



State of New Jersey
ADVISORY COMMITTEE ON POLICE STANDARDS

New Jersey Advisory Committee on Police Standards

**Report and Recommendations to Governor Jon S. Corzine
Pursuant to Executive Order No. 29**

December 7, 2007



State of New Jersey
ADVISORY COMMITTEE ON POLICE STANDARDS

New Jersey Advisory Committee on Police Standards

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“The force, individually and collectively, should cultivate and maintain the good opinion of the people of the State by prompt obedience to all lawful commands, by a steady and impartial line of conduct in the discharge of its duties and by clear, sober and orderly habits and by respect to all classes.”

– New Jersey State Police
General Order No. 1, December 5, 1921

PREFACE

The men and women who enforce our laws ensure safety on our highways and streets and protect against those who would prey on the weakest among us. They are the most evident and ever-present face of government. When true to their calling, they represent the best in all of us. They are courageous, innovative and willing to sacrifice themselves for the greater good. When they execute their tasks with vigor, honor and fairness, they enrich our common life together.

Nearly a decade ago, some New Jersey State Troopers engaged in acts that were neither fair nor honorable. Their conduct only served to divide the people of this State and dishonor the best traditions of the State Police. They neither acted alone, nor were they the only examples of misconduct. They operated in an environment in which mixed signals were sent from the most senior levels of State law enforcement. Since that time, the State Police, staff within the Attorney General’s office, as well as the Attorney Generals themselves, have worked to rebuild public trust and restore the honor of the State’s largest law enforcement force through radical revision of the State Police’s Standing Operating Procedures, reordering of the relationship between the Attorney General’s office and the State Police, and development of management technology that broke new ground. They have made tremendous progress in seven years. Although that progress has been neither uniform nor perfect, they have earned our respect for tackling the task presented to them. All participants in the system must maintain continued vigilance, but the State Police must also have our encouragement for the path ahead.

ACKNOWLEDGEMENT

The Governor established this Advisory Committee to provide guidance on questions important to the lives of all citizens of this State. He asked this group, drawn from a variety of professions, backgrounds and perspectives, to serve the State and develop a common vision of the way forward. The Committee thanks the Governor for his leadership and his willingness to trust that if you give citizens a task, the time in which to do it, and the expectation that their effort will be taken seriously, it is possible to find common ground. This Committee has done just that.

Our ability to hold hearings, to gather documentary evidence and to inform ourselves and the public was dependent on the cooperation of the Attorney General's office and the New Jersey State Police. As Attorneys General, the Honorable Stuart Rabner, now Chief Justice of the New Jersey Supreme Court, and his successor, Attorney General Anne Milgram, together with their staffs, have earned our praise for their cooperation, insight and candor. Their commitment to openness is a model of how government should answer the questions of its citizens. Like the Attorneys General, Colonel Rick Fuentes, Superintendent of the State Police, has given freely of his own time and that of his staff. He and the entire leadership team of the State Police have earned our thanks for their assistance in this enterprise.

The Committee is deeply indebted to the Independent Monitoring Team, headed by Dr. James Ginger and Mr. Al Rivas, Esq., for their work of over seven years, which has assisted the State Police in implementing the terms of the Consent Decree and setting the standard of many current best practices in policing. The Monitors were also generous with their time and insights in speaking to and testifying before the Committee, without which the Committee could not have completed its work, and for that we are truly grateful.

The Committee benefited from the testimony of more than seventy-five witnesses who shared their time and perspectives. Their contributions gave life to our work. We are particularly appreciative of the three former Attorneys General, Robert Del Tufo, John J. Farmer, Jr., and Peter Harvey, who shared with us the benefit of their insights and experience in the job. Finally, we thank the experts who gave generously of their time, outside of public view, to help to educate us on many of the challenging issues we faced: Dr. Jeffrey Fagan, Dr. Geoffrey Alpert, Richard Brooks, and Dr. Christopher Winship. We also thank those who appeared before us: Professor Roger Goldman, Richard Jerome, Esq., Dr. Joseph B. Kadane, Dr. John Lamberth, Dr. Richard Brooks and Dr. Samuel Walker.

This work would not have been possible without the tireless assistance of a team of lawyers from Debevoise & Plimpton LLP and DLA Piper LLP. The Committee thanks Aaron Bloom, Courtney Dankworth, Shirley Emehelu, Andrea Glen, Evan Hochberg, Timothy Howard, Neuman Leverett, Cameron Schroeder, Emily Slater and Katherine Worden of Debevoise & Plimpton LLP and James S. Coons, Michael D. Hynes and Caleb J. Stevens of DLA Piper. Both firms, in devoting resources and talent to this effort *pro bono*, continue their fine traditions of serving the public interest, and these lawyers proved themselves more than worthy to carry those traditions forward.

INTRODUCTION

I. Summary of Recommendations of the Committee

The New Jersey State Police has a challenging, dangerous and invaluable mission. Although some members of the Committee had either served with the State Police or worked with Troopers as law enforcement colleagues and task force members, some members of the Committee took on this duty equipped with just the knowledge of well-informed members of the public. The Committee's first job, then, even before taking testimony, was to travel to the training academy and review video of a highway stop and see the Management Awareness Personal Performance System ("MAPPS") in operation. The Committee was quickly impressed with three things. First, the job of the Trooper, who enforces the law on our highways, often without any support for miles, is filled with grave risk. Second, to the average member of the public stopped by a Trooper for whatever reason, the Trooper is a powerful figure—the only governmental authority present—and subject to great deference. Third, data systems and supervisory controls placed around such systems help both to ensure that the stop is conducted in a constitutional manner and enhance the safety of the Trooper by improving his or her communication with Supervisors and dispatchers. Every Trooper who takes to the road and every Trooper who helped to facilitate the progress made in the past seven years should take pride in the mission of the New Jersey State Police and in the work that has been done to enhance its dedication to the Constitution and laws of the State.

The Committee recommends that the State join in the motion to dismiss the Consent Decree. It is time to move both the State Police and the Attorney General's office from federal intervention and monitoring and recognize that, together, they have become largely self-regulating. Both the Monitors and Colonel Fuentes, however, among others, identified areas in which questions remain about the racial disparities in some of the stop data, notwithstanding compliance. There is a risk that the progress made can be undercut. Failure of political will, a failure to maintain systems, innocent error and willfulness are all enemies of sustained progress. Because of the stakes involved and concerns about the risks of backsliding, the Committee recommends structural changes to the apparatus of State government, particularly in the Attorney General's office and the State Police, to ensure that leadership remains accountable for the conduct of public servants in the Attorney General's office and on State highways, and to ensure that the operations of the State Police remain transparent to all involved. It is in that spirit that the Committee makes the following recommendations:

1. The State Police should:
 - in conjunction with the Attorney General, periodically assess whether motor vehicle stop and post-stop protocols continue to meet evolving State and federal constitutional standards;
 - maintain protocols ensuring multi-level supervisory review;
 - maintain current Mobile Video Recorder ("MVR") review protocols;

- continue to employ MAPPS as a supervisory and management tool;
 - enhance routine collection of detailed stop data, including data on stop characteristics that will allow deeper analysis of the reason for a stop or post-stop activity;
 - maintain adequate information technology and/or data analysis staffing to timely address technical needs and perform data analysis;
 - continue and enhance trend analysis to enable the Attorney General and the Superintendent to identify early warning signs regarding stop and post-stop data and to take prompt remedial action;
 - continue to publish aggregate data reports;
 - ensure adequate staffing and resources for training programs;
 - place strict controls on training offered by outside vendors;
 - ensure that trainers, before they commence their service, know and understand the letter and spirit of policies and procedures against racial profiling;
 - reform the promotion process, including adopting promotion standards that take into account compliance with the Consent Decree and any implementing Standing Operating Procedures (“SOPs”) as an explicit factor; and
 - give an annual award, within each Troop, to the Trooper who demonstrates exemplary performance under the SOPs implementing the Consent Decree.
2. The State Police and the Office of State Police Affairs (“OSPA”) must take a dynamic approach to assess and reevaluate data collection and analysis efforts. The effectiveness of such efforts should be reevaluated every two years with a report to the Attorney General and legislative leadership.
3. The Attorney General should:
- continue staffing for what is now OSPA at levels sufficient to audit Office of Professional Standards (“OPS”) investigations, collect and analyze data in conjunction with the State Police, and assess the adequacy of data collection and review functions of Field Operations, including the quality of supervisory review of stop activity and the use of MAPPS in connection with Trooper and Troop evaluation;
 - develop recommendations for enhancing the State Police’s management of hiring, training, promotion and discipline to make these systems more objective and transparent;

- require the Superintendent of the State Police and each Troop commander to quarterly certify that the State Police has complied with SOPs regarding stop procedures and supervisory protocols. The Attorney General should report the results of that certification to the Governor and the legislature; and
 - establish an Attorney General's forum at least twice a year at which the Attorney General and the Superintendent meet with members of the public. The Attorney General will develop the agenda for these meetings with assistance of a Steering Committee appointed by the Governor.
4. The Attorney General, through OSPA, should:
- continue oversight by approval or disapproval of State Police training programs, including review of curricula, testing of training outcomes and review of courses offered by outside vendors;
 - exercise oversight over OPS, including enhanced auditing of OPS investigations;
 - receive reports of all new OPS referrals and complaints concerning State Police personnel made by or filed with the State Police, including those categorized as administrative or performance, and particularly all new claims concerning attitude and demeanor and/or disparate treatment brought by minority motorists;
 - work with OPS to standardize penalties for substantiated disciplinary complaints and make those standards transparent to the State Troopers and the public;
 - continue aggregate reporting of results of disciplinary proceedings to the public, including reporting on the nature of substantiated allegations that were companion allegations to racial profiling complaints; and
 - engage in greater oversight of local law enforcement, initially in providing guidance and technical assistance, and evolving to ensure greater review of local law enforcement practices, including review of data on police interactions with the public.
5. The Committee commends the Attorney General for addressing the conflict embedded in the mission of OSPA by removing legal advice-giving functions from the unit. The Committee urges the Attorney General to consider whether OSPA should continue to represent the State Police in disciplinary proceedings brought against State Troopers.
6. The State should codify the policy goals of the Consent Decree and its minimum requirements for supervision, MAPPS, MVRs, training and OPS and provide sufficient funding to ensure, among other things:
- continuing multi-tiered supervisory review of all critical stops and a sample of all stops;
 - provision of MVRs in all patrol cars;

- maintenance of MVRs and upgrading of technology;
 - maintenance and enhancement of MAPPS; and
 - maintenance of at least the minimum training requirements of the Consent Decree.
7. The State Comptroller should:
- designate an auditor to perform, within six months of the lifting of the Consent Decree, then every six months for the next eighteen months, and at least one time per year thereafter, risk-based auditing of:
 - stops;
 - post-stop enforcement activities;
 - internal affairs and discipline;
 - decisions not to refer an individual to internal affairs notwithstanding the existence of a complaint; and
 - training; and
 - establish a procedure for reporting to the Governor and the public the results of the Comptroller audits, including a report of the activities of the Comptroller and funding levels and a report card from the Comptroller of the performance of the State Police in the areas noted above.
8. The Committee recommends, that upon the lifting of the Consent Decree, the Governor should immediately issue an Executive Order adopting the recommendations of this Report.
9. The State should conduct a comprehensive review of the State Police's continued efforts at eradicating racial profiling five years from the date the Consent Decree is lifted.

The Committee was also charged with taking the lessons learned from the State Police's efforts to eradicate racial profiling and determining whether they should and can be applied to other law enforcement entities throughout the State. While the Committee lacked the resources to engage in a top-to-bottom review of local law enforcement operations, it did gather sufficient information to identify best practices relating to the eradication and prevention of racial profiling. Based on the information gathered by the Committee, it recommends a broadening of the Attorney General's current role in exercising oversight to include giving advice and acting as a resource concerning the operations of local law enforcement in the State.

10. The Committee recommends that the following best practices be implemented to ensure against the risk of racial profiling on the local level:

- installation of MVRs in all patrol cars and regular supervisory review of recordings;
- rigorous collection and proactive review of stop data collected through computer assisted data (“CAD”) systems; and
- uniform, regular training statewide.

II. **Background**

In December 1999, the State of New Jersey (the “State”) and the United States Department of Justice entered into a Consent Decree (“Consent Decree” or the “Decree”) as a remedy for alleged racial profiling by members of New Jersey State Police (“State Police”). For more than seven years, both the Attorney General’s office and the State Police have operated under the supervision of the United States District Court for the District of New Jersey and an Independent Monitoring Team (“IMT” or the “Monitors”), which periodically evaluated the State Police’s compliance with the Consent Decree. In June 2006, the IMT reported that the State Police had been in substantial compliance with the Consent Decree for two consecutive years. In light of that finding, the Department of Justice is contemplating bringing a motion to have the Consent Decree dismissed.

On August 23, 2006, the Governor signed Executive Order No. 29, which created the New Jersey Advisory Committee on Police Standards (the “Committee”) and appointed the citizens now serving on the Committee.¹ The Governor directed the Committee to make recommendations on the following issues:

- Whether and under what circumstances the State should join a motion of the Department of Justice to dismiss the Consent Decree;
- How to ensure that racial profiling is not engaged in or tolerated in the future if the Consent Decree is lifted; and
- How the systems developed by the State Police under the Consent Decree could benefit local police departments.

This Report sets forth, in detail, the findings and recommendations of the Committee. In sum, the Committee has found that the State has made significant strides in combating racial profiling and that the Consent Decree should be lifted. As discussed below, the Committee believes that continued success of the reforms depends on two critical elements: transparency of the operations of the State Police and accountability for conduct and decisions, both in the

¹ Executive Order No. 29, dated Aug. 23, 2006 [hereinafter “Executive Order No. 29”], *available at* <http://www.state.nj.us/acps/exec/>. This was the first executive order in the nation to appoint a committee of citizens to advise whether a court-entered consent decree prohibiting racial profiling should be lifted.

Attorney General's office and in the State Police. The Committee, therefore, recommends that critical elements of the reforms that ensure accountability and transparency—the ability of the public to have a clear view of the operations of the State Police—be maintained in the future. As many witnesses have testified, the State Police has developed a system that sets a new standard for ensuring that the public can be confident that the law is enforced in a non-discriminatory manner. Many of these reforms can serve as models for local law enforcement.

These recommendations are institutional and are intended to survive leadership changes in the State House, the Attorney General's office and the State Police. Indeed, the leadership changes in the last seven years underscore the importance of this approach. Since the entry of the Consent Decree, the State has had three governors, Christine Todd Whitman, James McGreevy and Jon Corzine, and one Acting Governor, Senator Richard Cody. Seven different men and women have served as Attorney General: Peter G. Verniero, John J. Farmer, Jr., David Samson, Peter C. Harvey, Zulima V. Farmer, Stuart Rabner and Anne Milgram. There have been four Superintendents of the State Police: Carl Williams, Carson Dunbar, Joseph Santiago and Joseph Fuentes.

Both the Monitors and State Police union leaders emphasized that enforcement problems can be exacerbated by shifts in the tone set by leadership. The recommended changes appropriately place accountability on the shoulders of leadership and empower Troopers at the mid-levels of management and on the front lines to do a very difficult job in a constitutional manner. They also provide for constant, independent vigilance outside of the law enforcement chain as a mechanism to provide some additional, and needed, public accountability.

III. Summary of Work of the Committee

A. Members of the Committee

The Committee consists of the following citizens appointed by the Governor pursuant to Executive Order No. 29:

James E. Johnson, Chair	Carmelo V. Huertas
Larry L. Bembry	Pastor J. Stanley Justice
Ellen Brown	Samer E. Khalaf
Michelle Carroll	Carlos F. Ortiz
Kevin P. Donovan	Michael A. Rambert
Reverend Reginald Style Floyd	Mitchell C. Sklar
Jonathan L. Goldstein	Edwin H. Stier
James E. Harris	Scott Louis Weber
Jerome C. Harris, Jr.	Theresa L. Yang

Biographies of the Committee members are attached in Appendix A. The First Assistant Attorney General, as designee of the Attorney General, also participated in the meetings.

B. Summary of the Work of the Committee

The Committee conducted six public hearings between October 10, 2006 and September 24, 2007.² At these hearings, the Committee heard the testimony of invited government witnesses and law enforcement experts. The Committee also provided time for members of the public to share their perspectives directly with the Committee. The individuals who testified before the Committee included State Police executives, Chiefs, Troopers and union representatives; representatives of minority communities; officials within OSPA and OPS; academics and experts on police accountability; and concerned citizens.

The Committee heard testimony on the events leading to the adoption of the Consent Decree and the reforms undertaken by the State Police in the areas of supervision, training, internal affairs, and data collection and analysis as the State implemented the Consent Decree. The Committee also received testimony about how to sustain and build upon the progress that the State Police has undertaken and prevent racial profiling in the future. Those appearing before the Committee discussed a wide range of issues, including: the culture of the State Police, informal practices and traditions of the State Police, diversity within the State Police, external oversight models, local law enforcement practices and community perspectives on policing in New Jersey.

Members of the Committee held eighteen formal meetings from August 2006 to December 2007, during which the Committee discussed the course of its investigation and heard presentations from invited guests. The Committee also conducted informal interviews with some individuals who did not wish to present testimony at a public hearing, and with community leaders and experts who provided information to the Committee but did not testify.³

In addition to understanding State Police practices, the Committee undertook to learn more about local law enforcement. The Committee gathered evidence regarding current

² The public hearings were held on October 10, 2006 (transcript *available at* http://www.state.nj.us/acps/home/hearings/pdf/061010_transcript.pdf); October 24, 2006 (transcript *available at* <http://www.state.nj.us/acps/home/hearings/061024.html>); November 13, 2006 (transcript *available at* <http://www.state.nj.us/acps/home/hearings/061113.html>); November 21, 2006 (Part 1 of transcript *available at* http://www.state.nj.us/acps/home/hearings/pdf/061121_transcript_part1.pdf and Part 2 of transcript *available at* http://www.state.nj.us/acps/home/hearings/pdf/061121_transcript_part2.pdf); April 26, 2007 (transcript *available at* http://www.state.nj.us/acps/home/hearings/pdf/070426_transcript.pdf); and September 24, 2007 (Part 1 of transcript *available at* http://www.state.nj.us/acps/home/hearings/pdf/092407_1of_2.pdf and Part 2 of transcript *available at* http://www.state.nj.us/acps/home/hearings/pdf/092407_1of_2.pdf).

³ A complete list of the individuals who testified before the Committee during the six public hearings, the eighteen Committee meetings, and the non-confidential informal interviews can be found in Appendix B.

practices relating to unbiased policing from the many law enforcement entities within the State. With the assistance of the New Jersey League of Municipalities, the Committee invited officials from every one of the State's municipalities to attend one of four meetings at which Committee representatives reported on the work of the Committee. The aim of these meetings was to solicit input from municipal leaders about how the lessons of the Consent Decree could best be used to benefit local law enforcement agencies within New Jersey. Specifically, the conversations focused on the experiences of municipalities in managing police departments, views on the public's perception of the fairness of law enforcement, the tools or best practices that local police departments would find useful for addressing racial profiling, the practicalities of implementing such best practices in all municipalities and other concerns relating to addressing racial profiling at the municipal level. Through these meetings, the Committee received sufficient feedback to develop useful perspectives on how the proposed best practices might affect communities around the State.⁴

The Committee sent surveys to each County Prosecutor and to selected law enforcement agencies of varying sizes throughout the State.⁵ Through the surveys, the Committee gathered evidence in such areas as training, the use of MVRs, computer-assisted dispatch systems, methods and practices of reviewing complaints about racially-biased policing, demographics of police departments and the need for technical and other assistance from State government. The Committee received responses from all twenty-one County Prosecutors in the State.⁶

The American Civil Liberties Union ("ACLU") submitted to the Committee a report it had commissioned from Dr. John C. Lamberth and Dr. Joseph B. Kadane ("Lamberth/Kadane Report") regarding traffic stops on the southern end of the New Jersey Turnpike. The Lamberth/Kadane Report concludes that African-American drivers in general were slightly more than twice as likely to be stopped as other drivers and slightly less than twice as likely to be stopped among egregious violators of traffic laws.⁷ Given the implications of the Lamberth/Kadane Report, the Committee commissioned a panel of experts to engage in an outside peer review of the Lamberth/Kadane Report. The Peer Review Team identified a number of limitations in the data collected by Drs. Lamberth and Kadane and raised some questions about the methodology used in preparing the report, but ultimately concluded that

⁴ A list of the Mayors and Mayor's representatives who spoke to the Committee can be found in Appendix C.

