white" drivers while the proportion of "Hispanic" drivers is smaller than in previous reports.

<sup>110</sup> The report finds no statistically significant pattern that would indicate race-based decision making on the part of the New Jersey State Police. However, some statistical tests were unlikely to show significance because there were no "non-critical" incidents against which to assess any potential bias in selection of whom to ask for consent, of which incidents will lead to drug canines to be deployed, nor of against whom force might be employed.

<sup>111</sup> During the Consent Decree, the federal monitors and the State established a procedure whereby once Phase II compliance was achieved (see Section 1.2 for phases of compliance), a task would not be placed out of compliance until after two consecutive reporting periods outside the allowable margin of error for the particular task. Thus, for the first reporting period out of compliance, a "warning" is issued.

<sup>112</sup> One exception is the lack of a use-of-force form in one of the 13 incidents involving use of force; the one incident was sufficient to raise the error rate to over seven percent. (See Section 2.5.)



which Miranda warnings were not appropriately given (74 stops) and the fact that the issue with the warnings was not appropriately noted by supervisors in more than a fifth of these (16 stops), no doubt reflects the revised search procedure requiring immediate arrest of all occupants with probable cause, but was troubling, especially because Miranda issues were covered in the previous year's (2008) in-service training. (See Section 2.38.) However, OLEPS recognizes that an organization needs time to adjust to a change in procedures. As the OLEPS monitoring team began noting the prevalence of the issue, it discussed the issue with State Police. The monitoring expects the issue to subside in future monitoring reports.

## **Other Findings**

In addition to the clear effects of the Peña-Flores decision on State Police activity, the State Police continued to maintain compliance with other requirements of Consent Decree during the reporting period. The monitoring team continues to comment on issues raised in its previous report, and notes some new areas in need of attention by the State Police.

### *Supervision*

In the First OLEPS Monitoring Report, the monitoring team raised concern about the removal of the responsibility for authorizing consent requests from first-line supervisors to station commanders. Ironically, because of increases in consent search requests with the Peña-Flores decision, as noted above, more decision making was placed back with first-line supervisors who were given the responsibility to approve consent requests based on probable cause. The monitoring team continues to believe that supervision is most effective when conducted by first-line supervisors. While two consent requests based on PC were approved inappropriately during the reporting period, management reviewers caught and corrected them. Overall, the error rate for consent requests based on reasonable articulable suspicion (2.8%) was higher than in those based on PC, which was under one percent. (See Section 2.4.)

Also raised in the previous report was the issue of the low proportion of stops with a supervisor present. The overall rate this period (39.6%) is similar to that found the First OLEPS Monitoring Report. And, the presence of a supervisor at the scene of an unfolding critical incident remains high (59.8%), but is down slightly from that reported in the last report. (See Section 2.16.) Again, the monitoring team cautions that effective supervision in the long term may be compromised without a presence on the scene.

Thirdly, in this reporting period, the State Police clearly is moving toward digital recording of stops, with six digital stop recordings reviewed by the monitoring team for the period. The number of stops with audio, video, or both audio and video issues, at

49, remains too high, and again likely reflects aging equipment. MVR malfunctions accounted for eight of the 12 incidents for which the monitoring team was unable to view videos. (See Section 2.11.) OLEPS looks forward to the complete shift to digital technology in the near future.

Finally, in the last monitoring report, OLEPS noted improvements in the articulation of reasonable suspicion leading to a consent request and in supervisors' ability to catch problematic articulation, attributing this improvement to the in-service training received in 2007. This trend continues in the first half of 2009. Almost all 72 consent requests based on RAS contained at least one "probative" element among the factors articulated to establish the reasonable suspicion needed to pursue a consent request. (See Section 2.2.2.1.)