⁵ A copy of the prosecutors' and local law enforcement surveys can be found in Appendix D.

⁶ The list of local law enforcement agencies from which surveys were received is attached as Appendix E.

⁷ John C. Lamberth & Joseph B. Kadane, *In the Matter of the Study of State Police Stop Activity at the Southern End of the New Jersey Turnpike* (2006), at 7-8 [hereinafter "Lamberth/Kadane Report"], available at http://www.state.nj.us/acps/home/hearings/pdf/061121_kadane-lambert.pdf.

these limitations did not appear to undermine the Lamberth/Kadane Report's conclusions.⁸ The Peer Review Team has continued to consult with the Committee on its review of data trends and questions raised by the Independent Monitoring Team's Fifteenth and Sixteen Reports.

In an effort to engage members of the general public in its work, the Committee established a mechanism for members of the public to make comments through the Committee's website, and also allotted time for public comments at the public hearings. The Committee responded to every comment received through its website or otherwise.⁹ The Committee received several complaints about racial profiling or police misconduct from members of the public, which were referred to the Attorney General's office for investigation and follow up. The Committee was not an adjudicative body nor did it have the powers of a legislative body, including subpoena powers. Accordingly, the Committee was not competent to make legal findings in connection with the complaints. It received that information as part of an effort to reach fully informed policy judgments.

While the Committee spent significant time and effort reviewing the State Police's efforts with respect to ending racial profiling, the Committee's scope was limited by Executive Order No. 29, and it has not undertaken, and this Report does not purport to be, a complete review of all aspects of the State Police and all of its functions. Likewise, the Committee's review of local law enforcement organization and function was limited by Executive Order No. 29, and the Committee did not undertake a comprehensive review of all of New Jersey's enormously complex law enforcement agencies, but sought to obtain a broad understanding of local law enforcement in order to make recommendations on general best practices for preventing racial profiling.

⁸ *Report of the Peer Review Team*, Apr. 10, 2007, at 2-4 [hereinafter "*Report of the Peer Review Team*"]. A copy of the Report is attached as Appendix F.

⁹ See Appendix G for a list of all the public comments received by the Committee.

PART ONE:
POLICING IN NEW JERSEY: FACTUAL AND LEGAL BACKGROUND

I. Overview of Policing in New Jersey

A. Law Enforcement at the State Level

Pursuant to the New Jersey Constitution, the Attorney General is appointed by the Governor and confirmed by the Senate to be the State's Chief law enforcement official. Once appointed, the Attorney General can be removed only for cause. The legislature has vested the Attorney General with broad authority to issue regulations that guide law enforcement conduct, interpret statutory and constitutional law for all State agencies, conduct criminal investigations, prosecute all State crimes and oversee the conduct of all law enforcement officers in the State.¹⁰ The Attorney General is a position older than the Republic and was established when Alexander Griffith first held the post in 1704. William Paterson served as the first Attorney General after independence, and had a staff that would be considered tiny by today's standards.¹¹ Today, the Attorney General oversees a department of over 9,000 employees in ten divisions, including over 4,500 personnel in the State Police; 500 lawyers in the Division of Law; 840 employees, including 143 attorneys and over 200 criminal investigators in the Division of Criminal Justice; a team of fifteen staff members, including four attorneys and three State Police enlisted members in OSPA; and the Division of State Police.¹² The Attorney General also exercises general supervision of each County Prosecutor.¹³

Approximately 39,700 sworn law enforcement officers serve under the authority of State law.¹⁴ All of these officers are subject to directives issued by the Attorney General.¹⁵

The State Police was established by legislation in 1921 with the mission of "furnishing adequate police protection to the inhabitants of rural sections," exercising statewide law enforcement powers and serving as a posse when directed to do so at the request of a

¹⁰ N.J.S.A. §§ 52:17B-97 *et seq.*

¹¹ History of the Office of the Attorney General, <http://www.state.nj.us/lps/history.htm>.

¹² Information provided by the Attorney General's office, November 2007.

¹³ N.J.S.A. § 52:17B-103.

¹⁴ New Jersey Office of the Attorney General, *2006 New Jersey Uniform Crime Report*, at 176 [hereinafter "*2006 New Jersey Uniform Crime Report*"], available at <http://www.state.nj.us/lps/njsp/info/ucr2006/index.html>.

¹⁵ N.J.S.A. §§ 52:17B-112, 52:17B-103.

municipality.¹⁶ Colonel Herbert Norman Schwarzkopf was appointed as the first Superintendent of the State Police, and an initial class of eighty-one Troopers was administered the oath of office on December 5, 1921. In 1948, following the adoption of the 1947 Constitution, the State Police, which had been a separate entity, became a division within the newly-created Department of Law and Public Safety, and came under the auspices of the Attorney General.

Since its founding, the State Police has grown dramatically in size and has shouldered responsibilities that cover a wide spectrum of police services. On July 28, 2007, the State Police achieved a significant milestone in receiving internationally-recognized law enforcement accreditation from the Commission on Law Enforcement Accreditation (“CALEA”).¹⁷ CALEA accreditation requires, for example, the State Police to have comprehensive written directives and to develop a comprehensive system of risk-management based on timely flows of relevant information in order to ensure informed management decision-making.¹⁸

The State Police currently performs all general functions associated with the statewide enforcement of law, prevention of crime, pursuit and apprehension of offenders and gathering of legal evidence to ensure the conviction of such offenders. The State Police also retains jurisdiction over general highway traffic enforcement, statewide investigation and intelligence services, emergency management, support services for State and local law enforcement efforts when requested, and regulation of commerce in businesses designated by the legislature. Since September 11, 2001, the State Police has been asked to take on responsibilities for investigating terrorist activity as a partner in the FBI Joint Terrorism Task Force.¹⁹ In addition, the State Police is an active partner in urban law enforcement initiatives in places such as Camden and Irvington.²⁰

¹⁶ *Id.* § 53:2-1; New Jersey Office of the Attorney General, *Final Report of the State Police Review Team*, July 2, 1999, at 8 [hereinafter “*Final Report of the State Police Review Team*”], available at http://www.state.nj.us/lps/Rpt_ii.pdf.

¹⁷ Written Testimony of Colonel Fuentes, Sept. 24, 2007, at 1-2, available at <http://www.state.nj.us/acps/home/hearings/pdf/openingstatement092407.pdf>

¹⁸ *Id.* at 2-3. The CALEA accreditation process took place over a two-year period, and involved on-site inspections regarding 371 applicable standards covering the entire range of law enforcement activity, including: internal affairs policies, recruiting, traffic enforcement, fiscal control, measures against bias-based policing, employee development, facility maintenance, and the use of early warning systems.

¹⁹ Testimony of Colonel Rick Fuentes [hereinafter “*Testimony of Col. Fuentes*”], Oct. 10, 2006 Committee Hearing, at 11.

²⁰ Community Partnerships Troop, <http://www.state.nj.us/njsp/divorg/operations/commmpart.html>.

The State Police also remains the principal provider of general police services in certain rural municipalities and is responsible for the protection of State officials and properties and for providing security for national and international officials while within the State. Waterways within New Jersey are routinely patrolled by the State Police Marine Troop. In addition, the State Police retains the exclusive responsibility to maintain statewide criminal records and identification systems to ensure a comprehensive resource for all criminal, non-criminal and judicial-related functions which require accurate identification and information.

Like much of law enforcement, individual Troopers perform their jobs without fanfare, and often alone in dangerous circumstances. Two Troopers have been killed in the line of duty since 2000. In 2006 alone, fifty-three Troopers were assaulted in the line of duty.²¹ The State Police conducts over 450,000 motor vehicle stops per year, and responds to over 450,000 calls for assistance, which include calls from motorists in distress on State highways.²²

B. County and Municipal Law Enforcement

Appointed by the Governor, County Prosecutors are the chief law enforcement officers in their respective counties. They exercise general supervision of local law enforcement agencies and, within guidelines established by the Attorney General, set enforcement policy for the counties, oversee major investigations and, of course, seek indictments against violators.²³

Within every County there are at least two sets of law enforcement forces. Most of the State's cities and towns have their own police forces. Newark has one of the largest police forces in the nation,²⁴ while some towns can claim only ten officers.²⁵ Other towns have no law enforcement agency and rely instead on the State Police. Within each municipality, the local police department has general law enforcement authority to perform tasks ranging from enforcing traffic codes to investigating the most serious of crimes. Each County also has a Sheriff who oversees the operations of deputies and patrol officers. Sheriffs have primary responsibility for patrolling County roads and property, including County parks. Finally, the

²¹ 2006 New Jersey Uniform Crime Report, at 190-92.

²² Information provided by the State Police, November 2007.

²³ N.J.S.A. §§ 2A:158-1, 2A:158-2, 2A:158-4, 2A:158-5, 19:34-62.

²⁴ Brian A. Reaves, Bureau of Justice Statistics, *Census of State and Local Law Enforcement Agencies, 2004*, June 2007, available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/cslla04.txt>.

²⁵ The Committee spoke to the Director of the Netcong Police, who informed the Committee that their force is comprised of only ten officers.

public housing facilities and the many State colleges and universities all have police forces operating under color of the authority of the Attorney General.²⁶

C. New Jersey State Police Organization and Structure

1. *Leadership*

The executive and administrative head of the New Jersey State Police is the Superintendent, who is appointed by the Governor for the length of the appointing Governor's term.²⁷ The Superintendent has the authority to appoint a Deputy Superintendent and an Executive Officer.²⁸ The Command Staff currently includes a Chief of Staff, Deputy Superintendents for each of the four primary branches (Administration, Homeland Security, Investigations and Operations), Troop Commanders and other senior supervisory personnel.

2. *Administrative Structure and Divisions*

There are four primary branches of the New Jersey State Police, each headed by a Deputy Superintendent: (1) Administration; (2) Homeland Security; (3) Investigations; and (4) Operations.²⁹ The Administration Division oversees fiscal, personnel, logistics, information technology and planning functions. The Homeland Security Division provides capacity for emergency management operations, critical infrastructure protection, and responding to an elevation of National Alert System and other events that require additional mobilization of resources in concert with the other law enforcement, intelligence and emergency management partners. The Investigations Division has general criminal investigative authority and includes units focusing on intelligence and forensic services. Within each Division, there are sections, each overseen by a Section Commanding Officer.

The Operations Division manages the State Police's Field Operations capabilities, provides full and part-time rural policing where the State Police is the primary response agency, and routinely provides highway and roadway policing and contracted police services to all of the toll roads in New Jersey.³⁰ The Operations Division supervises five Troops, each having responsibility for patrolling and providing Field Operations capabilities in different regions of the State. Troop A serves the southern geographical portion of the State, Troop B serves the northern geographical portion of the State, Troop C serves the central region, Troop D has

²⁶ The Port of Authority of New York and New Jersey is a hybrid organization operating under the authority of the Governors of both New York and New Jersey.

²⁷ N.J.S.A. §§ 53:1-1, 53:1-2.

²⁸ *Id.* §§ 53:1-3, 53:1-3.1.

²⁹ Division Organization, <http://www.state.nj.us/njsp/divorg/index.html>.

³⁰ *Id.*

jurisdiction over the New Jersey Turnpike, and Troop E is responsible for the Garden State Parkway.³¹ New Jersey State Police Stations are located throughout the State, with generally one Troop Station in each County. In addition, several Toll Road Stations exist along the New Jersey Turnpike, the Garden State Parkway and the Atlantic City Expressway, and there are seven Marine Stations along New Jersey's coast.

The Superintendent's Office also directly supervises five additional units: the Government Integrity Bureau, the Quality Assurance Bureau, the Public Information Unit, OPS and the Executive Protection Unit.³²

D. Pre-Consent Decree Internal Controls and External Oversight of the New Jersey State Police

1. *Internal Affairs Bureau*

Before the entry of the Consent Decree, the New Jersey State Police had an internal affairs department called the Internal Affairs Bureau ("IAB") that was charged with administering the investigative and disciplinary processes for the State Police.

The effectiveness of IAB was widely criticized. In *State v. Soto*, Judge Robert E. Francis credited testimony that IAB lacked the ability to investigate complaints of discrimination, and found that "the utter failure of the State Police hierarchy to . . . investigate the many claims of institutional discrimination manifests its indifference if not acceptance."³³ The effectiveness of IAB as an internal oversight mechanism was also openly challenged by former Superintendent Colonel Carson J. Dunbar, who criticized IAB's lack of transparency. IAB's commanders frequently refused to release any information regarding discipline, even to those who filed officer complaints.³⁴ Colonel Dunbar also criticized IAB for paying more attention and devoting more investigatory resources to minor infractions than more serious allegations of corruption and Trooper misconduct.³⁵ Additionally, IAB lacked conflict-of-interest rules; prior to reforms enacted by Colonel Dunbar in 1999, IAB investigators were not prohibited from participating in

³¹ Road Stations, <http://www.state.nj.us/njsp/divorg/operations/roadstations.html>.

³² Division Organization: Superintendent's Office, <http://www.state.nj.us/njsp/about/supt.html>.

³³ 324 N.J. Super. 66, 85 (Law Div. 1996).

³⁴ David Kocieniewski, "New Jersey Police Nominee Vows to Fight Racial Bias," *The New York Times*, Sept. 21, 1999, at A1.

³⁵ David Kocieniewski, "New Jersey Police Unveil Plan to Monitor Troopers," *The New York Times*, Feb. 18, 2000, at B5 (quoting Colonel Dunbar as noting that within IAB "[t]here seems to have been a cottage industry of investigations that were thoroughly investigated involving a lost flashlight or a lost hat").

investigations that involved themselves or their friends.³⁶ In the first few months following Colonel Dunbar's 1999 appointment, he instituted a number of reforms to IAB, including initiating a review of all of its internal investigations. These reforms, in conjunction with the Consent Decree, led to a restructuring of the unit into the current OPS.

2. *The Attorney General*

The Attorney General has historically played a role in evaluating the State Police's operational policies. For example, then-Attorney General Robert Del Tufo took steps in early 1990 to reinforce the protection of constitutional rights of motorists. Similarly, as Attorney General, John Farmer conducted a comprehensive review of traffic stop, shooting, training and disciplinary protocols, in part at the direction of former Attorney General Peter Verniero.³⁷ Attorney General Peter Harvey issued the policy against discriminatory law enforcement that applies throughout the State. The Attorney General's purview also includes oversight of hiring practices and promotions, as well as setting policy guidance for investigative priorities. These are just a handful of examples of the Attorney General's authority and responsibility for the State Police. The recommendations discussed below in Section Four serve to ensure that the Attorney General has the tools needed to responsibly discharge these duties.

3. *Office of the Governor*

Members of the State Police are subject to the call of the Governor.³⁸ The Governor possesses the power to appoint the Superintendent and to remove the Superintendent for cause after a hearing.³⁹ Each newly-elected Governor has the power to appoint a new Superintendent; the previous Superintendent's term concludes when a new Governor takes office and the newly-appointed Superintendent is confirmed. As head of the executive branch, the Governor also has

³⁶ *Id.*

³⁷ New Jersey Senate Judiciary Committee, *Report of the New Jersey Senate Judiciary Committee's Investigation of Racial Profiling and the State Police*, June 11, 2001, at 9 [hereinafter "*Report of the Senate Judiciary Committee's Investigation*"], available at <http://www.njleg.state.nj.us/RacialProfiling/sjufinal.pdf>; New Jersey Office of the Attorney General, *Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling*, Apr. 20, 1999, at 1 [hereinafter "*Interim Report of the State Police Review Team*"], available at http://www.state.nj.us/lps/intm_419.pdf.

³⁸ N.J.S.A. § 53:1-2.

³⁹ *Id.*

the power to appoint the Attorney General, County Prosecutors and judges, subject to approval by the State Senate.⁴⁰

In addition, the Governor maintains authority over the State Police through the issuance of Executive Orders. Executive Orders are binding orders that can be enacted by the Governor alone without going through the formal legislative process or complying with administrative regulations.⁴¹ Executive orders can be repealed as easily as they can be enacted; thus, new Governors typically rescind all Executive orders issued by their predecessors.⁴²

II. Events Surrounding the Entry of Consent Decree

A. Early Background

Racial Profiling by the State Police first gained widespread public notice in 1989, when WWOR-TV aired a series of reports entitled “Without Just Cause,” focusing on allegations that minorities were being subjected to racial profiling by the State Police.⁴³ Then- Superintendent Colonel Clinton Pagano was interviewed as part of that series and stated that “[violating the rights of motorists was] of serious concern [to him], but nowhere near the concern that I think we have got to look in to in trying to correct some of the problems we find with the criminal element in this State.”⁴⁴ He explained that, “the bottom line is that those stops were not made on the basis of race *alone*.”⁴⁵

In early 1990, new Superintendent Colonel Justin Dintino and then-Attorney General Robert Del Tufo initiated plans to change State Police policies to reinforce the constitutional protections of motorists.⁴⁶ By May 1990, the State Police had adopted a new Standing Operating Procedure, SOP F55, which: (1) prohibited Troopers from using personal characteristics such as race, age, sex or style of dress as facts relevant to establish reasonable suspicion, unless the

⁴⁰ State Government: Executive Branch, http://www.state.nj.us/hangout_nj/government_executive.html.

⁴¹ Michael S. Herman, “Gubernatorial Executive Orders,” 30 RUTGERS L.J. 987, 989-90 (1999).

⁴² *Id.* at 990.

⁴³ *Report of the Senate Judiciary Committee’s Investigation*, at 9.

⁴⁴ Shannon P. Duffy, “Verniero Can Be Found Liable in Profiling Suit,” *N.J. Law Journal*, Jan. 14, 2002, at 73.

⁴⁵ *Id.*; *Report of the Senate Judiciary Committee’s Investigation*, at 9 (emphasis in Senate Report).

⁴⁶ *Report of the Senate Judiciary Committee’s Investigation*, at 9.

Trooper could identify how the characteristic was directly related to a criminal activity; and (2) required a review of all consent searches by field Supervisors.⁴⁷

In April 1990, seventeen minority defendants filed a consolidated motion to suppress evidence, claiming that they were victims of selective enforcement of traffic laws because of their race.⁴⁸ On March 4, 1996, New Jersey Superior Court Judge Francis ruled that the evidence should be suppressed, crediting expert evidence that indicated that it was highly unlikely that the wide disparity between the rates at which white and African-American drivers were being stopped on the Turnpike could have occurred randomly.⁴⁹ Judge Francis' opinion was highly critical of former State Police Superintendent Pagano, citing his remarks that condemned critics of the State Police, his adherence to drug interdiction practices in the face of claims of racial profiling, and his failure to investigate allegations of discriminatory practices at the State Police.⁵⁰ Although the State initially appealed the ruling, the appeal was eventually dropped in 1999.⁵¹

B. 1998 Shooting Incident

On April 23, 1998, Troopers James Kenna and John Hogan shot four unarmed African-American males in a van that they had stopped on the New Jersey Turnpike.⁵² In the course of investigating the shooting, a racial composition survey of stops conducted by the two Troopers was performed, which revealed that the Troopers may have falsified reports on the night of the shooting, possibly to conceal the race of the motorists that they were stopping.⁵³ The investigation was ultimately expanded to include an inquiry into whether other Troopers at the Cranbury Barracks were engaging in race-based records falsification. This became known as the

⁴⁷ *Id.* at 9-10.

⁴⁸ *State v. Soto*, 324 N.J. Super. 66 (Law Div. 1996); *id.* at 9.

⁴⁹ *Id.* at 12 (citing *Soto*, 324 N.J. Super. at 81).

⁵⁰ *Id.* (citing *Soto*, 324 N.J. Super. at 81-83).

⁵¹ *Id.* at 40.

⁵² *Id.* at 32.

⁵³ *Id.*

“Troop D audit.”⁵⁴ Troopers Kenna and Hogan were ultimately indicted for the shooting and for falsifying records.⁵⁵

After the shooting, there was widespread outrage within many communities, particularly the African-American community. The Black Ministers’ Council, the National Association for the Advancement of Colored People, and the ACLU, among other civil rights and community groups, played a significant role in pressuring both the executive branch and the legislature to take strong remedial steps.

C. State Police Review Team of the Attorney General’s Office

In February 1999, Attorney General Verniero formed a State Police Review Team to examine the internal discipline system and procedures for processing complaints from the public and internal complaints from Troopers.⁵⁶ On April 20, 1999, the Attorney General released the team’s Interim Report (the “SRT Interim Report”), which concluded that the problem of racial profiling (including traffic stops based on racial criteria or a Trooper’s use of race or ethnicity to make a discretionary decision during a stop) was “real—not imagined” and that minority motorists had been treated differently by the State Police on the Turnpike.⁵⁷ The SRT Interim Report included statistics demonstrating that minority motorists were disproportionately subject to consent searches—according to the aggregate data it presented, 77.2% of consent searches recorded by the Cranbury and Moorestown Stations between 1994 and 1999 involved African-American or Hispanic motorists.⁵⁸ The SRT Interim Report recommended that an early warning system be developed to deter and detect disparate treatment of motorists, and that new Standing Operating Procedures be adopted for the State Police regarding the initiation of stops, the conduct of stops, and consent searches.⁵⁹

On July 2, 1999, at the direction of then-Attorney General Farmer, the State Police Review Team issued its Final Report (the “SRT Final Report”), which focused on issues of hiring, promotions, internal affairs and discipline. The SRT Final Report recommended that an oversight unit be created within the Attorney General’s office that reports directly to the

⁵⁴ *Id.* at 33.

⁵⁵ *Id.* at 34-35. Troopers Kenna and Hogan ultimately pleaded guilty to the lesser charge of obstructing an investigation. David Kocieniewski, “New Jersey Troopers Avoid Jail In Case That Highlighted Profiling,” *The New York Times*, Jan. 15, 2002, at A1.

⁵⁶ *Report of the Senate Judiciary Committee’s Investigation*, at 37.

⁵⁷ *Interim Report of the State Police Review Team*, at 4-5.

⁵⁸ *Id.* at 27.

⁵⁹ *Id.* at 94-102.

Attorney General, and that IAB be substantially reformed under the supervision of the Attorney General into OPS.⁶⁰

The SRT Final Report recommended changes to the State Police application process for recruits in order to promote diversity among Troopers. Specifically, it recommended that physical requirements be closely tailored to reflect job requirements, that an explicit list of conditions that constitute cause for rejection from recruiting process be developed, that oral boards be taped and that the State review the files of any group of female or minority applicants when a significant percentage of their applications are rejected.⁶¹

The SRT Final Report also called for a formal policy governing the promotion of personnel to ranks of sergeant and above based on objective criteria, to ensure that those with superior leadership and management talent are promoted based on merit.⁶²

With respect to discipline, the SRT recommended that the name of IAB be changed to the Professional Standards Bureau, and that it report directly to the Superintendent.⁶³ Further, it recommended that the Professional Standards Bureau include a quality control unit that would conduct periodic, unannounced operation inspections at State Police facilities.⁶⁴ The SRT Final Report included specific recommendations regarding the processing of complaints, and called for the Attorney General to conduct a complete file review of all matters involving possible criminal activity, excessive force or discrimination.⁶⁵ It also called for Troop Commanders to have responsibility for adjudicating allegations of minor misconduct, and recommended that the internal oversight unit develop a schedule of progressive penalties for misconduct.⁶⁶

D. United States Department of Justice Investigation

On November 7, 1996, the United States Department of Justice initiated an inquiry into the allegations made in the *Soto* case to determine if the alleged racial profiling by the State Police was ongoing.⁶⁷ The Department of Justice requested documents from the Attorney

⁶⁰ *Final Report of the State Police Review Team*, at 4.

⁶¹ *Id.* at 29-31.

⁶² *Id.* at 65-66.

⁶³ *Id.* at 123.

⁶⁴ *Id.* at 128.

⁶⁵ *Id.* at 133-36, 140.

⁶⁶ *Id.* at 149.

⁶⁷ *Id.* at 19.

General regarding State Police activities, including data regarding consent searches. On April 26, 1999, then-Attorney General Peter Verniero received a letter from the Department of Justice announcing that it had concluded its investigation and had determined that the State Police “engaged in a pattern or practice of discriminatory law enforcement” and that the Civil Rights Division had authorized the filing of a civil suit against the State Police.⁶⁸ The Attorney General then engaged in discussions with the Department of Justice for remedial actions that resulted in the Consent Decree. The Department of Justice ultimately filed a lawsuit in connection with this investigation in the United States District Court for the District of New Jersey on December 22, 1999.⁶⁹ The lawsuit was immediately resolved by the Consent Decree, which was formally filed on December 29, 1999.

E. New Jersey Senate Judiciary Committee Investigation

In October 2000, the New Jersey State Senate Judiciary Committee commenced an investigation into racial profiling and the State Police, as well as issues surrounding the Hogan and Kenna indictments.⁷⁰ After an extensive investigative effort, the Judiciary Committee held nine public hearings in March and April 2001.⁷¹ During this time, the Judiciary Committee heard testimony from witnesses identified in the document review, depositions and earlier interviews, as well as from members of the public and other interested parties.⁷² A final report regarding the investigation was issued on June 11, 2001, which recommended that the following four major remedial measures be undertaken in addition to those required by the Consent Decree: (1) issuance of an Executive Order banning the use of consent searches generally;⁷³ (2) creation of an independent oversight mechanism for the State Police, combining an internal Office of Professional Responsibility (“OPR”) with a three-member independent review board;⁷⁴ (3) enactment of a criminal offense for official deprivation of civil rights that would cover racial

⁶⁸ *Id.* at 31.

⁶⁹ *United States v. New Jersey*, No. 99-5970 (D.N.J. filed Dec. 22, 1999).

⁷⁰ *Report of the Senate Judiciary Committee’s Investigation*, at 1.

⁷¹ *Id.* at 1-2. Before the hearings, Committee staff reviewed over 90,000 pages of documents from the Department of Law and Public Safety and over 3,500 pages of documents from Governor Whitman’s office concerning racial profiling. Committee staff also conducted interviews and depositions with individuals identified as possessing relevant information.

⁷² *Id.* at 5.

⁷³ *Id.* at 82-89.

⁷⁴ *Id.* at 89-103.

profiling;⁷⁵ and (4) development of State Police Standing Operating Procedures requiring the generation of a report for all stops, regardless of what occurs after the stop.⁷⁶

The Committee recommended that annual reports be issued regarding Trooper misconduct complaints, that the State Police be required to maintain records regarding stops for ten years, that the State Police establish a “public confidence police integrity” telephone hotline, that tampering with electronic devices in patrol cars be criminalized, and that Troopers be subject to psychological testing for racial bias.⁷⁷ The Committee also called for codification of Consent Decree requirements that Stop Reports be generated, that a Trooper performance database be created, that annual performance evaluations of Troopers be completed, that a Speedy Trial Act be enacted, and that a justification defense jury instruction be adopted for police officers who use deadly force to effect an arrest or to prevent an escape.⁷⁸ Finally, the Committee recommended specific funding levels for OPR, OSPA and training regarding racial profiling.⁷⁹

III. The Consent Decree

The Consent Decree requires the Attorney General and the State Police to make the following changes:

- Policy: adopt a policy that New Jersey State Troopers may not rely to any degree on the race or national or ethnic origin of motorists in selecting vehicles for traffic stops and in deciding upon the scope and substance of post-stop actions, such as searches;⁸⁰

⁷⁵ *Id.* at 105-06.

⁷⁶ *Id.* at 106.

⁷⁷ *Id.* at 110-11.

⁷⁸ *Id.* at 112-14.

⁷⁹ *Id.* at 114-16. The Senate Report recommended the establishment of an Office of Professional Responsibility to assume the disciplinary functions of OSPA after the expiration of the Consent Decree. OPR was to have more expansive powers than OSPA, and would have been expected to review all citizen complaints of misconduct and constitutional violations. It would then refer less serious violations to the respective Division for internal review, handle more serious violations itself, and refer all criminal violations to the Division of Criminal Justice. *Id.* at 101-02. This recommendation was never adopted.

⁸⁰ Consent Decree in *United States v. New Jersey*, No. 99-5970 (D.N.J.), entered December 30, 1999 ¶ 26 [hereinafter “Consent Decree”].

- Training: train recruits and members not to engage in race-based police tactics, and train them in cultural diversity, communication skills, integrity and ethics;⁸¹
- Data Collection and Technology: document stops to enable adequate supervision and oversight; accurately record information about motor vehicle stops, including noting the race, ethnic origin and gender of all stopped motorists and providing an explanation of each stop and post-stop action;⁸² and use MVRs installed in each patrol vehicle;⁸³
- Management: establish an “early warning system”—called the “Management Awareness Program” in the Consent Decree, but eventually named MAPPS, the “Management Awareness Personal Performance System”—to use computerized data on traffic stops, misconduct investigations and other matters to assist State Police Supervisors to identify and modify potentially problematic practices;⁸⁴
- Internal Review: internally review motor vehicle stop reports (“Stop Reports”) and MVRs to ensure compliance and refer cases of misconduct by Troopers to OPS for investigation; and enhance internal affairs procedures by requiring internal affairs to investigate all complaints of racial profiling or disparate treatment and refer substantiated misconduct for disciplinary proceedings and/or criminal charges;⁸⁵
- Public Accountability: regularly issue public reports that include motor vehicle stop and search data,⁸⁶ adequately inform the public about complaint procedures available to them, and thoroughly investigate complaints from the public;⁸⁷ and
- Oversight: ensure adequate oversight of the State Police by requiring auditing of training, Field Operations, implementation of the MAPPS system and internal

⁸¹ *Id.* ¶¶ 98, 100.

⁸² *Id.* ¶ 29.

⁸³ *Id.* ¶ 34.

⁸⁴ *Id.* ¶ 40.

⁸⁵ *Id.* ¶ 48.

⁸⁶ *Id.* ¶ 114.

⁸⁷ *Id.* ¶¶ 61, 62.

affairs by OSPA,⁸⁸ and create independent Compliance Monitors to monitor and report on implementation of the Consent Decree to the Court and the public.⁸⁹

The Consent Decree may be terminated after both five years have elapsed and substantial compliance with the terms of the Consent Decree have been maintained for no less than two years.⁹⁰

IV. Summary of Compliance Monitoring

On March 30, 2000, three months after the Consent Decree was entered, the IMT was appointed to conduct periodic reviews of the State's compliance with the elements of the Consent Decree.⁹¹ The IMT was comprised of two experts in the field of police affairs, Dr. James Ginger and Mr. Alberto Rivas, Esq., and their staff. Paragraph 115 of the Consent Decree requires the Monitors to "monitor and report on the State's implementation of [the] Decree."⁹² Additionally, the Consent Decree directs the IMT to "offer the State technical assistance regarding compliance with this Decree."⁹³

Reviewing the Consent Decree together, the IMT, the Attorney General, and the United States Department of Justice assigned objectively measurable tasks to each of the elements of the Consent Decree.⁹⁴ The parties then agreed upon a method and standards for judging compliance with the identified tasks. For each task, there would be two "phases" of compliance. Phase I was deemed the "administrative" phase and entailed "the creation of policy, procedure, rule, regulation, directive or command" to comply with a particular task. Phase II was deemed the

⁸⁸ *Id.* ¶ 110.

⁸⁹ *Id.* ¶ 115.

⁹⁰ *Id.* ¶ 131.

⁹¹ Independent Monitors' First Report, Oct. 6, 2000, at 1-2 [hereinafter "Independent Monitors' First Report"], *available at* http://www.nj.gov/lps/monitors_report_1.pdf; Consent Decree ¶¶ 115-21 ("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.").

⁹² Consent Decree ¶ 115.

⁹³ *Id.* ¶ 117.

⁹⁴ Testimony of Al Rivas [hereinafter "Testimony of A. Rivas"], Oct. 10, 2006 Committee Hearing, at 155.

“implementation” phase; compliance required evidence that the policies of Phase I were being followed in the day-to-day operations of the State Police.⁹⁵

The Consent Decree outlines the relevant information the State Police must produce to ensure meaningful review of its operations. The State Police has adopted procedures and protocols that guide Troopers in conducting and recording motor vehicle stops and the Monitors are charged with reviewing those records. Additionally, the Consent Decree requires the IMT, among other things, to review and evaluate the following: (1) samples of misconduct investigations for quality and timeliness; (2) the handling of interventions stemming from misconduct investigations and disciplinary actions; (3) steps taken by Supervisors upon their review of Trooper reports; (4) MAPPS data and reports; (5) samples of consent to search forms and reports, non-consensual-search reports, drug-detection canine reports, Stop Reports and logs, and MVR tapes prepared in connection with a motor vehicle stop; and (6) second-level review of Trooper reports and steps taken by Supervisors in response to findings of their second-level review.⁹⁶ The IMT conducted its compliance audits through site visits, review of electronic data, review of paper records maintained by the State Police and review of MVR tapes of Trooper stop activity. Prior to each Report, the Monitors visited and evaluated selected Stations from two of the five New Jersey State Police Troops: either Troop D or E (the Turnpike patrols) and one of Troops A, B, or C (the regional Troops).⁹⁷

In each of its sixteen Reports, the IMT began its assessment of the State Police’s compliance with the Consent Decree by discussing the State Police’s adherence to Task 26—the cornerstone of the plan for corrective action with respect to eradicating racial profiling in the State Police.⁹⁸ The IMT’s assessment of the State Police’s compliance with Task 26 consisted, from time to time, of site visits to various road stations to collect and/or review pertinent data. In particular, the Monitors requested the following so-called “course-of-business” data produced in conjunction with vehicle stop incidents:

⁹⁵ Independent Monitors’ Fourteenth Report, July 10, 2006, at 3 [hereinafter “Independent Monitors’ Fourteenth Report”], *available at* <http://www.nj.gov/lps/monitors-report-14.pdf>.

⁹⁶ *Id.* ¶ 119.

⁹⁷ Minutes of Oct. 5, 2006 Committee Meeting, at 3.

⁹⁸ Consent Decree ¶ 26 provides in the relevant part:

[S]tate 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.

- electronic data from the stations selected for all motor vehicle stops relating to an incident in which a Trooper (1) requested permission to search the car; (2) conducted a consensual or non-consensual search; (3) ordered the occupants out of the car; (4) frisked the occupants of the car; (5) deployed a drug-detection dog; (6) seized contraband; (7) arrested the occupants of the car; or (8) used deadly, physical, mechanical, or chemical force.
- electronic data for all occasions in which a Trooper called in to the communications center from a motor vehicle stop, including the duration of the stop and results of the stop.
- all documents created in conjunction with consent search requests, dog deployments and incidents involving use of force by State Police personnel, where the search request, dog deployment, or use of force took place during a motor vehicle stop.
- CAD system records.

These requests captured all motor vehicle stop records for the particular road station visited by the Monitors. The Monitors assessed the data retrieved by: (1) cross-referencing electronic data with handwritten Stop Reports; (2) reviewing both the handwritten report and the recording of the stop in question; and (3) reviewing only the video recording of the stop in question.

The IMT established numerical compliance standards for each task for which quantitative data could be collected. For tasks that relate to constitutional issues, like the number of Stop Reports that conform to the requirements of the Consent Decree, a Phase II compliance standard of greater than ninety-four percent was set; for standard tasks not directly related to constitutional issues, such as recording of specific motor vehicle stop events, the compliance standard was set at ninety percent.⁹⁹ It was also established that “if an error was identified and corrected by New Jersey State Police supervisors, before the monitoring team discovered it, the New Jersey State Police would not be charged with the error.”¹⁰⁰ Thus, even if a Trooper or groups of Troopers committed an error repeatedly, the State Police would not be charged with the error. Once the State achieved compliance on a task, the Consent Decree allowed for

⁹⁹ Independent Monitors’ Fourteenth Report, at 3-4.

¹⁰⁰ Testimony of A. Rivas, Oct. 10, 2006 Committee Hearing, at 156; *see also* Independent Monitors’ Seventh Report, Jan. 17, 2003, at 63 [hereinafter “Independent Monitors’ Seventh Report”] (stating that “problems noted and corrected by supervisory personnel will not be tallied against the [State Police] in the monitors’ final reports”).

temporary setbacks. The State Police would not be deemed “not in compliance” until there were two consecutive reporting periods during which it failed to meet compliance requirements.¹⁰¹

During the first several reporting periods, the State Police quickly put into place most of the policy and procedural changes required by the Consent Decree, but many operational changes would take longer to effectuate and there were also setbacks in implementation, which are discussed in more detail below.¹⁰² The most sustained institutional progress was made in the area of decreasing the backlog of OPS’s unresolved disciplinary investigations. Tasks related to training and supervision, however, proved more challenging. But by the time of the Fourteenth Report in July 2006, the Monitors found the State Police to have been in substantial compliance for more than two years, which permitted the Department of Justice and the State of New Jersey to seek to terminate the Consent Decree. The IMT issued its Sixteenth Report in August 2007, finding that the State Police was substantially in compliance with all aspects of the Consent Decree.¹⁰³

V. Legal Framework of Stops/Searches and Race-Based Police Tactics

Vehicle stops and searches are extensively regulated in New Jersey by the United States and New Jersey Constitutions, State statutes, and other sources, including a directive issued by the Attorney General in 2005. Race-based enforcement is prohibited in all but a limited category of cases. The law and policy of New Jersey inform the SOPs of the State Police relating to proper stop and search procedures. This Section provides a brief overview of this legal framework.

A. Regulation of Traffic Stops and Vehicle Searches Under the United States and New Jersey Constitutions

Under the United States Constitution, in order to perform a traffic stop, a police officer needs “at least articulable and reasonable suspicion” to believe that a traffic violation or other crime has been committed.¹⁰⁴ Once the vehicle is stopped, an officer is only permitted to search the vehicle without a warrant if there exists “probable cause” to conduct the search.¹⁰⁵ Probable

¹⁰¹ Independent Monitors’ Ninth Report, Jan. 23, 2004, at 30 [hereinafter “Independent Monitors’ Ninth Report”], *available at* http://www.nj.gov/lps/monitors_report_9.pdf.

¹⁰² Independent Monitors’ Sixteenth Report, Sept. 5, 2007, at 4 [hereinafter “Independent Monitors’ Sixteenth Report”], *available at* <http://www.nj.gov/lps/monitors-report-16.pdf> (characterizing failings as “slip[ping]”).

¹⁰³ *Id.* at 7.

¹⁰⁴ *Delaware v. Prouse*, 440 U.S. 648, 663 (1979); *United States v. Delfin-Colina*, 464 F.3d 392, 397 (3d Cir. 2006); *State v. Locurto*, 157 N.J. 463, 470 (1999).