### *MAPPS Development*

MAPPS continues to contain all required information and capabilities, resulting in full compliance again for this reporting period. Commencing with this reporting period, MAPPS use is governed by a Standard Operating Procedure (S.O.P. C-11), approved by the federal monitors and incorporating revised policies that previously existed in annually renewed Operations Instructions since MAPPS implementation in January 2004. (See Section 2.17.) The system can be used to review trooper and supervisory performance, compare trooper performance to other members of the trooper's workgroup, and to compare performance across work groups (Section 2.20). MAPPS is being used in performance evaluations and in other supervisory actions in order to document interventions and commendations, thus enhancing the system's repository of performance information available to subsequent supervisors (Section 2.24 through Section 2.26). Appropriate benchmark processes have been established for the MAPPS system, and all five of the New Jersey State Police's field operations troops continue to receive written analytic reports on motor vehicle stops and race that are reviewed by selected command staff at quarterly Risk Management Advisory Panel meetings (Sections 2.27 and 2.28).

During this reporting period, the use-of-force module was added to the system, allowing routine analysis by the RACG within the MAPPS Unit that can be provided to the Division (Section 2.28). And, troopers now have routine access to much of their own MAPPS information, far beyond the annual requirement of the Consent Decree (Section 2.19).

The monitoring team did note some issues with the availability of certain information in MAPPS and inconsistent application of policies, both of which limit the comprehensive picture of performance MAPPS is intended to present and its use as an early intervention system to correct performance (Section 2.18). MAPPS relies on data maintained by other units within the State Police; a change in the protocol by the

Academy for recording attendance at on-duty firearms training during the reporting period was not relayed to the MAPPS Unit and the information was missing in MAPPS for all troopers checked by the monitoring team more than a year later (Section 2.22). MAPPS presents a view of the Academy's training base, but the protocol creating that view in MAPPS needed to be revised to reflect the Academy's change. The units responsible for feeding information to MAPPS should be sure that the MAPPS Unit is aware of any changes to their systems so that accommodations can be made, if required. Secondly, the ability to attribute performance to a specific incident requires that the Computer-Aided-Dispatch (CAD) number associated with a stop appears on all information related to the incident, including trooper interventions and commendations resulting from it. Supervisors need to remember to record appropriately CAD numbers when entering interventions and commendations in MAPPS to allow cross-referencing to all information about the incident (cf. Section 2.21).

The topics on which interventions are taken also need clarity by supervisors. An issue raised in earlier reports by the federal independent monitors was the fact that corrective action appears in the narratives of MVR reviews, with "no action taken" indicated as the outcome of the review (Section 2.24). This remains an on-going issue for the OLEPS monitoring team, which acknowledges a supervisor's understanding of the troopers under their command and what the appropriate level of intervention is for each individual. However, as noted above, most MVR reviews are conducted by troop-level personnel, not first-line supervisors. In addition, in this reporting period, the monitoring team found that the narratives of the MVR reviews of critical incidents did not always clearly state the issues they were raising, such as when questioning was inappropriate leading up to a consent or after an arrest without a Miranda warning. The clarity of issues may be especially important when noted by someone other than the front-line supervisor.

The MAPPS system and the RACG continue to have sufficient resources to maintain compliance with the demands of the Consent Decree and to address other analytic demands of the State Police. That said, in a time of budgetary constraints, the monitoring team remains concerned about future staffing of positions that support the analytic efforts of the State Police, both enlisted and civilian. The sufficiency of the staffing is not just in terms of numbers, but also in terms of the appropriate training required to support specialized functions.

### *Office of Professional Standards (OPS)*

OLEPS continues to monitor the activities of OPS and finds it remains in compliance the requirements of the Consent Decree (Section 2.32). Of note during the previous reporting period was the implementation by OPS of its Incident Reduction Initiative that continued to evolve in the current reporting period. The initiative hopes to achieve a reduction in the number of complaints through an aggressive program of data collection

and analysis. The analysis allows the Division as a whole to proactively address troopers who are unwilling, unable or unfit to perform their duties. The monitoring team awaits the potential integration into the program of the meaningful review process for troopers who are identified with three misconduct investigations in two years, a process that remains otherwise insufficiently articulated (Section 2.30).