¹⁰⁵ *Ornelas v. United States*, 517 U.S. 690, 696 (1996).

cause exists “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.”¹⁰⁶ Under New Jersey law, an officer may search a vehicle without a warrant where “probable cause and exigent circumstances are evident, making it impracticable for the police to obtain a warrant.”¹⁰⁷

Otherwise, an officer may request consent from the occupant to conduct a search of the vehicle. In this context, the Fourth Amendment requires consent to be freely given—not as a result of duress or coercion, express or implied—and while knowledge of a right to refuse consent is one factor to be taken into account, it is not an indispensable element of effective consent.¹⁰⁸ As long as consent is voluntarily given, an officer does not need probable cause or reasonable suspicion to conduct the search under federal constitutional law.

The New Jersey Constitution sets a more exacting standard for consent searches by State law enforcement officers. First, in *State v. Johnson*, the New Jersey Supreme Court held that Article I, Paragraph 7 of the New Jersey Constitution requires that a person have knowledge of his or her right to refuse consent to the search.¹⁰⁹ Under *Johnson*, the State has the burden to show that a person in fact knew that he or she had the right to refuse to accede to the search request. In response to *Johnson*, a new “Consent to Search” form was developed that vehicle occupants are required to sign before a Trooper can conduct a consent search.¹¹⁰

Moreover, the New Jersey Constitution requires that police officers have “a reasonable and articulable suspicion” that the occupants of the vehicle are engaged in wrongdoing before requesting a consent search.¹¹¹ A Trooper’s perception that occupants of a vehicle “appeared to

¹⁰⁶ *Id.*

¹⁰⁷ *State v. Cooke*, 163 N.J. 657, 671 (2000).

¹⁰⁸ *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973); *United States v. Givan*, 320 F.3d 452, 459 (3d Cir. 2003).

¹⁰⁹ 68 N.J. 349, 366 (1975).

¹¹⁰ *State v. Carty*, 170 N.J. 632, 639, *modified on other grounds*, 174 N.J. 351 (2002); New Jersey State Police Standing Operating Procedure [hereinafter “SOP”] F31, dated Oct. 3, 2001, at Annex A; *see* Appendix H for a sample New Jersey State Police Consent to Search Form.

¹¹¹ *Carty*, 170 N.J. at 647; *State v. Elders*, 192 N.J. 224, 230-31 (2007) (extending requirement that an officer have reasonable and articulable suspicion to request a consent search of a disabled vehicle).

be nervous” does not provide the reasonable articulable suspicion required to request consent to search.¹¹²

Under federal constitutional standards, an officer may also perform a warrantless search of a motor vehicle after arresting the occupant of the vehicle, as a search incident to arrest.¹¹³ This form of search is valid on the rationale of protecting officer safety and preventing the destruction of evidence, and is permissible under federal precedent even if the occupant of the vehicle has been handcuffed and removed from his or her vehicle.¹¹⁴ Again, the New Jersey constitutional standard sets the bar higher. Article I, Paragraph 7 of the New Jersey Constitution commands that after a police officer arrests and removes the occupant of a vehicle, the officer may not search the vehicle as a search incident to arrest.¹¹⁵ Accordingly, if an officer wishes to search the vehicle following an arrest of the occupant of a vehicle, the officer must obtain a warrant under New Jersey law.¹¹⁶

B. Regulation of Race-Based Police Tactics Under Federal and State Law

The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution guarantees all citizens the right to equal protection of the law, and ensures that persons are not discriminated against by any governmental actor on the basis of race, ethnicity, national origin or gender.¹¹⁷ Accordingly, the Equal Protection Clause specifically “prohibits selective enforcement of the law based on considerations such as race.”¹¹⁸ The same prohibition exists under Article I, paragraphs 1 and 5 of the New Jersey Constitution.¹¹⁹ In *State v. Maryland*, the New Jersey Supreme Court made clear that even police actions which do not

¹¹² *Carty*, 170 N.J. at 647-48.

¹¹³ *New York v. Belton*, 453 U.S. 454, 462-63 (1981).

¹¹⁴ *Thornton v. United States*, 541 U.S. 615, 623-24 (2004).

¹¹⁵ *State v. Eckel*, 185 N.J. 523, 541 (2006).

¹¹⁶ *Id.*

¹¹⁷ U.S. Const. amend. XIV.

¹¹⁸ *Whren v. United States*, 517 U.S. 806, 813 (1996); *State v. Maryland*, 167 N.J. 471, 485 (2001).

¹¹⁹ *Maryland*, 167 N.J. at 485.

require reasonable suspicion are illegal if the individual was approached solely because of the individual's race.¹²⁰

The enactment and enforcement of the Consent Decree have had an impact on the evolution of the applicable law as the courts, the legislature and the executive branch have all contributed to strengthening the legal framework ensuring that enforcement is as effective as it is fair. New Jersey recently enacted a criminal provision entitled "Official deprivation of civil rights," which states:

A public servant acting or purporting to act in an official capacity commits the crime of official deprivation of civil rights if, knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, the public servant: (1) subjects another to unlawful arrest or detention, including, but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights; or (2) denies or impedes another in the lawful exercise or enjoyment of any right, privilege, power or immunity.¹²¹

Violation of this offense constitutes a third-degree crime, provided that no aggravating factors are present.¹²² Proving a violation of this crime requires a showing that an officer was aware that his or her conduct is unlawful. The statute eases the evidentiary burden, however, by establishing that where an officer filed a false statement or report or failed to prepare a required report, an inference exists that the officer was aware that his or her conduct was unlawful.¹²³

The New Jersey Supreme Court's decision in *State v. Carty* extensively cited to and discussed the Reports of the IMT in its analysis regarding consent requests for vehicle searches.¹²⁴ Specifically, the Court pointed to data demonstrating that motorists approve consent search requests at a ninety-five percent rate, which supports the notion that motorists believe that

¹²⁰ *Id.* at 484; *State v. Patterson*, 270 N.J. Super. 550, 559 (Law Div. 1993) ("[A]n individual's race cannot be considered at all when conclusions are reached or assumed as to a 'profile' suggesting criminal activity.").

¹²¹ N.J.S.A. § 2C:30-6(a).

¹²² *Id.* § 2C:30-6(b).

¹²³ *Id.* § 2C:30-6(d).

¹²⁴ 170 N.J. 632 (2002).

police officer consent requests have the force of law and that individuals feel compelled to consent.¹²⁵ Moreover, the Court was alarmed by the fact that consent search requests often occurred after extended detention and questioning and following the use of intimidating tactics, as exhibited by one of the IMT Reports.¹²⁶ The Court also considered data that four out of every five motorists subject to consent searches were ultimately found innocent of any wrongdoing.¹²⁷ As a result of the weight of this evidence, the Court concluded that there was “widespread abuse of our existing law that allows law enforcement officers to obtain consent searches for every motor vehicle stopped for even the most minor traffic violation.”¹²⁸ The Court found that the voluntariness standard established by *State v. Johnson* was inadequate standing on its own, and proceeded to implement a requirement that law enforcement have a reasonable, articulable suspicion of criminal wrongdoing prior to requesting a consent search.¹²⁹

C. Attorney General Law Enforcement Directive No. 2005-1

On June 28, 2005, Attorney General Peter C. Harvey signed Attorney General Law Enforcement Directive No. 2005-1 (“Directive No. 2005-1”), entitled “Establishing An Official Statewide Policy Defining and Prohibiting the Practice of ‘Racially-Influenced Policing.’”¹³⁰ The directive defines and condemns “racially-influenced policing” and orders that any “sworn officer or civilian employee of a police agency acting under the authorities of the laws of the State of New Jersey shall not consider a person’s race or ethnicity as a factor in drawing an inference or conclusion that the person may be involved in criminal activity, or as a factor in exercising police discretion as to how to stop or otherwise treat a person, *except* when responding to a suspect-specific or investigation-specific ‘Be on the Lookout’ (BOLO) situation.”¹³¹ The directive is broader than the criminal statute discussed above, as it prohibits conduct that is not necessarily a criminal offense under the statute. Further, the directive instructs all police agencies under the authority of New Jersey law to develop rules and Standing Operating Procedures to prohibit employees from engaging in racially-influenced policing. It also calls for the Division of Criminal Justice to develop training materials regarding this nondiscrimination policy, and requires all police officers in the State to take such training within

¹²⁵ *See id.* at 644.

¹²⁶ *See id.* at 645.

¹²⁷ *See id.*

¹²⁸ *See id.* at 646.

¹²⁹ *See id.* at 645-46, 650-55.

¹³⁰ Directive No. 2005-1, *available at* <http://www.nj.gov/oag/dcj/agguide/directives/racial-profiling/pdfs/law-enforce-dir-2005-1.pdf>.

¹³¹ *Id.* (emphasis in original).

180 days after their agency or office receives the materials from the Division of Criminal Justice.¹³²

¹³² *Id.*

PART TWO:
FIELD OPERATIONS, SUPERVISION, DATA COLLECTION AND ANALYSIS

I. Review of Field Operations

A. Recommendations

The Committee recommends that the State Police:

- in conjunction with the Attorney General, periodically assess whether motor vehicle stop and post-stop protocols continue to meet evolving State and federal constitutional standards;
- maintain protocols ensuring multi-level supervisory review;
- maintain current MVR review protocols; and
- continue to employ MAPPS as a supervisory and management tool, including using MAPPS to conduct periodic Trooper reviews, trend analysis and risk management.

B. By the Book: Motor Vehicle Stop Procedures as Set Forth in the State Police Standing Operating Procedures

The Field Operations Division has responsibility for criminal investigations and law enforcement on the highways. A Trooper on the road may conduct dozens of stops in a week and also assist numerous stranded motorists. Even the routine stop carries with it the danger that the Trooper could be injured as a result of criminal conduct, negligence or accident. To minimize the risks to the Trooper and the public, the State Police has adopted procedures that every Trooper must follow from the moment he or she goes on the clock until the time he or she signs off the shift. This Section of the Report discusses procedures designed to ensure that stops are safe and conducted in a constitutional manner, so as to ensure fairness and instill public confidence.

1. Preparation for Duty

Before going on the road, a Trooper must ensure that the patrol vehicle's MVR equipment is functioning by performing pre-operational checks on the equipment. At the start of the shift, the Trooper must turn on the MVR, attach a remote transmitter and a microphone and note on the Daily Patrol Activity Log that the MVR is in good working order.¹³³

¹³³ SOP F19, dated Oct. 10, 2003, at 3-4.

2. *The Decision to Make a Stop*

A Trooper may stop a motor vehicle based on any of the following: a motor vehicle law violation; an authorized highway checkpoint, roadblock or inspection; a BOLO or attempt to locate broadcast or notice; probable cause or reasonable suspicion of a violation of the law; or a specific request from an investigative agency that has been authorized by the State Police.¹³⁴ The Trooper may not initiate a motor vehicle stop or take any subsequent law enforcement action based upon the race, ethnicity, gender or national origin of the motorists.¹³⁵ The Trooper may not “spotlight” (*i.e.*, illuminate) the interior of a vehicle to ascertain the race, ethnicity, gender or national origin of the occupants prior to initiating a stop, unless that information is necessary to confirm that the occupants match the description of specific suspects identified on a wanted bulletin or BOLO notice.¹³⁶

3. *The Stop*

Once the Trooper activates the patrol vehicle’s emergency lights or turns on the wireless microphone, the MVR automatically begins to record. If the Trooper does not want to alert the driver that he or she is being followed by turning on the emergency lights, the Trooper may manually activate the MVR.¹³⁷

After activating the MVR, but before any contact with the driver, the Trooper must communicate information about the stop to the appropriate Operational Dispatch Unit. This information includes the location, descriptions of the vehicle and its occupants and the reason for the stop. If necessary, the Trooper must request assistance. The Trooper must identify the race of the occupants as White, Black, Hispanic/Latino, Asian-Indian, Other Asian or American Indian. To do so, the Trooper is expected to make a good-faith judgment based on his or her observations; the Trooper may not ask any occupants about their race, ethnicity, gender or national origin.¹³⁸ The State Police’s ethnic categories do not provide for motorists of East Indian or Arab descent.

During a routine stop, the Trooper approaches the stopped vehicle and immediately identifies himself or herself as a member of the State Police, obtains the driver’s credentials and states the specific reason for the stop. Upon request, the Trooper must provide his or her name and badge number. For routine stops, the Trooper may not utilize the external public address

¹³⁴ SOP F3, dated Sept. 29, 2000, at 1-2.

¹³⁵ *Id.* at 2.

¹³⁶ *Id.*

¹³⁷ SOP F19, dated Oct. 10, 2003, at 4.

¹³⁸ SOP F7, dated Aug. 16, 2006, at 3-4.

system to summon a motorist, occupant or pedestrian to the patrol car.¹³⁹ For high risk or felony stops, the Trooper must use the public address system to communicate with the occupants of the stopped vehicle and provide detailed instructions about exiting the vehicle.¹⁴⁰

4. *Activities During the Stop*

During the stop, the Trooper may do the following: ask the driver or the other occupants professional questions; conduct a computerized check for active warrants, driver's license verification and criminal history; and issue a summons or written warning.¹⁴¹

In certain circumstances, the Trooper may order or request the occupant to exit, conduct a frisk, summon a police canine, request consent based on the reasonable suspicion standard, conduct a consensual or non-consensual search of the vehicle, make a seizure or arrest or use force.¹⁴² In conducting these activities, the Trooper must follow specific police procedures and complete a Stop Report after the stop. For example, if the Trooper employs force, he or she must also complete a Reportable Use of Force form after the stop.¹⁴³

The Trooper may not request consent to search a motor vehicle or its contents unless the Trooper has reasonable suspicion that the search will yield contraband or evidence of a crime and the Trooper has received supervisory approval to initiate a consent search.¹⁴⁴ The Trooper may issue a summons or make an arrest upon probable cause, defined in Part One, Section V.A above.¹⁴⁵ The use of non-deadly force is restricted to circumstances in which the Trooper has a reasonable belief that it is immediately necessary to achieve one of several listed objectives, such

¹³⁹ SOP F3, dated Sept. 29, 2000, at 3.

¹⁴⁰ *Id.* at A-6 to A-9 (A Trooper may use the public address system when “stopping a vehicle based on probable cause that a subject in the vehicle may have or is committing a crime; stopping a vehicle wanted in connection with a crime as notified via police radio; stopping a known fugitive; stopping a stolen vehicle; [or] under circumstances which reasonably cause[] the Trooper making the stop to believe that the employment of high risk stop techniques [is] reasonably necessary to protect the Trooper or a member of the public from harm during the course of the stop. The Trooper shall be required to justify the use of a high risk stop procedure.”).

¹⁴¹ *Id.* at 3.

¹⁴² *Id.*; SOP F55, dated Sept. 15, 2006, at 14-15, 20, 24-25.

¹⁴³ SOP F3, dated Sept. 29, 2000, at 3.

¹⁴⁴ SOP F55, dated Sept. 15, 2006, at 24-25.

¹⁴⁵ *Id.* at 25-26.

as preventing escape.¹⁴⁶ A Trooper may only use deadly force in specific situations involving self-defense, defense of others or the prevention of escape.¹⁴⁷

When feasible, the Trooper is to inform the Operational Dispatch Unit of the patrol's status, corrected information, and requests for assistance and must alert the Operational Dispatch Unit of his or her intended law enforcement actions. For example, the Trooper must notify the Operational Dispatch Unit by radio prior to conducting a non-consensual search of a motor vehicle, unless circumstances make prior notice unsafe or impractical. The Trooper is not required to radio the Operational Dispatch Unit before conducting a search incident to arrest, but a Supervisor must travel to the location of an arrest when it is feasible to do so.¹⁴⁸

Prior to requesting consent to a search a motor vehicle, the Trooper must notify both the Operational Dispatch Unit and a Supervisor by radio. A Supervisor then proceeds to the scene of the stop. The Trooper is required to report the facts supporting reasonable suspicion that the search would yield contraband or evidence of a crime. The Trooper may only request consent from the motorist if the Supervisor approves. Before obtaining consent, the Trooper must explain to the vehicle occupant his or her rights and request that he or she sign the Consent to Search form. The Supervisor informs the communication center whether he or she granted or denied the request to conduct a consent search. The consenting person has the right to be present during the search and may withdraw consent, which would cause the Trooper to immediately terminate the search.¹⁴⁹

If any person objects to a Trooper's conduct, the Trooper (or any other member of the State Police) must inform the person that he or she has a right to make a complaint. The Trooper must provide the person with two items: an informational handout called Ensuring Quality of Service, and a Citizen Compliment/Complaint Form. Members of the State Police may not discourage a person from making a complaint.¹⁵⁰

5. *After the Stop*

a. Radio Transmission

Immediately at the conclusion of a stop, if feasible, the Trooper must radio a closing transmission to the Operational Dispatch Unit. The Trooper must state that the stop has concluded, note if there was an MVR malfunction and report whether he or she issued a

¹⁴⁶ SOP B22, dated Sept. 12, 2000, at 3.

¹⁴⁷ *Id.* at 4-5.

¹⁴⁸ SOP F7, dated Aug. 16, 2006, at 5.

¹⁴⁹ *Id.* at 6; SOP F31, dated Oct. 3, 2001, at 1-3.

¹⁵⁰ SOP B9, dated June 26, 2001, at 3.

summons or warning.¹⁵¹ If the Trooper knows that the MVR did not record the stop, he or she must notify the Operational Dispatch Unit of the reason the stop was not recorded.¹⁵² If it is unsafe or impractical to radio immediately after the stop, then the Trooper must radio as soon as practicable.¹⁵³

b. Documentation

A Stop Report must be completed whenever a Trooper orders or requests that an occupant exit a vehicle, conducts a frisk, summons a canine, requests a consent search, makes a seizure or arrest or uses force.¹⁵⁴ The Stop Report must be completed as soon as practicable after the stop. The Stop Report includes information on the vehicle, the stop, whether the MVR was used, the reason for the stop, the race/ethnicity and gender of occupants and the activity taken. The Trooper must attach all Stop Reports to his or her Daily Activity Patrol Log and submit them to the shift Supervisor at the conclusion of the shift.¹⁵⁵

The Operational Dispatch Unit operators enter all the information from the stop into the CAD system.¹⁵⁶ The Stop Report is entered into the Records Management System and filed at the station.¹⁵⁷

II. Supervision/Review of Stop Activity

A. Review of the Stop Report and MVR Tapes

Shift Supervisors review and initial all Stop Reports,¹⁵⁸ and must review a consent search within ten days. The review of the consent search may include speaking with the Trooper and reviewing the MVR tape.¹⁵⁹

¹⁵¹ SOP F7, dated Aug. 16, 2006, at 7. At the start of a shift or detail, every Trooper must carry at least three copies of the English and Spanish versions of the Ensuring Quality of Service handout and the Citizen Compliment/Complaint Form to provide to citizens who wish to file a complaint. SOP B9, dated June 26, 2001, at 3.

¹⁵² SOP F19, dated Oct. 10, 2003, at 6.

¹⁵³ SOP F7, dated Aug. 16, 2006, at 7.

¹⁵⁴ SOP F3, dated Sept. 29, 2000, at Annex B.

¹⁵⁵ *Id.* at B-3 to B-7.

¹⁵⁶ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 18-19.

¹⁵⁷ SOP F3, dated Sept. 29, 2000, at B-4.

¹⁵⁸ *Id.*

Supervisors conduct a “Standard Review” of at least two randomly selected MVR tapes per month for each subordinate who served at least sixteen days that month in a specific squad or unit. When available, at least one of these recordings should include a stop in which the Trooper either ordered or requested that an occupant exit a vehicle, conducted a frisk or search of any occupant or the vehicle, summoned a canine, requested consent to search, conducted a consensual or non-consensual search of the motor vehicle, made a seizure or arrest or used force.¹⁶⁰

If the Supervisor determines from the Standard Review that the Trooper has made a procedural error, the Supervisor reviews the Trooper’s intervention history to determine the appropriate intervention. A second Supervisor conducts a “Management Review” to assess the performance of the Standard Reviewer and all Troopers involved in the stop.¹⁶¹

B. Quarterly and Annual Reviews of Stops

In addition to day-to-day supervision of stop activity, Troopers receive quarterly and annual reviews by their Supervisors. Data generated from MAPPS is used for the performance reviews.

MAPPS is a computer system that aggregates information and allows Supervisors to evaluate individual Trooper performance, spot early warning signs of racial profiling and track trends within police units. The system is comprised of ten separate modules that include information on motor vehicle stop data, training, assignment history, commendations, compliments, discipline and interventions. MAPPS integrates this information to allow managers to compare the individual performance of a Trooper with that of a Trooper’s peer group and applicable benchmarks. It enables Supervisors to review relevant performance indicators and make well-informed decisions about a Trooper’s performance and training needs, and it facilitates the identification of exemplary behavior or performance that suggests a need for further review.

Additionally, every quarter MAPPS sends an alert to the Supervisor of a Trooper whose stops of minority motorists in that quarter fell outside the upper or lower “control limits” (defined as two standard deviations above and below the average of the peer group), and who made twenty or more stops of the particular minority group. Falling outside of the upper or lower control limits triggers a review (known as an “SP-632”) of a Trooper’s stop activity. If a Trooper’s activity generates three SP-632 reviews in any four quarters, then the squad and station level Supervisors, the MAPPS unit, and OSPA conduct a more intensive review of the Trooper’s activity.

¹⁵⁹ SOP F31, dated Oct. 3, 2001, at 3.

¹⁶⁰ SOP F19, dated Oct. 10, 2003, at 7.

¹⁶¹ New Jersey State Police Operating Instruction (“OI”) 06-01, at I-3 to I-4.

If a Supervisor concludes that a Trooper is engaged in prohibited discrimination, intentional failure to follow any of the documentation requirements of the Consent Decree or other misconduct, the Supervisor documents the conduct on the review form and immediately refers the Trooper to OPS. If the Supervisor determines that the Trooper had a performance deficiency unrelated to disparate treatment, the Supervisor reviews the Trooper's past intervention history to determine, with the assistance of the Squad Patrol Sergeant, what intervention is appropriate.¹⁶² The Station Commander, Unit Head or Troop Traffic Officer then conducts a second-level review and examines the SP-632 review for completeness and accuracy and determines whether the intervention implemented was appropriate.¹⁶³

Troop MAPPS Coordinators monitor stop activity, ensure that Supervisors perform their quarterly reviews properly and prepare a quarterly report for the Troop Commander listing all members plotted outside the control limits for the quarter and actions taken.¹⁶⁴ Troop Commanders review the form and all completed individual forms to ensure fair and consistent application of the review policy. Troop Commanders then forward the forms to the Field Operations Section Commanding Officer, who reviews them and forwards them to the MAPPS Unit.¹⁶⁵

C. IMT Assessment of Direct Supervisory Review

Early in the monitoring process, neither the State Police nor the IMT expected that supervisory reform would be immediate. Indeed, it was not until the third reporting period, from December 2000 to March 2001, that the Monitors first noted an active supervisory presence within the Field Operations of the State Police. The Monitors considered this to be a significant improvement. The IMT noted several occasions in which supervisory personnel effectively detected and corrected noncompliant Trooper performance.¹⁶⁶

In the sixth reporting period, from January to May 2002, the State Police revised and updated supervisory practices and implemented agency-wide Fourth Amendment training. For example, during this period, Supervisors were first required to approve all consent search requests before consent searches could be made and were required, where possible, to send "Road Sergeants" to be present for such searches. These changes resulted in on-site supervision

¹⁶² *Id.* at A-6 to A-7.

¹⁶³ *Id.* at A-9.

¹⁶⁴ For an example of a scatter plot, see Appendix I.

¹⁶⁵ OI 06-10, at A-13.

¹⁶⁶ Independent Monitors' Third Report, Apr. 12, 2001, at 127 [hereinafter "Independent Monitors' Third Report"], available at http://www.nj.gov/lps/monitors_report_3.pdf.

for forty-five percent of consent searches and fifty-five percent of canine deployments.¹⁶⁷ During the sixth reporting period, consent searches continued to decline in number, while “find rates,” that is, the rate of recovery of contraband, continued to improve. The IMT also noted, however, that Supervisors’ performance had lost ground; Supervisors had missed a large number of SOP violations in the motor vehicle stops reviewed by the Monitors.¹⁶⁸

In the ninth reporting period, from April to September 2003, the IMT found that supervision continued to be the “weak link” in compliance.¹⁶⁹ Nevertheless, the ninth reporting period was the first time that supervisory review of Field Operations “improved to the point that it [could] be documented and measured,” with road-level supervision only seventy-four percent effective, allowing reporting, procedural and constitutional errors to slip through (out of 120 stops reviewed, the IMT found supervisory errors in thirty-one of them).¹⁷⁰ MAPPS became operational during this period but was not yet being used to manage operations on a day-to-day basis.¹⁷¹

The Monitors found the tenth reporting period, from October 2003 to March 2004, to be a time of great progress in the areas of training, supervision, MAPPS and quality control, largely due to a focused and clear mandate from the Office of the Superintendent, which made compliance a top priority of the agency.¹⁷² The changes in the process and outcomes of supervision resulted in only two supervision-related Field Operations tasks out of compliance. During the tenth reporting period, Supervisors were beginning to use MAPPS in performance evaluations and positive disciplinary processes, such as verbal counseling, performance notices and retraining.¹⁷³

By the Eleventh Report, covering April to September 2004, the IMT reported that the State Police had achieved compliance with all supervision-related tasks.¹⁷⁴ All motor vehicle

¹⁶⁷ Independent Monitors’ Sixth Report, July 19, 2002, at 56 [hereinafter “Independent Monitors’ Sixth Report”], available at http://www.nj.gov/lps/monitors_report_6.pdf.

¹⁶⁸ *Id.* at 128.

¹⁶⁹ Independent Monitors’ Ninth Report, at 157.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 54.

¹⁷² Independent Monitors’ Tenth Report, July 16, 2004, at 4 [hereinafter “Independent Monitors’ Tenth Report”], available at http://www.nj.gov/lps/monitors_report_10.pdf.

¹⁷³ *Id.* at 6.

¹⁷⁴ Independent Monitors’ Eleventh Report, Dec. 20, 2004, at 106 [hereinafter “Independent Monitors’ Eleventh Report”], available at <http://www.nj.gov/lps/monitors-report-11.pdf>.

stops were subject to at least three levels of supervisory review.¹⁷⁵ Of the fifty Consent Decree–related mistakes noted by the IMT (all but one of which were technical mistakes), forty-nine were caught in supervisory review. The Monitors’ review found that immediate Supervisors completed reviews of eighty-five percent of all motor vehicle stops covered by the Consent Decree.¹⁷⁶

Although the IMT continued to find the State Police to be in compliance with the Consent Decree, it did note certain setbacks in supervision in the fifteenth and sixteenth reporting periods. In the Fifteenth Report, the Monitors noted that the State Police suffered an “interrupt[ion]” in improvements to the quality of MVR review reports.¹⁷⁷ In the Sixteenth Report, the Monitors found that an atypically large number of supervisory corrections from viewing MVRs or from reports were made at high levels—either at the Troop or OSPA levels—instead of by field-level Supervisors.¹⁷⁸ The IMT postulated that the failure of field-level Supervisors to catch errors was “undoubtedly attributable to the problems created by the [unauthorized] external drug interdiction training.”¹⁷⁹

The IMT also made recommendations for sustaining the progress achieved by the State Police under the Consent Decree. The IMT proposed that efforts should be made to engage front-line Supervisors and to make their efforts more efficient, because the work load of front-line Supervisors has become significant. In testimony before the Committee, Mr. Rivas recommended that reviews should become more targeted following termination of the Consent Decree. Mr. Rivas suggested, for example, more frequent review of stops made by new Troopers or those who have records of violations, than the review of stops by other Troopers.¹⁸⁰ In addition, advances in technology, such as digital in-vehicle recorders, should make MVR reviews more efficient as well.

The Monitors also testified that an effective supervisory system depends upon multiple levels of review, both within and outside the State Police. Dr. Ginger testified that sustaining multiple levels of review—including review of stops, MAPPS data and trend analysis by OSPA—is an integral part of maintaining an effective supervisory system following the termination of the Consent Decree. He stated:

¹⁷⁵ *Id.* at 5.

¹⁷⁶ *Id.* at 106.

¹⁷⁷ Independent Monitors’ Fifteenth Report, Jan. 19, 2007, at 47 [hereinafter “Independent Monitors’ Fifteenth Report”], available at <http://www.nj.gov/lps/monitors-report-15.pdf>.

¹⁷⁸ Independent Monitors’ Sixteenth Report, at 60, 63.

¹⁷⁹ *Id.* at 60.

¹⁸⁰ Testimony of A. Rivas, Oct. 10, 2006 Committee Hearing, at 228-29.

If you're a supervisor in New Jersey State Police you cannot avoid doing your job now. . . . [I]t will be difficult for them to disengage as long as those [multiple review] systems are in place, but to the extent that we do away with one or two or three or four levels with that after-action review, then the odds of disengagement will be greater.¹⁸¹

As the management infrastructure of the State Police strengthened in the areas of supervision and technology, the performance of the State Police on the roads also improved from the Fourth through the Fourteenth Reports. In the Fourth Report, the Monitors noted that although they detected no apparent indications that race was used as a factor in initiating traffic stops, they did note a possible racial disparity in the conduct of stops. Specifically, the Monitors noted six stops in one station involving two white drivers, three African-American drivers and one Asian Indian driver which violated the Consent Decree because there were: (1) extended detention and questioning regarding issues not related to the stop; (2) use of intimidating statements to obtain consent to search; and/or (3) the use of hypothetical consent requests. Each of these stops was noted by the State Police prior to the Monitors' visit and the State Police had independently initiated remedial action with each of the Troopers. Based on this remedial action, the State Police was still found to be in Phase II compliance with the stop procedure tasks.¹⁸²

After the fourth reporting period, the IMT began reviewing State Police activity for indications that minor infractions were serving as precursory violations for various law enforcement procedures, including consent searches, frisks and requests to exit the vehicle.¹⁸³ In the Fifth Report, the Monitors found that all motor vehicle stops they reviewed were professionally conducted and almost all of them were made for violations affecting public safety, as opposed to minor violations bordering on the pretextual. During this same period, the IMT noted that no consent searches were conducted after a non-related violation and that the vast majority of these searches were based on reasonable suspicion that evidence would be located in the area searched. Finally, beginning with the Fifth Report, the Monitors consistently commended the State Police for improving "the quality and tenor of the 'average' traffic stop" that the Monitors observed.¹⁸⁴ The IMT attributed the change in behavior in the field to the

¹⁸¹ Testimony of Dr. James Ginger [hereinafter "Testimony of Dr. Ginger"], Oct. 10, 2006 Committee Hearing, at 226.

¹⁸² Independent Monitors' Fourth Report, July 17, 2001, at 11-13 [hereinafter "Independent Monitors' Fourth Report"], *available at* http://www.nj.gov/lps/monitors_report_4.pdf.

¹⁸³ *See, e.g.*, Independent Monitors' Seventh Report, at 11. Such infractions include obstructed windshields and license plates and broken tail lights. Independent Monitors' Sixteenth Report, at 20-21 & Annex 1.

¹⁸⁴ Independent Monitors' Fifth Report, Jan. 14, 2002, at 11-12 [hereinafter "Independent Monitors' Fifth Report"], *available at* http://www.nj.gov/lps/monitors_report_5.pdf; *see also* Independent Monitors' Sixth Report, at 12; Independent Monitors' Seventh Report, at

increased supervision of Field Operations and changes to motor vehicle stop policies that were implemented during this period. The Monitors also noted that the Fourth Amendment training that was delivered during this period was a model for all law enforcement agencies, resulting in a sixty-nine percent decrease in consent search requests and an increased “find rate” in the searches conducted.¹⁸⁵

During the early reporting periods, the Monitors noted problems with the recording (audio and video) of motor vehicle stops, as well as failures to report when the recording equipment did not function properly and, worse, Trooper tampering with the devices so that they would not work. In the Fifth and Sixth Reports, however, the Monitors noted that the only problems with recordings were a result of equipment problems, exigent circumstances and safety issues.¹⁸⁶ Beginning with the Seventh Report, the Monitors noted that the vast majority of searches and frisks were “non-discretionary” (*e.g.*, incident to arrest or conducted under “duty to transport” situations).¹⁸⁷ During this period, the IMT found that problematic searches that were conducted resulted from a lack of understanding of the Consent Decree requirements and State Police SOPs, not from intentional violations of procedure. The Monitors noted one problematic consent search request and search, one problematic non-consensual search and twelve instances in which a Trooper failed to state sufficient reasons to justify frisking a driver or passenger.¹⁸⁸

During the seventh reporting period, from July 2002 to January 2003, the IMT found frequent instances in which errors occurred but were not noted in the supervisory review process. The Monitors noted, however, that supervisory review continued to improve. Errors such as

11-12; Independent Monitors’ Eighth Report, Aug. 21, 2003, at 12 [hereinafter “Independent Monitors’ Eighth Report”], *available at* http://www.nj.gov/lps/monitors_report_8.pdf; Independent Monitors’ Ninth Report, at 12; Independent Monitors’ Tenth Report, at 12; Independent Monitors’ Eleventh Report, at 12; Independent Monitors’ Twelfth Report, July 12, 2005, at 13 [hereinafter “Independent Monitors’ Twelfth Report”], *available at* http://www.nj.gov/lps/monitors_report_12.pdf; Independent Monitors’ Thirteenth Report, Dec. 21, 2005, at 13 [hereinafter “Independent Monitors’ Thirteenth Report”], *available at* http://www.nj.gov/lps/monitors_report_13.pdf; Independent Monitors’ Fourteenth Report, at 16.

¹⁸⁵ Independent Monitors’ Fifth Report, at 144.

¹⁸⁶ *Id.* at 143; Independent Monitors’ Sixth Report, at v.

¹⁸⁷ Independent Monitors’ Seventh Report, at 11-12; *see also* Independent Monitors’ Eighth Report, at 11; Independent Monitors’ Ninth Report, at 12; Independent Monitors’ Tenth Report, at 12; Independent Monitors’ Eleventh Report, at 12; Independent Monitors’ Twelfth Report, at 13; Independent Monitors’ Thirteenth Report, at 13; Independent Monitors’ Fourteenth Report, at 16; Independent Monitors’ Sixteenth Report, at 13. This measure was not reported in previous Reports.

¹⁸⁸ Independent Monitors’ Seventh Report, at 17, 23, 54.

failing to activate video or audio recording or failing to call into the communications center prior to a non-consensual search also persisted. A significant step forward in compliance was made when a test version of the MAPPS system was implemented in two road stations.¹⁸⁹

In the Ninth Report, the Monitors noted that the percentage of errors that resulted in constitutional infringements continued to decrease from 15% in the eighth reporting period to 8.7%. The Monitors did, however, raise a concern that four problems were found relating to consent search requests (though all were procedural), and the number of on-road law enforcement errors rose overall.¹⁹⁰

In the Ninth Report as well, for the first time, the IMT found compliance with Task 27, motor vehicle stop criteria. All consent search requests, uses of force and canine deployments were found to have been constitutionally conducted.¹⁹¹ The Monitors also found the State Police had made substantial progress toward the goal of having station-level Supervisors review *all* motor vehicle stops which resulted in a law enforcement procedure (vehicle exit, frisk, arrest, search, canine deployment, consent request or use of force). Prior to the tenth reporting period, the supervisory reviews were primarily conducted by secondary supervisory sources—quality assurance reviews, OSPA reviews or other non-station sources.

MAPPS was conceived as the core of the State Police's compliance apparatus, but the Monitors found that the development and implementation of the MAPPS system took much longer than anticipated. It was not until the tenth reporting period that MAPPS was online and beginning to be used in performance evaluations. By the eleventh reporting period, the Monitors reported that the use of MAPPS had become more widespread and that Supervisors were using MAPPS to track problems with a Trooper's motor vehicle stop procedures and provide verbal counseling to correct minor problems.¹⁹² That progress continued into the twelfth reporting period, when the MAPPS unit developed and implemented a history subsystem that allowed Supervisors to review an individual Trooper's MAPPS history in a user-friendly manner.¹⁹³ The Monitors testified that MAPPS has evolved into a state of the art management system.

The Twelfth Report, released in July 2005, found the State Police to be in substantial compliance with all of the requirements of the Consent Decree.¹⁹⁴ The Thirteenth Report,

¹⁸⁹ *Id.* at 64-66.

¹⁹⁰ Independent Monitors' Ninth Report, at 156.

¹⁹¹ *Id.* at 6.

¹⁹² Independent Monitors' Eleventh Report, at 6.

¹⁹³ Independent Monitors' Twelfth Report, at 54.

¹⁹⁴ *Id.* at 4, 101.

released in December 2005, also found the State Police in substantial compliance with the Consent Decree. Training and supervision continued to improve, with supervisory review completed on 100% of the motor vehicle stops that the IMT reviewed. Only two Consent Decree–related errors were not caught and corrected by supervisory personnel. One of the errors, however, was potentially serious. A Sergeant was found to have given incorrect guidance. He had counseled Troopers under his command about failing to conduct frisks, but his guidance and counsel were not supported by law. Error rates for complex interactions such as consent searches, arrests, detentions, frisks and searches of persons and vehicles were at or near zero.¹⁹⁵ MAPPS continued to facilitate high-level risk analysis in this period.

The State Police remained in substantial compliance with all tasks in the fourteenth reporting period from December 2005 to July 2006. Motor vehicle stops underwent three levels of review: (1) immediate supervisory review of all stops of interest to the Consent Decree;¹⁹⁶ (2) quality assurance review; (3) and OSPA review. Errors at the initial supervisory level were routinely noted and corrected by management review. The three-tiered process caught all errors in stops reviewed by the IMT.¹⁹⁷

In its Fourteenth Report, the IMT found that “the New Jersey State Police have fielded supervisory and Field Operations systems that attain well more than that which was envisioned and required by the Decree.”¹⁹⁸ MAPPS continued to be implemented with a Trooper-centric data access process. The Monitors found that “the State was in substantial compliance with the requirements of the Consent Decree as of the eleventh reporting period, and have remained in compliance for four consecutive periods from April 1, 2004 through May 31, 2006, more than the required two years.”¹⁹⁹

During the fifteenth reporting period, from April to September 2006, the IMT noted some risks to continued compliance. A spike in consent searches was seen and traced to unauthorized training of numerous Troopers. The Monitors found that the system had “worked” because the trend identified and the cause determined and corrected by the State Police and OSPA.²⁰⁰ The IMT found substantial compliance in the area of supervision, noting only two Consent Decree–related errors this period that were not first caught and corrected. Supervisory presence on the

¹⁹⁵ Independent Monitors’ Thirteenth Report, at 99.

¹⁹⁶ Independent Monitors’ Fourteenth Report, at 5.

¹⁹⁷ *Id.* at 6.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 10.

²⁰⁰ Independent Monitors’ Fifteenth Report, at 5.

road hit a new high, with Supervisors present at sixty-one percent of all reviewed motor vehicle stops.²⁰¹

D. OSPA Review of Field Operations

OSPA, charged by the Consent Decree to perform compliance audits of Field Operations, generally tracked the findings of the Monitors in OSPA's semi-annual progress reports. Unlike the IMT Reports, OSPA's summaries focus on the steps taken by the State Police to comply with the Consent Decree, and generally do not provide specific findings with respect to its audit of Field Operations. Rather, the early semi-annual reports outline the efforts of the State Police to implement the policies and protocols mandated by paragraphs twenty-six through thirty-nine of the Consent Decree (the Field Operations provisions), and the latter reports outline the evolution of the State Police's adherence to those mandates.