The program's focus on identifying patterns of behavior is consistent with the spirit of the Consent Decree and its emphasis on early interventions to modify behavior. As in the previous report, the monitoring team encourages improved integration of the risk identification and the risk analysis functions across the State Police, including this program, to enhance its ability to effectively address emerging issues as they arise.

### *Training*

The State Police remains in compliance with all Consent Decree requirements applicable to the training function for this reporting period.<sup>113</sup> The New Jersey State Police Training Academy's ability to provide effective and meaningful training continues to evolve and improve.

During the reporting period, the Peña-Flores decision demonstrated not only the Academy's role in updating troopers with current case law applicable to search and seizure, but also its capability to identify training issues that arise from the day-to-day activities of the Field Operations Section, develop curriculum and programs to address those issues, and implement the curriculum and programs through in-service training. For 2009, the in-service updated troopers on the court decision and its impact on search and seizure procedures for the Division (Section 2.34). The measurement of the effectiveness of the curriculum at the conclusion of in-service training awaits data from 2010. Attendance at the 2009 in-service training by OLEPS revealed that the required training not only in search and seizure, but also for cultural diversity, leadership and ethics was well-presented. Search and seizure topics included participation in interactive scenarios (Section 2.38 and Section 2.39).

A Regional Intelligence Academy (RIA) was established during the reporting period as a collaborative effort of the New Jersey State Police with the New Jersey Office of Homeland Security and Preparedness, and with the Urban Area Security Initiative. The RIA develops intelligence training for law enforcement personnel, emergency management personnel, analysts, corporate executives and policy decision makers. While falling outside the mandate of the Consent Decree, members of the Academy staff assigned to the RIA develop training according to the same training cycle used by the Academy and are commended for doing so (Section 2.34). Unfortunately, the detachment of Academy personnel to the RIA contributes to the monitoring team's

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<sup>113</sup> The reporting period for the training requirements encompassed the entire calendar year (2009).

concern about low staffing levels actually available for Academy training assignments, a long-standing concern of the federal monitors (Section 2.35).

The Academy is required to maintain formal eligibility requirements and selection processes both for Academy instructors and for troopers who become trooper coaches to new troopers. During MAPPS reviews of troopers who had three misconduct investigations in two years, the monitoring team noted several who attended trooper coach training with open misconduct investigations (Section 2.30). Consequently, the monitoring team reviewed the whole trooper coach selection process in place for the reporting period (Section 2.36). As a result of the review, the monitoring team recommends more attention and transparency to the recording of reasons why or why not someone is recommended to continue in the trooper coach selection process.

### *Inspections, Audit and Quality Control*

OLEPS continues to provide the State Police with an additional tier of review for law enforcement activities related to the Consent Decree. Inspections and Audit personnel from Field Operations and OLEPS continue to review motor vehicle stop reports and video tapes elements for conformance to the requirements of the Consent Decree. OLEPS continues to publish public reports on motor vehicle stops by the State Police (Section 2.48 through Section 2.52).

### **Overall Compliance Status**

All functions subject to review under the decree including training, supervision, inspections, audits and MAPPS processes are staffed and functioning and all areas again meet the requirements established by the Consent Decree. That said, the monitoring places the State Police on warning for several tasks related to supervision of motor vehicle stops following the Peña-Flores decision and expects improvement in subsequent reports. The goal of the Consent Decree is to encourage the development of a law enforcement organization that is able to monitor its activities and adapt to the changing dynamics of the criminal justice system. OLEPS anticipates the State Police's level of functioning to continue when it conducts reviews in post-Consent Decree periods.