For example, OSPA reported in its Sixth Progress/Status Summary that attorneys from its office had been assigned to each of the five Troops of the State Police to "perform site visits . . . to obtain feedback for the purpose of training and remediation." The report, however, did not identify the nature of the training or causes for remediation.²⁰² A common theme emerged from the OSPA summaries, suggesting that its Field Operations audits evolved from a front-line focus to a supervisory focus. That is, as the protocols and procedures implemented by the State Police increased in effectiveness in documenting information relevant to the Consent Decree, the focus of OSPA's Field Operations shifted to how the State Police reviewed that information up the chain of command.

III. Data Analysis of Motor Vehicle Stops and Post-Stop Activities

A. Recommendations

The Committee recommends that:

- The State Police:
 - enhance routine collection of detailed stop data, including data on stop characteristics—such as make, model and year of the car, road conditions, number of people in the car, state of registration, specific type of violation and whether the driver was an egregious violator (*i.e.*, more than ten miles per hour over the speed limit)—that will allow deeper analysis of the reason for a stop or post-stop activity;

²⁰¹ *Id.* at 6.

²⁰² Office of State Police Affairs, Sixth Progress/Status Summary, Oct. 23, 2002, at 4, *available at* http://www.state.nj.us/lps/cdstatus_10-23-02.pdf.

- maintain adequate information technology and/or data analysis staffing to timely address technical needs and perform data analysis;
- continue and enhance trend analysis to enable the Attorney General and the Superintendent to identify early warning signs regarding stop and post-stop data and to take prompt remedial action; and
- continue to publish aggregate data reports.
- The State Police and OSPA must take a dynamic approach to assess and reevaluate data collection and analysis efforts. The effectiveness of such efforts should be reevaluated every two years with a report to the Attorney General and legislative leadership.

B. Supervisory Analysis of Stop Data Trends

Paragraph 50 of the Consent Decree mandates that the State Police use MAPPS to develop reports on trends in State Police motor vehicle stops, known as “Task 50 Reports.” Paragraph 51 of the Consent Decree requires that the State Police review the reports in order to identify emerging trends and develop policies to respond to those trends.

The Risk Analysis Core Group (“RACG”), a group of civilian analysts supervised by enlisted personnel within the Office of the Chief of Staff in the Office of Strategic Initiatives,²⁰³ is responsible for producing a Task 50 Report quarterly using MAPPS data.²⁰⁴ The Task 50 Reports contain detailed data analyses that use internal—and, for Troop D, which is responsible for patrolling the New Jersey Turnpike, external—benchmarks to determine whether there are racial or ethnic disparities in State Police stops. The Risk Management Advisory Panel (“Risk Management Panel”) is a forum for the discussion and analysis of law enforcement trends, including the motor vehicle stop and post-stop activity data, which is mandated by paragraph 50 of the Consent Decree, compliance with which is measured by Task 51. The Risk Management Panel was created pursuant to a plan for “Risk Management in the New Jersey State Police” that was developed by OSPA, the State Police and other stakeholders.²⁰⁵ The Risk Management Panel is composed of five voting members, serving on a rotating basis and holding the rank of at least Major, and two permanent non-voting members: the Strategic Initiatives Officer of the State Police and the Director of OSPA.²⁰⁶

²⁰³ OI 06-04, at 2.

²⁰⁴ Memorandum from the NJSP on the Genesis of the “Task 50” Report, at 1-2.

²⁰⁵ *Id.* at 2, 5.

²⁰⁶ OI 06-04, at 6.

Each quarter's Task 50 Report contains twelve months of data for one Troop. Along with statistics and summaries, the reports propose discussion questions and areas for further research. RACG issued its first report on April 29, 2005, reviewing data for Troop A between January and December 2004, and reports for Troops B, C, D and E were issued subsequently. All the reports found that African-American and Hispanic drivers were stopped for non-moving violations at a disproportionately high rate. The first report (for Troop A) postulates that socioeconomic factors could affect the disparities in non-moving violations, which include violations such as suspended insurance.²⁰⁷ The latest report reviews data for Troop A in 2006 and compares the data to 2004.

There was significant variance between the reports in enforcement actions (moving violations, non-moving violations and others), including situations in which there were no or small racial disparities. Generally, white drivers were more likely to receive a warning or no enforcement action. Also, generally, African-American and Hispanic drivers were more likely to receive a summons.²⁰⁸

African-American and Hispanic drivers were significantly more likely to encounter a post-stop interaction—exit of the vehicle, frisk, consent search, driver search or arrest. The disproportionality index was typically around two, meaning actions happened twice as frequently as would be expected given the racial breakdown of stops.²⁰⁹ In all reports, African-American and Hispanic drivers were overrepresented and white drivers underrepresented in non-consensual searches. In some situations the disparities were dramatic. For example, in 2004 in Troop A, African-American and Hispanic drivers disproportionately had their vehicles searched; African-American drivers were more than seven times more likely than white drivers to have their vehicles searched after being stopped for moving violations by the Woodbine station and Hispanic drivers were almost seven and a half times more likely than white drivers to have their vehicles searched after being stopped for moving violations by the Bridgeton Station.²¹⁰ In some

²⁰⁷ Risk Analysis Core Group, *Task 50 Report, An Analysis of Motor Vehicle Stop Data by Race/Ethnicity: Troop A, Jan. 1, 2004 to Dec. 31, 2004*, at 164 [hereinafter "*Troop A Task 50 Report*"].

²⁰⁸ See, e.g., Risk Analysis Core Group, *Task 50 Report, An Analysis of Motor Vehicle Stop Data by Race/Ethnicity: Troop C, July 1, 2004 to June 30, 2005*, at 56 [hereinafter "*Troop C Task 50 Report*"].

²⁰⁹ See, e.g., Risk Analysis Core Group, *Task 50 Report, An Analysis of Motor Vehicle Stop Data by Race/Ethnicity: Troop E, Oct. 1, 2005 to Sept. 30, 2006*, at 52.

²¹⁰ *Troop A Task 50 Report*, at 159.

instances (Troops A and B), find rates were lower for African-American and Hispanic drivers.²¹¹ Some reports, however, did not have a disparity in find rates.²¹²

The Task 50 Report for Troop D noted that the external study estimated there to be between 10.5% and 14.5% African-American drivers on the road, but African-American drivers represented 24% of drivers stopped. In Moorestown, there were an estimated 12.5% to 17.7% African-American drivers, but 30.9% of drivers stopped were African-American.²¹³ These disparities persist despite a complete turnover of personnel at the Moorestown station.²¹⁴

C. OSPA Semiannual Public Report of Aggregate Data and Summary of Selected Data Trends

The Consent Decree requires the State Police to prepare semi-annual public reports of aggregate statistics broken down by station and the race or ethnicity of the civilians involved. The Decree mandates that the reports include: (1) stop data divided into reason for stop, enforcement actions and procedures taken during the stop; and (2) information on misconduct investigations by OPS, including the number of complaints received and sustained.²¹⁵

The Aggregate Data Reports contain racial breakdowns of four categories of motor vehicle enforcement actions: stops, law enforcement procedures (post-stop interaction), dispositions and arrests by Troop. Stops are broken down only into the broad categories of “moving,” “nonmoving” and “other.” Data on misconduct investigations from OPS is organized by complaint classification and disposition. The OPS investigation data is not broken down by race.²¹⁶

According to OSPA’s Summary of Selected Trends—an analysis of the Aggregate Data Reports from May 2000 through April 2006—the data raised questions about racial disparities in driver stops and post-stop activity. In particular, the data showed that for higher discretion non-

²¹¹ *Id.* at 162; Risk Analysis Core Group, *Task 50 Report, An Analysis of Motor Vehicle Stop Data by Race/Ethnicity: Troop B, Apr. 1, 2004 to Mar. 31, 2005*, at 57.

²¹² *See, e.g., Troop C Task 50 Report*, at 52.

²¹³ Risk Analysis Core Group, *Task 50 Report, An Analysis of Motor Vehicle Stop Data by Race/Ethnicity: Troop D, Oct. 1, 2004 to Sept. 30, 2005*, at 4; Risk Analysis Core Group, *Task 50 Report, An Analysis of Motor Vehicle Stop Data by Race/Ethnicity: Moorestown Station, Oct. 1, 2004 to Sept. 30, 2005*, at 4.

²¹⁴ Testimony of Col. Fuentes, Sept. 24, 2007 Committee Hearing, Pt. 2, at 145.

²¹⁵ Consent Decree ¶ 114.

²¹⁶ Fifteenth Semiannual Public Report of Aggregate Data, June 2007, at 1-4, *available at* <http://www.nj.gov/lps/15-aggregate-data-rep.pdf>.

moving violation stops, the proportion of white drivers stopped for such violations decreased over time, while the number of non-white drivers stopped increased.²¹⁷ In addition, there has been a general decrease in the number of whites stopped for moving violations on the New Jersey Turnpike, with a corresponding increase in the number of non-white drivers stopped for moving violations.²¹⁸ Likewise, the data showed racial disparities in post-stop activity, with non-white drivers disproportionately being frisked or searched compared to white drivers, particularly on the New Jersey Turnpike, where searches of non-white drivers were the majority of all driver searches conducted. In that period, the percentages of motor vehicle stops by Troop D were 51.3% white drivers, 24.6% African-American drivers and 15.2% Hispanic drivers, but the percentages of searches were 30.6% white drivers, 44.7% African-American drivers and 20.9% Hispanic drivers, showing that on the raw data alone, non-white drivers were more likely to be subject to a search than white drivers on the Turnpike.²¹⁹

While the Summary of Selected Trends raises questions about racial disparities in the stop data, it notes that the “data in the [Aggregate Data Reports] are limited with respect to their ability to shed light on the racial/ethnic disproportions noted, especially those for post-stop activities that occur disproportionately for minority drivers.” The Summary of Selected Trends concludes that more data would be useful to understand the disparities, as would subjecting the data currently available to the State Police “to additional statistical analyses that could help clarify overall trends.”²²⁰

D. Lamberth/Kadane Report

At the hearing held on November 21, 2006, the Committee heard testimony from Mr. Edward Barocas, Legal Director of the American Civil Liberties Union of New Jersey, and Dr. John C. Lamberth. Prior to the testimony, the ACLU submitted a study of traffic stops on the southern end of the New Jersey Turnpike. The study examined “whether the New Jersey State Police (NJSP) was targeting Black motorists in making stops” on the section of the Turnpike patrolled by the Moorestown Station.²²¹

Dr. Lamberth and Dr. Kadane conducted two surveys to determine the population of motorists who violated traffic laws on the Turnpike between Exit 7A and Exit 1 during August

²¹⁷ Office of State Police Affairs, *Summary of Selected Trends, May 2000 through April 2006*, December 2006, at 6.

²¹⁸ *Id.* at Exhibits D-6, T-4.

²¹⁹ *Id.* at 12, Exhibits T-2, T-10b (reporting on the results from the Thirteenth Semiannual Public Report of Aggregate Data, dated June 28, 2006).

²²⁰ *Id.* at 16.

²²¹ Lamberth/Kadane Report, at 1.

and September 2005. Drs. Lamberth and Kadane compared data from the two surveys about the population of drivers on the Turnpike to data on actual State Police stops from the first eleven OSPA Aggregate Data Reports, noting the limitation of the comparison of their studies against the Aggregate Data Reports, which do not disaggregate data by region.²²²

The weighted and unweighted estimates from the surveys showed a driving population for the Moorestown Station that was between 17.6% and 19.0% African-American, with African-Americans consisting of 19.2% of egregious violators. In contrast, the Aggregate Data Reports showed that 30.8% of drivers stopped from 2000 to 2005 were African-American (with the percentage ranging from 29.3% to 32.3% across reports). The Lamberth/Kadane Report concluded that African-American drivers in general were slightly more than twice as likely to be stopped than other drivers and slightly less than twice as likely to be stopped among egregious violators.²²³

E. The Peer Review Report

The Committee engaged a panel of experts to conduct an outside peer review of the Lamberth/Kadane Report.²²⁴ The Peer Review Team consisted of four of the leading experts in the field of police practice and racial profiling: Professors Jeffrey Fagan, Geoffrey Alpert, Richard Brooks and Christopher Winship.²²⁵ The Peer Review Team analyzed the Lamberth/Kadane Report, along with additional information requested from Drs. Lamberth and Kadane and additional data from the State Police.

The Peer Review Team identified a number of limitations in the State Police's collection and reporting of stop data: the data did not include information such as the speed of the driver stopped, markers for non-speeding moving violations, and which drivers stopped were egregious violators versus those who were traveling between five and ten miles per hour above the speed limit, a category with broad discretion for law enforcement action. Additionally, the stop data did not contain information on the make and model of the car, state of registration, the number

²²² *Id.* at 1, 3.

²²³ *Id.* at 5, 7.

²²⁴ The Peer Review Team was provided a small honorarium out of the discretionary state funds.

²²⁵ The Chair of the Peer Review Team was Jeffrey Fagan, J.D., Ph.D., a professor of Law and Public Health and co-director of the Center for Crime, Community and Law at Columbia University. Geoffrey Alpert, Ph.D., is a professor in the Department of Criminology and Criminal Justice at the University of South Carolina. Richard Brooks, M.A., J.D., Ph.D., is a professor of Law at the Yale School of Law; Christopher Winship, Ph.D., is the Diker-Tishman Professor of Sociology at Harvard University.

and race of passengers and the time of day or other road conditions.²²⁶ The Peer Review Team opined that all of this data would be helpful to managers attempting to gain a refined insight into the range of factors, including possibly race, that informed a Trooper's enforcement decisions.

The Peer Review Team concluded that the Lamberth/Kadane Report affirmed the likelihood that "stop rates for Blacks are disproportionate to their violation rates and disproportionate to the rates for drivers of other races."²²⁷ The Peer Review Team confirmed from a review of additional data provided by the State Police that the time period used by Drs. Lamberth and Kadane was representative of the stop patterns for the period of their surveys. The Peer Review Team nevertheless noted some limitations to Drs. Lamberth and Kadane's surveys estimating the population of African-American motorists who were speeding. Additionally, the Peer Review Team raised several questions about the method used to classify the race or ethnicity of drivers and noted the absence of an effort to validate racial classification using photographs or multiple raters.

While the Peer Review Team noted that these issues raised some doubts about the estimate of the number of violators by race, they noted that the similar estimates from the two surveys evidence reliability and the stated that they had no reason to believe that any of the issues raised in their report varied by race of the driver.²²⁸ The Peer Review Team concluded that given the extent of the stop disparities found by Drs. Lamberth and Kadane, the measurement and design limitations noted by the Peer Review Team "do not appear to undermine the [Lamberth and Kadane] conclusions" about disparity.²²⁹

F. Response of the State Police to Racial Disparities in the Data

Racial disparities in stop data from the Moorestown Station were an area of consistent concern at Risk Management Panel meetings. The State Police Chief of Staff asked the Monitors why the Moorestown disparities remained despite the State Police's changing personnel and levels of review. Dr. Ginger suggested that the State Police should develop a system to disaggregate the reason for stops in order to explain the disparities.

Colonel Fuentes acknowledged and accepted the Lamberth/Kadane Report finding of disproportionate numbers of stops of African-American drivers on the southern part of the Turnpike. He stated that research has not yet shown whether there is disparate treatment of

²²⁶ *Report of the Peer Review Team*, at 2-3.

²²⁷ *Id.* at 4.

²²⁸ *Id.* at 2-3.

²²⁹ *Id.* at 4.

African-American drivers.²³⁰ First, he noted that the State Police's internal data and review systems, including MVRs of actual stops, have not shown disparate treatment. Second, other factors might affect the stop data, including that forty-two percent of stops by the Moorestown Station occur in the dark between 8 p.m. and 5 a.m. and that the southern part of the Turnpike connects to the toll free I-295. Third, Colonel Fuentes pointed out that African-American motorists were encountered during approximately thirty percent of non-discretionary dispatches, in which Troopers are dispatched to assist stranded motorists and motorists who have been in an accident, and that this number is similar to the percentage of African-American motorists pulled over in discretionary stops.²³¹ The implication of the assistance data is that the demographic balance of the motorists may be at odds with that reported by Drs. Lamberth and Kadane. Colonel Fuentes called for more research, stating, "I don't have the answer. And I need to have the answer to reconstruct any policy." Finally, he requested that the Committee help him "to get to that point where we can make some policy."²³²

G. IMT Review of Data Trend Analysis by the State Police

The Monitors concluded that the data generated by the State Police and by the Lamberth/Kadane and Peer Review reports, which Drs. Lamberth and Kadane and the Peer Review Team used to make findings of racial disparities in stops and post-stop activity, were not attributable to racially-motivated decision-making by Troopers.

The Monitors presented their views of the Lamberth/Kadane Report at a Committee meeting held March 20, 2007 and at the September 24, 2007 public hearing. Dr. Ginger asserted that the "study asked the wrong question" and employed "the wrong methodology."²³³ The Monitors presented alternative explanations for the disparities found by Drs. Lamberth and Kadane. Dr. Ginger stated that the disparities in stops by race or ethnicity will always exist, based on usage patterns or other factors.²³⁴ Mr. Rivas agreed that usage patterns might explain the disparities, noting that the southern part of the Turnpike abuts a free interstate highway and is used differently than the northern part. Mr. Rivas recommended review of statistics on the race of drivers involved in accidents or motorist aids, which he stated were similar to the stop rates.²³⁵

²³⁰ "Where that translates from disparate numbers to disparate treatment I think is a divide that we haven't begun to cross yet." Testimony of Col. Fuentes, Sept. 24, 2007 Committee Hearing, Pt. 2, at 144.

²³¹ *Id.* at 144-45.

²³² *Id.* at 144-46.

²³³ Testimony of Dr. Ginger, Sept. 24, 2007 Committee Hearing, Pt. 1, at 42-43.

²³⁴ *Id.* at 43.

²³⁵ Testimony of A. Rivas, Sept. 24, 2007 Committee Hearing, Pt. 1, at 44.

The Monitors likewise recommended to the State Police that the Task 50 Report data should be disaggregated to understand why the disparities might exist. The Monitors noted that they had been reviewing Moorestown Station for six years and believed that the State Police was doing everything possible to catch any potential problem.

The Fifteenth and Sixteenth Reports found that consent search requests and canine deployments were conducted frequently enough to lend themselves to statistical analysis for indications of race- or ethnicity-based decision-making on the part of the State Police. Consent search requests increased from 30 in the fourteenth reporting period to 94 and 134 in the fifteenth and sixteenth reporting periods, respectively.²³⁶ The IMT stated that “[t]he *number and tenor* of consent requests continues to be of concern [in the sixteenth reporting period], and the rate of consent requests jumped more than 42 percent this period, after rising more than *200 percent* [in the fifteenth period].”²³⁷

The Monitors developed a methodology and conducted an analysis of the racial disparities in consent search request data in the Fifteenth Report. The IMT found that, while the data indicated “higher consent request rates for blacks and Hispanics,” it was not “statistically significant,” and that “the differences may be attributable to chance.”²³⁸ In the Sixteenth Report, the IMT found that African-American and Hispanic drivers were stopped and subject to post-stop activity at statistically significantly higher rates than white motorists, and for the first time, “the differences [were] not attributable to chance.”²³⁹

Because of the statistically significant results, the Monitors conducted what they deemed to be a qualitative analysis of the interactions between State Police and drivers in the Sixteenth Report. The Monitors concluded that they “could find *no statistical support suggesting* consistent bias in the way various groups of drivers were treated during post-stop law enforcement activities.” The IMT concluded that “[t]he 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.”²⁴⁰

²³⁶ Independent Monitors’ Fourteenth Report, at 14; Independent Monitors’ Fifteenth Report, at 12; Independent Monitors’ Sixteenth Report, at 15.

²³⁷ Independent Monitors’ Sixteenth Report, at 37 (emphases in original).

²³⁸ Independent Monitors’ Fifteenth Report, at 15.