**Appendix One**  
**Summary of Independent Monitoring Team (IMT) Assessment of Phase II Compliance**  
**For Monitored Consent Decree Tasks**

		<b>In Compliance Since (Date of IMT Report):</b>	<b>IMT Report</b>
<b>TASK</b>			
<b>Field Operations</b>	26: Prohibition from Using Race-Ethnicity in Decision Making	1/10/2001	2nd
	27: Monitor & Eval. Implementation of Motor Vehicle Stop (MVS) Criteria	7/19/2004	10th
	28: Request for Consent to Search Upon Reasonable Suspicion	4/12/2001	3rd
	29a: Recording Requirements for MVS	8/21/2003	8th
	29b: Expeditious Implementation of MVS Criteria	1/10/2001	2nd
	29c: Forms to Support Tasks 31, 32, 33	10/6/2000	1st
	29e: Approval of Revisions to Protocols, Forms, Reports, & Logs	10/6/2000	1st
	30: Communications Center Call-Ins	10/6/2000	1st
	30a: Notice of Call-In at Beginning of Stop	10/6/2000	1st
	30b: Notice Prior to Search	7/19/2004	10th
	30c: Call-Ins Upon Completion of Stop	10/6/2000	1st
	30d: CAD's Incident Number Notification	10/6/2000	1st
	31: Reporting Consent to Search Requests	1/10/2001	2nd
	31a-c: Recording Consent to Search Requests	1/17/2003	7th
	32: Recording and Reporting of Non-Consensual Searches	4/12/2001	3rd
	33: Recording and Reporting Deployment of Drug Detect. Canines	7/17/2001	4th
	34a: Use of Mobile Video Recording (MVR) Equipment	10/6/2000	1st
	34b-c: Training in MVR Operation and Procedures	7/19/2002	6th
	35: Supervisory Review of Trooper Reports	12/20/2004	11th
	36: Supervisory Review of MVR Tapes	12/20/2004	11th
	37: Supervisory Referral To PSB of Obs. Inappr. Trooper Conduct	1/18/2002	5th
	38: Periodic Review of Referral Decisions	1/23/2004	9th
	39: Regular Supervisory Activity in the Field	8/21/2003	8th
<b>MAPPS...</b>	40: Development of a MAP[P] System (Specified in Tasks 41-51)	7/14/2005	12th
	41: Data: a.cf.#29; b. performance, misconduct; c.interventions& training	7/19/2004	10th
	42: Grant Individual Trooper Access to MAPPS Information	7/19/2004	10th
	43: MVS Data Available In Any Combination, Different Time Periods	7/19/2004	10th



**Appendix One**  
**Summary of Independent Monitoring Team (IMT) Assessment of Phase II Compliance**  
**For Monitored Consent Decree Tasks**

		<b>In Compliance Since (Date of IMT Report):</b>	<b>IMT Report</b>
<b>TASK</b>			
<b>MAPPS continued</b>	44: Use of Common Control Number for Incident Information	7/19/2004	10th
	45: Accuracy, Timeliness and Security of MAPPS Data	7/19/2004	10th
	46: MAPPS Implementation Plan; Begin Sup. & Mangmnt. Reviews	1/23/2004	9th
	47: Dev. Review Protocols, Individ., Units, Subunits	7/19/2004	10th
	48: At Least Q'ly Reviews of MAPPS Data; Individ., Units, Subunits	7/19/2004	10th
	49: cf.43;a. Rev., Individ., Squad, Station;#by race;p-stp by reas,race	7/19/2004	10th
	49b:Indiv., Squad, Station;complnts,misc.,discip.,interv.,force	7/19/2004	10th
	50: Analysis of MVS data by race, including benchmark	7/14/2005	12th
	51:Trend Analysis of MAPPS data	7/14/2005	12th
	52:Supervisors to Implement Changes	12/20/2004	11th
	53: Supervisory Review of Troopers w/ >2 Miscond. Invest. w/in 2 yrs.	7/19/2004	10th
	54:Drivers' Survey of New Jersey Turnpike	10/6/2000	1st
<b>OPS and Investigations...</b>	57:Troopers to Provide Name and Badge Number	1/10/2001	2nd
	58:State to Inform Civilians re Complaints/Compliments	1/10/2001	2nd
	59:Availability of Complaint/Compliment Forms	7/17/2001	4th
	60:Community Outreach	1/10/2001	2nd
	61:Receipt of Citizens' Complaints	1/10/2001	2nd
	62:Institution of 24-hour Toll-Free Hotline	1/10/2001	2nd
	63:PSB to Receive Citizens' Complaints	1/10/2001	2nd
	64:Relocation of the Office of Prof. Standards Offices	1/10/2001	2nd
	65: Referral to OAG of Specific Dismissed Charges	4/12/2001	3rd
	66:Notice to OSPA of Pending Civil Actions	1/10/2001	2nd
	67:Notice of Criminal Involvement of Members	7/17/2001	4th
	68:Notice of Adverse Involvement	7/17/2001	4th
	69:Duty to Report Misconduct	7/17/2001	4th
	70:Creation of the Office of Professional Standards	7/19/2002	6th
	71:Formal Eligibility Requirements for PSB	4/12/2001	3rd
	72:Execution of Training for OPS Staff	4/12/2001	3rd



Appendix One  
Summary of Independent Monitoring Team (IMT) Assessment of Phase II Compliance  
For Monitored Consent Decree Tasks

TASK		In Compliance Since (Date of IMT Report):	IMT Report
OPS and Investigations-continued	73:Initiation of Misconduct Investigations	1/10/2001	2nd
	74:Responsibility for Conducting Internal Investigations	1/10/2001	2nd
	75:Prohibition of Conflict of Interest in Investigations	1/10/2001	2nd
	76:Prohibition of Group Interviews	1/10/2001	2nd
	77:Alternative Locations for Interviews	1/10/2001	2nd
	78:Investigation of Collateral Misconduct	1/10/2001	2nd
	80:Revision of the "Internal Investigations Manual"	1/18/2002	5th
	81: Preponderance of the Evidence Stand. For Int. Investigations	1/10/2001	2nd
	82: MVR Tape Review in Internal Investigations	1/10/2001	2nd
	83:State to consider Circumstantial Evidence in Int. Investigations	1/10/2001	2nd
	84:Required Case Dispositions in Internal Investigations	1/10/2001	2nd
	85:No Closure upon Withdrawal of Complaint	1/10/2001	2nd
	86:Development of a Final Investigative Report	1/10/2001	2nd
	87: State to Attempt to Complete Invest. Within 45 Days	8/21/2003	8th
	88:Imposition of Appropriate Discipline Upon Sustained Complaint	7/17/2001	4th
	89:Imposition of Appropriate Discipline Upon finding of Guilt or Liability	1/18/2002	5th
	90:Imposition of Appropriate Discipline In Consultation with MAPPS	7/19/2004	10th
	91:Tracking of Open OPS Cases	4/12/2001	3rd
	92:Inform the Complainant upon Resolution of Investigations	4/12/2001	3rd
Training	93:Develop & Evaluate Quality of Training Programs	7/14/2005	12th
	97:Encourage Superior Troopers to Apply for Academy	1/10/2001	2nd
	98:Formal Eligibility Criteria for Training Personnel	7/19/2004	10th
	99:Training for Academy Instructors	7/19/2004	10th
	100:Training in Cultural Diversity	7/19/2004	10th
	101: Recruit and In-Serv.Training on 4th Amend. &Non-Discrim.Reg.	4/12/2001	3rd
	102:Training Protocols for the Trooper Coach Process	1/18/2002	5th
	103:Provision of Copies of the Decree to All State Troopers	10/6/2000	1st
	104:Systems Improvement Processes for Police Training	1/10/2001	2nd

**Appendix One**  
**Summary of Independent Monitoring Team (IMT) Assessment of Phase II Compliance**  
**For Monitored Consent Decree Tasks**