²³⁹ Independent Monitors’ Sixteenth Report, at 15.

²⁴⁰ *Id.* at 28 (emphasis in original).

IV. Committee Concerns About Data Collection and Analysis

Over the last seven years, the State Police, the IMT and OSPA have developed methodologies for collecting and analyzing data bearing on the question of whether State Troopers are engaged in racially-biased law enforcement. As the State charts the way forward, it is helpful to note the strengths and challenges posed by current approaches. If policies are aimed at cabining a Trooper's discretion and ensuring that he or she exercises such discretion without bias, the data collected must be sufficiently specific to help identify factors, including those other than race, that affect a Trooper's decision-making. The collection of such data is the beginning of an effective analytical system, not the end. Adequate resources must also be provided, and Supervisors and data analysts must properly assess the data collected. The current system could be revised to provide a better window into practices on the road.

As the Sixteenth Report and related testimony made clear, there are limits to the methodology employed by the Monitors during the sixteenth reporting period. The State Police in the Task 50 Reports, OSPA in the Summary of Selected Trends, and the IMT in the Sixteenth Report identified racial disparities in post-stop activities. All noted racial disparities in stops across stations and Troops. Neither the State Police nor the Monitors could provide an explanation for the rise in the number of consent searches or the "statistically significant" differences in the number of consent searches of African-Americans and Hispanics on the one hand, and of whites on the other. Colonel Fuentes called for more research to better understand the basis for these numbers. The IMT methodology did not fill that gap.

The State Police and OSPA have recognized that there are disparities in the data, but thus far have only taken preliminary steps to engage in additional analysis. The Risk Management Panel has taken steps to disaggregate stop data by level of discretion in order to understand the statistics in the Task 50 Reports.²⁴¹

The Monitors began to propose and develop such a system in the Sixteenth Report, when for the first time it identified statistically significant racial disparities in two categories of post-stop activities. The IMT presented the outline of this approach at the Committee's March 23, 2007 meeting and September 24, 2007 public hearing. This proposed approach focuses on levels of discretion in stop and post-stop activity and is not something that had previously been required under the terms of the Consent Decree. However, the qualitative analysis performed was not sufficiently transparent for the Committee to evaluate the Monitors' conclusion that there is no statistical significance to the data suggesting consistent bias in post-stop activity. In addition, the analysis does not explain why the racial disparities in stop and post-stop activities continue to persist.

In order for the State Police and external oversight bodies to analyze data and employ data to determine the presence or absence of racial profiling, the State Police must ensure that the data it collects is sufficient to give insight into a Trooper's reasons for exercising his or her

²⁴¹ Minutes of Oct. 6, 2006 Risk Management Panel Meeting, at 6-7.

discretion. A Trooper may act based on a host of factors, including speed of the vehicle, the make, model and year of the car, the state in which the car is registered, the existence of other violations or the number of people in a car. None of these factors is captured in the data that was analyzed by the IMT. Without such refinements in the data, the State and the public are left with open questions.

Access to critical data is essential for effective trend analysis by the RACG, Risk Management Panel and oversight bodies. The Committee was informed by one member of OSPA that OSPA currently does not have access to data needed for effective data analysis because (1) the State Police has not been electronically collecting all data required for analysis, and (2) access to existing electronic data depends upon allocation of precious State Police programmer time to extract requested data and put it into an analyzable format.²⁴² Going forward, OSPA must have access to all data necessary for effective trend analysis in electronic form. Trend analysis must be institutionalized in order to ensure that it is conducted by internal and external oversight bodies and that those bodies possess the necessary data to conduct such analysis effectively.

The data collection must evolve. The Committee was troubled to learn that the system was not modified after September 11, 2001 to take into account the concern that motorists of Arab descent could be subject to racial profiling. The Monitors believed such modification could have taken place, but it has not been undertaken. The State Police and OSPA must take a dynamic approach to assess and reevaluate data collection efforts. The effectiveness of such efforts must be reevaluated every two years with a report to the Attorney General and legislative leadership.

In addition, adequate technical staff is necessary to ensure that data is collected and processed in a timely manner. As discussed above, the State Police and Monitors attributed the delay in creating the Troop D Task 50 Report and in holding the corresponding Task 51 meeting to staffing problems, resulting in the IMT finding a lack of substantial compliance in the Fifteenth Report. The Committee was also informed by a member of OSPA that technical expertise was lacking and the technology staff was consumed by producing the Task 50 reports and could not produce additional necessary data.²⁴³

Given these concerns, the Attorney General should review the data collection and analysis methods to ensure that he or she, in conjunction with the State Police, has the tools to answer critical questions. The Attorney General should focus particular attention on the disparities identified by the Monitors for which neither the Monitors nor the State Police could provide a complete explanation.

²⁴² Interview with OSPA official, June 27, 2007.

²⁴³ Interview with OSPA official, May 17, 2007.

PART THREE:
FIRST KEYS TO SUSTAINABILITY: TRAINING, DISCIPLINE AND PROMOTION

In Parts One and Two, the Committee described the changes in protocols, technology and management that have been core to the State Police's operational success in implementing the Consent Decree. These reforms are critical to continued progress. It is vital that the State continue to provide the State Police with the resources to maintain the systems and managerial reform currently in place. The true transmission of the values of the organization is to be found in the training, discipline and promotion of Troopers. In any organization, it is not just the rules, but what the member is taught about the rules, that governs conduct. If the rules are not enforced, or enforcement occurs in a way that is inconsistent with the rules, the member will be guided by how he or she expects to be disciplined, not by what the book says. Finally, if members violate the rules, but nevertheless are not hurt in promotions, then the rules become meaningless. If any of the methods of training, discipline or promotion are out of alignment with the goals of the Consent Decree, the risk of error and misconduct rises. If all three are out of alignment with the goals of the Consent Decree, backsliding will almost certainly occur.

Within this Part, Section I discusses training and provides concrete examples of the problems that have occurred when the training provided to Troopers was not consistent with the terms and spirit of the Consent Decree. Sections II through IV set forth the Committee's recommendations with respect to discipline, which is currently neither transparent to the Troopers nor to the Attorney General and is clearly the object of distrust within some segments of the State Police and minority communities. Section V discusses promotion, which the largest Troopers' union calls arbitrary and many minority Troopers consider to be unfair.²⁴⁴

I. Training

A. Recommendations

- The Committee recommends that the State Police:
 - ensure adequate staffing and resources for training programs;
 - place strict controls on training offered by outside vendors;
 - ensure that trainers, before they commence their service, know and understand the letter and spirit of policies and procedures against racial profiling; and

²⁴⁴ See pp. 82-83, below.

- The Committee recommends that OSPA:
 - continue oversight of the Training Academy (“Academy”) by OSPA, including review of curricula, testing of training outcomes and review of courses offered by outside vendors.

B. Consent Decree Training Requirements

The Consent Decree requires the New Jersey State Police to formalize training at all levels by requiring programs that are formally developed, approved, supervised and uniformly implemented. The Consent Decree requires the State Police to (1) establish and adhere to procedures for evaluating its training programs; (2) ensure the quality of the individuals delivering training through development of formal criteria for selection of training personnel and provision of training for Academy instructors; and (3) train all recruits and Troopers on cultural diversity, Fourth Amendment requirements, drug interdiction and the non-discrimination requirements of the Consent Decree, including training on conducting motor vehicle stops and searches and seizures.

The Consent Decree also outlines training requirements for Troopers as they advance in their careers. For example, the State Police must (1) provide all Supervisors with mandatory supervisory and leadership training to address effective techniques to promote police integrity and prevent misconduct; (2) design and implement post-Academy training programs for all State Troopers who are advancing in rank; and (3) 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.

C. Summary of Training Provided

1. *Probationary and Enlisted Troopers*

a. Pre-Service Training

Pre-service training²⁴⁵ is the twenty-five-week training program at the Academy that all recruits must complete in order to become members of the State Police. As part of pre-service training, recruits are subjected to a rigorous test of physical fitness and receive training in self-defense, firearms, water safety, driving and other relevant subjects. In a typical year,

²⁴⁵ Prior to pre-service training the State Police offers physical examination preparedness (“PEP”) and an “Academy Awareness Weekend.” PEP is a voluntary program designed to help prepare a recruit for the physical demands of pre-service training at the Academy. Interview with Capt. Arlene Olshevski and Capt. Thomas Flarity, Oct. 27, 2006.

approximately seventy-five recruits will report to pre-service training, but only a portion of those will last the entire twenty-five weeks. The attrition rate is roughly twenty-four percent.²⁴⁶

i. Instructors

The Academy hires pre-service training instructors based on need, as determined by the head of the Academy. All pre-service training instructors must have a college degree, must have served as a member of the State Police for at least four years, and must pass a physical fitness test. From the qualified pool, the Academy selects pre-service instructors after considering the candidates' résumés and conducting interviews. A candidate will be selected only if the State Police's needs permit the candidate to relinquish his or her present duties.²⁴⁷

ii. Curriculum

The pre-service training is structured as an open forum. Recruits participate in group exercises as well as question-and-answer sessions that follow an "adult-based learning" method.²⁴⁸ At the end of each course, recruits must score at least a seventy on a written examination and must demonstrate proficiency through a "practical" examination.²⁴⁹ The courses include Traffic Science, Basic Policing and Procedures, Special Projects and Topics, and Physical Training/Self Defense.²⁵⁰

In addition to this curriculum, forty pre-service hours of instruction were added to the training in 2001 to respond to the requirements of the Consent Decree,²⁵¹ including courses on: (1) The History and Terms of the Consent Decree, which covers why the Consent Decree was enacted and the various procedures the State Police must follow in order to comply with it; (2) Ethics, which covers the core values of the State Police and how to respond to hypothetical ethical dilemmas;²⁵² (3) Constitutional Issues; (4) Civil Rights Component of Criminal Science, which covers information about the Division on Civil Rights and the New Jersey Law Against

²⁴⁶ Interview with Lt. Mark Muse and Sgt. Thomas Bonham, Oct. 27, 2006; *see also* Recruiting: New Jersey State Police Academy, <http://www.njsp.org/recruit/academy.html>.

²⁴⁷ Interview with Lt. Mark Muse and Sgt. Thomas Bonham, Oct. 27, 2006.

²⁴⁸ Interview with Lt. Thomas Soucek, Oct. 24, 2007.

²⁴⁹ *See* Recruiting: New Jersey State Police Academy, <http://www.njsp.org/recruit/academy.html>.

²⁵⁰ Interview with Lt. Mark Muse and Sgt. Thomas Bonham, Oct. 27, 2006.

²⁵¹ *Id.*; *see also* Interview with Sgt. Virginia Onifrio and Sgt. Rich Laverty, Nov. 17, 2006; Responses to Written Questions from Lt. Thomas Soucek, Oct. 10, 2007.

²⁵² Lesson Plans for courses *Ethics I* to *Ethics IV*.

Discrimination;²⁵³ (5) Prejudice and Discrimination, which covers the definition of racial profiling and law enforcement methods to avoid it;²⁵⁴ (6) Cultural Diversity; and (7) Courtesy, Professionalism and Respect, which covers how to interact with the public.²⁵⁵

The instructional materials entitled “Eradicating Racial Profiling,” which include a DVD and an instructional guide developed by an Assistant Attorney General, are used in this training.²⁵⁶ Pursuant to Directive No. 2005-1, these materials were made standard protocol for all recruit classes beginning in 2006.²⁵⁷

iii. Trooper Coach Program

During a Trooper’s first twelve weeks, he or she is automatically placed on “probation” and enrolled in the Trooper Coach Program (the “Program”). In the Program, an experienced member (“Trooper Coach”) provides instructional mentoring to a probationary Trooper and corrects mistakes that are made. All Troopers are considered probationary for their first five years of service, but only probationary Troopers in their first twelve weeks of service are subject to the Program. Probationary Troopers are re-enlisted annually unless there is cause to terminate their service. If the probationary Trooper has a particular problem that recurs and is not corrected during the Program, that probationary Trooper may be enrolled in Situation Interaction Training (“Situational Training”). Only after the Program has been completed will a probationary Trooper be given his or her own assignment.²⁵⁸

b. In-Service Training

i. Development of In-Service Training

Annual in-service training is mandatory for all members of the State Police regardless of rank. Training sessions are conducted year-round at several regional sites to accommodate attendance by all Troopers. Each course is taught by two certified instructors, who must meet the following minimum requirements of certification: (1) biannual review; (2) certain résumé requirements; (3) passage of an instructor training course; (4) knowledge, expertise, or background in the field of instruction; (5) in-field evaluations reflective of instruction; and (6)

²⁵³ Lesson Plan for course *Criminal Science (Civil Rights)*.

²⁵⁴ Lesson Plan for course *Prejudice and Discrimination*.

²⁵⁵ Lesson Plan for course *Courtesy, Professionalism, and Respect*.

²⁵⁶ State of New Jersey, Office of the Attorney General, Division of Criminal Justice, *Eradicating Racial Profiling* (2005).

²⁵⁷ E-mail from Capt. Thomas Flarity to Michael Hynes, Jan. 16, 2007.

²⁵⁸ Interview with Lt. George Mallist and Sgt. Tim Shaffer, Oct. 27, 2006.

the candidate must be on file at the State Police's Training Bureau, which conducts regular in-service training classes and workshops for prospective State Police candidates and enlisted and civilian State Police personnel, as well as advanced and specialized training for federal, state, county, and municipal police agencies. Members of the State Police who meet these requirements are recommended to the Superintendent's Office, which interviews the applicants.²⁵⁹

A seven-step cycle has been established for developing and delivering all State Police in-service training courses:

1. Needs assessment, consisting of a survey of the needs of the State Police and the current professional standards among law enforcement agencies;
2. Curriculum design, consisting of the actual creation of the course content;
3. Delivery, consisting of offering the training utilizing the current best practices in adult learning;
4. Evaluation of delivery, in which the instructor requests critiques of the course;
5. Modification or revision of the course, in which the instructor uses the critiques offered in order to improve the course;
6. Evaluation of impact in the field, in which the instructor utilizes surveys and interviews to determine the impact of the lesson on Field Operations; and
7. Documentation of all steps in the training cycle, in which each step taken is documented for future audits.²⁶⁰

These steps were developed by the State Police Training Bureau and are implemented with the assistance of the State Police Research and Development Department. According to the State Police, this program surpasses any requirements imposed by the Consent Decree or by CALEA.

No materials are to be used as part of the seven-phase curriculum until they are approved by both the head of the in-service training program and OSPA, which reviews the materials to ensure compliance with the Consent Decree. If OSPA expresses any concerns, the head of the in-service training program addresses those concerns before the materials are utilized. As discussed in detail below, a Captain violated this procedure and injected two inappropriate training courses into the program. Sixty Troopers were trained in these courses, resulting in a dramatic rise in Trooper errors in consent search procedures.

²⁵⁹ *Id.*

²⁶⁰ Lesson Plan for course *Ethics III*, at 6-7.

ii. Annual In-Service Training

All members of the State Police, regardless of rank, must receive annual in-service training. The In-Service Training program contains a Constitutional Issues course and the Search and Seizure component of this course consistently deals with race and racial profiling issues. Instructors review with students the facts recited in various court opinions in which police officers' searches or seizures were declared unconstitutional, such as *Chimel v. California*.²⁶¹ The class discusses how the police officers erred in these cases and what should have been done. In addition, the instructors explicitly address Consent Decree-related issues, and the students are provided with a copy of Directive No. 2005-1.

iii. Situational Training

When a Trooper of any rank or level of experience consistently breaches State Police directives, the Trooper must undergo Situational Training. There are three different levels of Situational Training: (1) a one-day training program; (2) a three-day training program; and (3) a five-day training program. A Trooper is assigned to one of these programs based upon that Trooper's problem and the progress made during the one-day training program.²⁶²

A supervisory conference is held by a Sergeant First Class ("SFC") when a Trooper exhibits problems responding to directives. This conference functions like an intervention, with the SFC providing the Trooper with an opportunity to explain why he or she is deficient in a particular area (*e.g.*, the existence of personal problems). If the problem is not resolved at the supervisory conference, then the station commander may request that the Trooper receive Situational Training from the In-Service Training Unit ("ISTU") at the Academy. The ISTU accepts the station commander's request if they determine that Situational Training can resolve the issue. For example, if a Trooper has difficulty safely making traffic vehicle stops on busy roads or effectively providing drivers with instructions, a Situational Training instructor will run simulations with the Trooper. The State Police has reported that these simulations help Troopers improve their confidence and performance, leading to effective and safe vehicle stops. If the simulations appear to correct the problem, the Trooper will be permitted to recommence his or her State Police duties. In more egregious cases, or if a Trooper fails to respond to Situational Training, additional measures are undertaken. Options include referral to the employee assistance program, individual anger management counseling and independent medical examinations by the State Police Medical Services Director.²⁶³

²⁶¹ 395 U.S. 752, 763 (1969) (holding that the Fourth Amendment permits only a search of suspect and the area "within his immediate control").

²⁶² Interview with Lt. George Mallist and Sgt. Tim Shaffer, Oct. 27, 2006.

²⁶³ E-mail from Capt. Thomas Flarity to James Coons, Aug. 2, 2007.

There are Situational Training courses on Managing Behavior, Conflict Resolution, Assertion Skills, Anger Management, Attending Skills, Reflective Listening and Driver Training. As noted above, these courses are intended to correct improper behavior exhibited by a Trooper. For example, in the Managing Behavior Situational Training, Troopers are told some reasons for managing behavior are: (1) to maintain positive public image; (2) to avoid attitude and demeanor complaints; and (3) to avoid stress.²⁶⁴

Situational Training is not required for a racial profiling problem because such problems are dealt with by the Recruit and Training Evaluation Board, which oversees recruits and probationary Troopers. If a Trooper exhibits racial profiling or racial sensitivity issues, the problem is likely to be addressed through an intervention similar to the supervisory conference. If the intervention does not correct the problem, then the Trooper may be ordered to submit to a psychiatric evaluation. If it is determined that the problem cannot be resolved by either an intervention or a psychiatric evaluation, the Trooper is not likely to be re-enlisted.²⁶⁵

2. *Executive Training*

The State Police requires officers to attend CALEA-accredited executive training courses. This program was implemented in 2005. No Supervisor may advance in rank or maintain his or her supervisory status for more than six months without completing executive training. The State Police maintains a database to ensure that all Supervisors complete the requisite training. If a Supervisor has not completed the requisite training, the database alerts the Supervisor and chief administrator of the executive training program.²⁶⁶

Although this program is modeled on the seven-step training cycle discussed above, the curriculum of the executive training program varies depending on the trainee's rank. There are four distinct courses within the executive training program: (1) First Line Supervision Course for Sergeants; (2) Mid-Level Management and Leadership Course for Sergeants First Class; (3) Executive Leadership Course for Lieutenants; and (4) Executive Staff Level Training for Captains through Lieutenant Colonels.²⁶⁷

Subjects common to all courses are: (1) Conflict Resolution, which teaches trainees about leadership in a crisis and managing conflicts among subordinates; (2) Administration, which

²⁶⁴ Lesson Plan for SIT course *Managing Behavior*.

²⁶⁵ Interview with Lt. George Mallist and Sgt. Tim Shaffer, Oct. 27, 2006; Interview with Capt. Thomas Flarity, Nov. 3, 2006.

²⁶⁶ Interview with Lt. Matt Wilson and Sgt. First Class Phil Coyne, Oct. 27, 2006.