<b>TASK</b>		<b>In Compliance Since (Date of IMT Report):</b>	<b>IMT Report</b>
<b>Training-continued</b>	105:Provision of Training for Supervisors	1/17/2003	7th
	106:Training for Newly Promoted State Troopers	1/10/2001	2nd
	107:Provision of Specialized Training	1/18/2002	5th
	108:Inclusion of Training Data in MAPPS Program	7/19/2004	10th
	109:Establishment of a Central Repository for Training Recs.	10/6/2000	1st
<b>Oversight &amp; Public Information</b>	110:Creation of the Office of State Police Affairs	7/14/2005	12th
	111:Audits of Motorists Subjected to MVS	4/12/2001	3rd
	112:Internal Audits of Citizen Complaint Processes	7/17/2001	4th
	113:Full and Unrestricted Access for OSPA	10/6/2000	1st
	114: Publication of Semi-Annual Repts. Of Aggregate. MVS Statistics	10/6/2000	1st
	115:Appointment of Independent Monitor	10/6/2000	1st
	118:Full and Unrestricted Access for Monitors	1/10/2001	2nd
	120: State Police Reopen Internal Invest. Determined to be Incomplete	7/17/2001	4th
	122:State to File Routine Progress Reports	10/6/2000	1st
	123:State to Maintain All Necessary Records	1/10/2001	2nd
	124: Unrestricted Access for the Department of Justice	10/6/2000	1st

## Appendix Two

### Data Tables for *Chi-Square* Analyses

Table Four: Consent Requests by Race-Ethnicity of Driver, 2<sup>nd</sup> OLEPS Reporting Period

	White	Black	Hispanic	n=
No Consent Request	12	7	5	24
Consent Request	178	168	47	393
Total	190	175	52	417 <sup>1</sup>

$$\chi^2=2.533, df= 2^2$$

$$p= 0.282^3$$

This test statistic is *not significant* at the 0.05 level.

Table Five: Canine Deployments by Race-Ethnicity of Driver, 2<sup>nd</sup> OLEPS Reporting Period

	White	Black	Hispanic	n=
No Canine Deployment	181	165	48	394
Canine Deployment	9	10	4	23
Total	190	175	52	417 <sup>4</sup>

$$\chi^2=0.707, df= 2$$

$$p= 0.702$$

This test statistic is *not significant* at the 0.05 level.

<sup>1</sup> The "Total" does not equal 429 because twelve drivers were in the other categories of race or ethnicity.

<sup>2</sup> "Degrees of freedom" (df) refer to the how much about the observed data needs to be known (or can "be free" to vary) before all the observations would be determined. The size of a statistic needed to achieve a particular level of significance ("p") is determined by the degrees of freedom. For the *Chi-square* statistic, the degrees of freedom translate into the number of cells in a table for which the data distribution needs to be known before all the cells are determined.

<sup>3</sup> A "p" level indicates the probability that a statistical relationship could reflect only chance. The smaller the size of "p," the smaller the probability the relationship happened by chance. A "p" level of 0.05 was chosen here as the level at which statistical significance will be determined, consistent with most research studies. If a reported *Chi-square* statistic reaches a "p" level of 0.05 (or smaller), there is no more than a five-percent probability that the distribution of the data in that table happened by chance, and therefore any differences across groups seen in the table are considered statistically significant.

<sup>4</sup> The "Total" does not equal 429 because twelve drivers were in the other categories of race or ethnicity.

## Appendix Two Data Tables for *Chi-Square* Analyses

Table Six: Arrest Data by Race-Ethnicity of Driver, 2<sup>nd</sup> OLEPS Reporting Period

	White	Black	Hispanic	n=
No Arrest	8	15	9	32
Arrest	182	160	43	385
Total	190	175	52	417 <sup>5</sup>

$\chi^2 = 10.227$ , df = 2

p = 0.006

This test statistic is *significant* at the 0.05 level.

Table Seven: Consent Request Stop Rates by Reason for Stop (Level of Discretion), 2<sup>nd</sup> OLEPS Reporting Period

	White	Non-White	n=
High Discretion (1)	59	67	126
Median Discretion (2)	48	72	120
Low Discretion (3)	71	88	159
Total	178	227	405

$\chi^2 = 1.215$ , df = 2

p = 0.545

This test statistic is *not significant* at the 0.05 level.

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<sup>5</sup> The "Total" does not equal 429 because twelve drivers were in the other categories of race or ethnicity.

## Appendix Two Data Tables for *Chi-Square* Analyses

Table Eight: Canine Deployment Rates by Reason for Stop (Level of Discretion), 2<sup>nd</sup> OLEPS Reporting Period

	White	Non-White	n=
High Discretion (1)	4	5	9
Median Discretion (2)	4	6	10
Low Direction (3)	1	3	4
Total	9	14	23

$\chi^2=0.445$ , df= 2

p= 0.800

This test statistic is *not valid* as four cells (66.7%) have expected counts of less than five.

Table Nine:  
Sampled Vehicle Stop Rates by Reason for Stop (Level of Discretion), 2<sup>nd</sup> OLEPS Reporting Period

	White	Black	Hispanic	n=
High Discretion (1)	61	49	17	127
Median Discretion (2)	50	58	17	125
Low Direction (3)	79	68	18	165
Total	190	175	52	417 <sup>6</sup>

$\chi^2=2.703$ , df= 4

p= 0.609

This test statistic is *not significant* at the 0.05 level.

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<sup>6</sup> The "Total" does not equal 429 because twelve drivers were in the other categories of race or ethnicity.

## Appendix Two Data Tables for *Chi-Square* Analyses

Table Ten:  
Reason for Consent Request by Race and Ethnicity, 2<sup>nd</sup> OLEPS Reporting Period

	White	Non-White	n=
Intangible (1)	1	1	2
Tangible (2)	---	---	---
Probative (3)	31	39	70
Total	32	40	72 <sup>7</sup>

$\chi^2$  statistic for this table is *not valid* as 2 cells (50%) have expected counts of less than five.

Table Eleven: Outcome for Consent Request by Race and Ethnicity,  
2<sup>nd</sup> OLEPS Reporting Period

	White	Non-White	n=
Inappropriate (1)	9	6	15
Appropriate (2)	169	221	390
Total	178	227	405

*Yates'*  $\chi^2=1.02$ , df= 1

p= 0.312

This test statistic is *not significant* at the 0.05 level.

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<sup>7</sup> The "Total" does not equal 405 consent requests because the reasons for consent requests tested apply only to the 72 requests based on reasonable articulable suspicion.

## Appendix Two Data Tables for *Chi*-Square Analyses

Table Twelve: Daytime v. Nighttime Consent Requests by Reason for the Stop  
2<sup>nd</sup> OLEPS Reporting Period

	Daytime Stops <sup>a</sup>			Nighttime Stops <sup>b</sup>		
	White	Non-White	n=	White	Non-White	n=
High Discretion (1)	36	44	80	23	23	46
Median (2)	21	16	37	27	56	83
Low Discretion (3)	45	42	87	26	46	72
Total	102	102	204	76	125	201

<sup>a</sup>  $\chi^2=1.579$ , df= 2

p= 0.454

This test statistic is *not significant* at the 0.05 level.

<sup>b</sup>  $\chi^2=3.979$ , df= 2

p= 0.137

This test statistic is *not significant* at the 0.05 level.



## Appendix Three High, Median and Low Discretionary Violations

### High Discretion:<sup>1</sup>

- Equipment Violation
- Exp Registration
- Failure to Signal Lane Change
- Following too Closely
- FTKR
- Improper U turn
- MDT Suspended Registration
- Obstructed View
- Rest Area Overstay
- Seatbelt
- Speeding <10

### Median Discretion:

- Aggressive Driving
- FTML
- Motorist Aid
- Speeding 10-14
- Unsafe Lane Change

### Low Discretion:

- BOLO
- Confidential Informant
- Criminal Activity
- Directed Stop
- Fictitious Plates
- Motor Vehicle Accident
- Reckless Driving
- Speeding >14
- Suspected DUI
- Warrants

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<sup>1</sup> The federal independent monitors engaged in multiple, substantial discussions with New Jersey State Police personnel regarding the nature of the "reason for stop" offenses. While there remain some differences in opinion regarding high versus low discretion incidents, the framework presented above is the best available framework obtainable, in the federal monitors' opinion, to assess the exercise of discretion in studied traffic stops. Further work in this area *may require* revision of the reason for stop continuum. (Appendix Three appeared as Annex One in the last two IMT reports.)