²⁶⁷ Executive Development Training Unit, *First Line Supervision Course for Sergeants, Mid-Level Management and Leadership Course for SFC, Executive Leadership Course for Lieutenants, and Captains through Lieutenant Colonels*.

consists of instruction on time management, information technology management and fiscal planning; (3) Emotional Intelligence and Self-Awareness, in which trainees take a Myers-Briggs Personality Type test and answer questions about their maturity level and their emotional responses to certain situations; (4) Strategic Planning, a lesson in issues such as coordinating strategy with regard to investigation; and (5) Leadership Expectations, an all-around self-assessment and anonymous evaluation.²⁶⁸

The executive training program addresses racial profiling in the First Line Supervision Course for Sergeants. Students are taught about OSPA and discuss the four major chapters of the Consent Decree. Racial profiling is also included in the ethics component of the leadership expectations lesson.²⁶⁹ According to the State Police, the effectiveness of the ethics component at instructing trainees on the impropriety and illegality of racial profiling is difficult to measure. Most surveys indicate that Troopers regard themselves as ethical, and anecdotal evidence suggests that most Troopers feel instruction on ethics is unnecessary. The State Police reported receiving feedback from Troopers that the Consent Decree is difficult to discuss because the Troopers feel they are already familiar with it.²⁷⁰

D. IMT Review of Training

Maintaining staffing levels and securing appropriate review by OSPA of certain training programs has been one of the most difficult areas for the State Police to maintain compliance with the terms of the Consent Decree. The IMT repeatedly noted that the Academy was inadequately staffed and poorly organized to meet the demands of the Consent Decree. While the Monitors ultimately found in the Sixteenth Report that “[a]s with the agency as a whole, the Academy appears to have become self-monitoring and adaptive,”²⁷¹ recent incidents involving unauthorized training sessions are similar to previous lapses and highlight the question of whether sustainable progress has been made.

The IMT reported over the first half of the Consent Decree that training was one of the areas that posed consistent challenges to the State Police. Through the fifth reporting period, from May to December 2001, the Academy was considered to be understaffed and not appropriately organized to manage the training challenges.²⁷² By the sixth reporting period, however, there was improvement in the documentation process of training due to the creation of a four-person Consent Decree compliance team at the Academy and a twenty-six percent

²⁶⁸ *Id.*

²⁶⁹ *Id.*; Responses to Written Questions from Lt. Thomas Soucek, Oct. 10, 2007.

²⁷⁰ Interview with Lt. Matt Wilson and Sgt. First Class Phil Coyne, Oct. 27, 2006.

²⁷¹ Independent Monitors’ Sixteenth Report, at 5.

²⁷² Independent Monitors’ Fifth Report, at 94, 98.

increase in staffing levels. Issues persisted regarding the needs assessment and evaluation processes of the training cycle. In spite of the improvements during the sixth reporting period, the IMT found that 289 Troopers were promoted without receiving the leadership and supervision training required by the Consent Decree.²⁷³ Staffing problems persisted in the seventh reporting period and into the eighth reporting period. Moreover, in the eighth period, the IMT also noted that training materials and courses were being developed and implemented without approval by the Academy.²⁷⁴

Training Academy staffing levels improved greatly during the ninth reporting period and many of the training processes improved as well. One remaining hurdle that was noted was the difficulty of managing external providers of training because such training is often developed and delivered without meeting the requirements in place for the Academy's own training programs. Notably, this problem of unauthorized training was to manifest itself again two years later when, during the fifteenth reporting period, unauthorized training sessions were found to have led to a dramatic rise in consent searches.²⁷⁵

The Monitors explained in the last Report that part of the reason that the unauthorized training sessions were delivered was because most of the present Academy personnel were not on staff during the development and implementation of the Consent Decree process, and "orientation of new staff may need to be reviewed to ensure that each person has a clear understanding of the tasks and the processes"²⁷⁶ Six personnel had not completed a required course for trainers. The Monitors noted as a "major concern" the insufficient pool of applicants for Trooper Coach who had met the two years post-Academy road-time requirement. The State Police waived this to allow members who were two months short to apply for the position, but the Monitors anticipated this becoming a more substantial problem in the future. The Monitors also found problems in the basic e-file system that allows Trooper Coach coordinators to e-mail weekly evaluations. As of the last Report, stations could not send files to the Academy. The IMT reported that the absence of computer enhancements resulted in delays in the availability of information and other inefficiencies.

The Monitors have stressed to the Committee the importance of ensuring the level of staffing in the Academy and the sufficiency of funding allotted to training.²⁷⁷ Without adequate staff, training will suffer. Funding is required to ensure that training personnel are able to attend conferences and participate in retraining and recertification so that they stay up-to-date with the

²⁷³ Independent Monitors' Sixth Report, at vii, 104.

²⁷⁴ Independent Monitors' Eighth Report, at 142.

²⁷⁵ Independent Monitors' Fifteenth Report, at 70.

²⁷⁶ Independent Monitors' Sixteenth Report, at 80.

²⁷⁷ Testimony of Dr. Ginger, Oct. 10, 2006 Committee Hearing, at 231-32.

current best practices. Specifically, the Monitors recommended imposing a statutory restriction against funding or staffing cuts. The concern was that, typically, training is among the first items to be cut during periods of fiscal challenge.²⁷⁸

II. Office of Professional Standards

A. Recommendations

The Committee recommends that the State Police and OSPA:

- ensure continued oversight of OPS by OSPA, including enhanced auditing of OPS investigations;
- receive reports of all new OPS referrals and complaints concerning State Police personnel, including those categorized as administrative or performance, made by or filed with the State Police, particularly all new claims concerning attitude and demeanor and/or disparate treatment brought by minority motorists;
- standardize penalties for substantiated disciplinary complaints and make those standards transparent to the State Troopers and the public; and
- continue aggregate reporting of the results of disciplinary proceedings to the public, including reporting on the nature of substantiated allegations that were companion allegations to racial profiling complaints.

B. OPS Structural Organization

In 1999, after the Attorney General reviewed the disciplinary system of the State Police, the Internal Affairs Bureau was reorganized to create OPS. As part of the reorganization, the Office of the Superintendent assumed direct supervision of the investigative and adjudication functions of the Internal Affairs Bureau.²⁷⁹

²⁷⁸ Minutes of the Oct. 5, 2006 Committee Meeting, at 7; Testimony of Dr. Ginger, Sept. 24, 2007 Committee Hearing, Pt. 1, at 31.

²⁷⁹ New Jersey State Police Office of Professional Standards, *2005 Annual Report: Internal Investigation and Disciplinary Process*, at 7 [hereinafter “OPS 2005 Annual Report”]. Before the reorganization, the internal affairs function was carried out by the Division Staff Section of the State Police. *Id.*; see also SOP B3, dated Sept. 18, 2006, at 1 (“Office of Professional Standards”).

The Consent Decree requires the maintenance and enhancement of OPS.²⁸⁰ The Consent Decree imposes also many requirements on OPS investigations, including that OPS, among other things: (1) investigate all complaints of misconduct; (2) maintain all written or recorded interviews as part of the investigative file; (3) assess the propriety of all State Trooper conduct during any incident in which alleged misconduct occurred; (4) use a “preponderance of the evidence standard” for investigative findings; (5) review MVR tapes, if any; (6) consider circumstantial evidence, as appropriate, and make credibility determinations (with no automatic preference for a Trooper’s statement over a civilian’s statement); (7) make a finding for each allegations that the allegation is either substantiated, unsubstantiated, unfounded, exonerated or based on insufficient evidence; (8) complete all investigations within 120 days; and (9) when an investigation is complete, inform the complainant in writing as to the disposition and whether discipline was imposed.²⁸¹ The Consent Decree also requires eligibility criteria for and adequate training of OPS staff who supervise or conduct investigations and prohibits participation in any investigation by Troopers with conflicts of interest.²⁸²

OPS imposed additional structural changes in 2001, when the State Police radically revised the SOPs governing OPS. Two separate bureaus were created: the Internal Affairs Investigation Bureau and the Intake and Adjudication Bureau.²⁸³ The Internal Affairs Investigation Bureau investigates all misconduct complaints lodged against enlisted members of the State Police. The bureau is subdivided into three regional investigative units. As of the end of 2005, there were thirty-two individuals assigned to the bureau, twenty-eight of whom were enlisted and four of whom were civilian support personnel. Twenty-three of the enlisted officers held the rank of detective sergeant and above.²⁸⁴ The State Police indicated that staffing as of March 2007 remains consistent with staffing levels during prior periods.²⁸⁵

²⁸⁰ Consent Decree ¶ 70. This paragraph provides, in relevant part: “The State Police shall provide for a Professional Standards Bureau, the purpose of which shall be to protect the professional integrity of the Division of State Police and to fully, fairly and expeditiously investigate and resolve complaints and other misconduct allegations.”

²⁸¹ *Id.* ¶¶ 73-92.

²⁸² *Id.* ¶¶ 71-72, 75.

²⁸³ *OPS 2005 Annual Report*, at 7.

²⁸⁴ *Id.*

²⁸⁵ Apr. 16, 2007 Letter from Col. Joseph R. Fuentes responding to March 8, 2007 Committee Questions, at 1-2 [hereinafter “Letter from Col. Fuentes”]; New Jersey State Police Office of Professional Standards, *2003 Annual Report: Internal Investigation and Disciplinary Process*, at 7 [hereinafter “OPS 2003 Annual Report”]; New Jersey State Police Office of Professional Standards, *2004 Annual Report: Internal Investigation and Disciplinary Process*, at 9 [hereinafter “2004 OPS Annual Report”]; *OPS 2005 Annual Report*, at 8; New

The Intake and Adjudication Bureau is divided into four units:

- Intake Unit. This unit receives all complaints, classifies them and assigns or refers them. The Intake Unit also informs the complainant and the members of the State Police of the disposition of a complaint;²⁸⁶
- Administrative Internal Proceedings Unit. This unit adjudicates substantiated allegations through disciplinary hearings. It also tracks civil complaints against the State Police and its members and serves as a liaison between OPS and the Attorney General's office, OSPA, the Division of Law and the Office of Administrative Law;²⁸⁷
- Management Review Unit. This unit formulates internal controls, identifies any weakness in controls and implements the improvement of controls. It serves as a liaison between the State Police, the Department of Law and Public Safety and other State audit agencies;²⁸⁸
- Staff Inspection Unit. This unit is responsible for field training in proper inspection techniques, reviews of inspection reports submitted by field Supervisors, inspecting stations and field units, and evaluating supervisory MVR reviews.²⁸⁹

C. Process for Investigating Allegations of Racial Profiling

OPS follows a standardized investigative plan ("Investigative Plan") for investigations of racial profiling allegations. The Investigative Plan has been in effect since June 15, 2001 and was revised on November 9, 2006. The Investigative Plan incorporates the substantive investigation requirements of the Consent Decree and details suggested or required steps for investigating claims of racial profiling or disparate treatment. The Investigative Plan requires an investigator to assemble and review internal documents, including CAD records, MVR tapes, assignment sheets, patrol logs and Stop Reports, as well as any external documents or reports; to interview relevant witnesses, including the complainant and the Trooper(s) involved in the incident; and to set standards for weighing the evidence collected. It also requires that all

Jersey State Police Office of Professional Standards, *2006 Annual Report: Internal Investigation and Disciplinary Process*, at 5 [hereinafter "2006 OPS Annual Report"].

²⁸⁶ OPS 2005 Annual Report, at 7-8.

²⁸⁷ *Id.* at 8.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

companion allegations to a racial profiling complaint be investigated and prohibits automatically crediting the statement of a member of the State Police over the statement of a civilian.²⁹⁰ In addition, the investigator should collect stop data for the Trooper and his or her peer group to determine whether there may be a disproportionate stop history for the Trooper. In some circumstances, the investigator may review other stops by the Trooper.²⁹¹

D. Oversight of OPS

1. *OSPA*

OSPA is tasked with oversight of OPS. In that capacity, OSPA audits OPS's investigation files and intake classifications. OSPA also conducts independent misconduct investigations when OPS's involvement creates a conflict of interest or an appearance of one.²⁹²

Throughout the term of the Consent Decree, OSPA has issued semi-annual reports providing status summaries regarding compliance with the Consent Decree, which have discussed its findings from its oversight of OPS. OSPA's analysis reviews the proper classification, investigative sufficiency and proper disposition of all internal misconduct investigations relating to "critical areas," defined as those involving disparate treatment, excessive use of force, illegal search and seizure, and domestic violence, and a random ten percent sampling of all others.²⁹³ According to OSPA reporting, most of its audits have revealed that investigations relating to "critical areas" constitute between thirty-seven and thirty-nine percent of all OPS investigations.²⁹⁴ OSPA reports have indicated that OPS has adopted new

²⁹⁰ November 9, 2006 Investigative Plan, at 7.

²⁹¹ *Id.* at 5.

²⁹² Testimony of Desha Jackson, Acting Director of OSPA [hereinafter "Testimony of D. Jackson"], Oct. 10, 2006, at 242-43; Attorney General Administrative Directive 2006-1 ¶ 4d, *available at* <http://www.state.nj.us/oag/dcj/agguide/directives/2006/administrative/AG%20Directive%202006-1.pdf>.

²⁹³ Attorney General Administrative Directive 2006-1 ¶ 4a; Testimony of D. Jackson, Oct. 10, 2006, at 243; Office of State Police Affairs, Fourteenth Progress/Status Summary, Oct. 26, 2006, at 4-5 [hereinafter "Fourteenth Status Summary"], *available at* <http://www.nj.gov/lps/cdstatus10-27-06.pdf>.

²⁹⁴ Fourteenth Status Summary, at 4 (39.2%); Office of State Police Affairs, Thirteenth Progress/Status Summary, May 3, 2006, at 5 [hereinafter "Thirteenth Status Summary"], *available at* http://www.nj.gov/lps/cdstatus_5-3-06.pdf (37%); Office of State Police Affairs, Twelfth Progress/Status Summary, Nov. 2, 2005, at 4 [hereinafter "Twelfth Status Summary"], *available at* <http://www.nj.gov/lps/cdstatus-11.02.05.pdf> (37%); Office of State Police Affairs, Eleventh Progress/Status Summary, Apr. 29, 2005, at 4 [hereinafter

procedures as a result of findings from OSPA audits. For example, in one report, OSPA stated that its audits resulted in requirements that OPS: (1) adopt notification procedures for instances in which a Supervisor disagrees with an investigator's findings or conclusions, and (2) coordinate with OSPA when internal investigation witnesses have pending criminal charges arising out of the same incident, to determine whether the witness is represented by counsel and to ensure that interviewing the witness is appropriate given the status of the charges.²⁹⁵ The Committee observed that OSPA continues to give feedback to OPS after its audits, even when OSPA concludes that OPS's investigations were in compliance with the terms of the Consent Decree.²⁹⁶

OSPA's semi-annual public findings regarding OPS misconduct investigations have been positive, with recent reporting consistently concluding that there is generally a ninety-nine percent compliance rate with investigation procedures enunciated in the Consent Decree and incorporated into OPS's rules,²⁹⁷ and no backlog of administrative internal affairs investigations.²⁹⁸

2. *IMT Findings on OPS Compliance*

The Monitors have assessed OPS for compliance with certain tasks related to the Consent Decree (Tasks 57-92, except for Task 79). After noting early issues with the backlog of cases, by the Seventh Report, issued in January 2003 (and reflecting OPS's performance through October 30, 2002), OPS had made significant progress on the backlog and was deemed "a 'bright spot' in the State's compliance efforts."²⁹⁹ Beginning with the Eighth Report, the IMT noted that

"Eleventh Status Summary"], available at <http://www.nj.gov/lps/cdstatus-4.29.05.pdf> (39%).

²⁹⁵ Thirteenth Status Summary, at 5.

²⁹⁶ Response to the Office of State Police Affairs Audit of the Office of Professional Standards Dated October 24, 2006, at 1-5, Dec. 1, 2006. OSPA's audit comments included that (1) two investigations resulted in punishments that were "very light" in view of substantiated charges; (2) a Supervisor denied an investigator's request to add an additional charge without providing a justifying explanation; (3) a complainant was interviewed at the same station at which he alleged he was assaulted by Troopers; and (4) one investigation generally lacked thoroughness.

²⁹⁷ Fourteenth Status Summary, at 5; Thirteenth Status Summary, at 5.

²⁹⁸ Fourteenth Status Summary, at 5; Thirteenth Status Summary, at 5; Twelfth Status Summary, at 5; Eleventh Status Summary, at 4.

²⁹⁹ Independent Monitors' Seventh Report, at vii-viii.

OPS was completing investigations within the 120-day period required by the Consent Decree, and found that the quality of OPS investigations was “strong.”³⁰⁰

Since the entry of the Consent Decree, the State Police has worked on enhancing the performance of OPS, which had been subject to criticism due to the manner in which it conducted its investigations and its large backlog of unresolved cases.³⁰¹ The IMT noted progress from the third reporting period, when OPS revised procedures for investigations and took steps to provide training for all internal affairs investigators.³⁰² By the sixth reporting period, the State Police had made significant strides in reducing the backlog of unresolved cases.³⁰³ Six months later, in the Seventh Report issued in January 2003 (and reflecting OPS’s performance through October 30, 2002), the Monitors found that OPS’s backlog had improved significantly, with 191 of 196 investigations completed within 120 days.³⁰⁴ Although the Monitors noted that OPS still had problems with the quality of the investigations, OPS was deemed “a ‘bright spot’ in the State’s compliance efforts.”³⁰⁵ Beginning with the Eighth Report, the IMT noted that OPS was completing investigations within the 120-day period required by the Consent Decree.³⁰⁶

After the ninth reporting period, which ended September 30, 2003, the Department of Justice and the State petitioned the Court to release the State from nearly all of the Consent Decree requirements related to OPS, based on two years of successful performance. The Court accepted the petition and, beginning with the tenth reporting period, the only remaining OPS-related tasks to be monitored were two tasks deemed to be “continuing requirements”: Task 87 (requiring investigations of citizen complaints to be completed within 120 days) and Task 90 (requiring imposition of appropriate discipline in consultation with MAPPS).

³⁰⁰ Independent Monitors’ Eighth Report, at 85, 139, 140.

³⁰¹ *Report of the Senate Judiciary Committee’s Investigation*, at 51.

³⁰² Independent Monitors’ Third Report, at 71-72, 79.

³⁰³ Independent Monitors’ Sixth Report, at 74-75.

³⁰⁴ Independent Monitors’ Seventh Report, at 83.

³⁰⁵ *Id.* at vii-viii, 98.

³⁰⁶ Independent Monitors’ Eighth Report, at 85, 139, 140.

E. Developments Subsequent to the Release of the State from Most Consent Decree Requirements Related to OPS

Following the ninth reporting period, the Monitors found that the State Police remained in compliance with Tasks 87 and 90. The Monitors informed the Committee that they have observed no change in quality within OPS since OPS was released from the Consent Decree.³⁰⁷

The Committee asked the State Police about the functioning of OPS since its release from the Consent Decree. The Police reported that staffing of OPS in March 2007 was consistent with staffing in October 2003, and that consistent staffing and approval of nearly all infrastructure funding requests indicated commitment of sufficient resources for OPS.³⁰⁸

The State Police reported a continued effort to encourage highly qualified candidates to become OPS investigators. Potential investigators are attracted to opportunities to advance within OPS, and OPS maintains a file of résumés of “many high qualified members” interested in assignment to OPS.³⁰⁹ Turnover in investigator positions is infrequent. The Superintendent’s daily branch commander meeting, to which the OPS commanding officer is a standing attendee, includes discussion of personnel needs.³¹⁰

The State Police stated that OPS continues to adhere to the Consent Decree requirement that no Trooper with a conflict of interest participate in the conduct or review of an investigation—as currently codified in SOP B10.³¹¹ OPS routinely refers investigations to OSPA when the conflict of interest cannot be resolved within OPS. There were thirteen such referrals in 2006, nineteen in 2005 and nine in 2004. OPS continues to adhere to the requirement that it fully investigate collateral misconduct, which is misconduct other than alleged in a

³⁰⁷ Minutes of Mar. 20, 2007 Committee Meeting, at 3 (comments of Dr. Ginger).

³⁰⁸ Letter from Col. Fuentes, at 1-2; *OPS 2003 Annual Report*, at 7; *OPS 2004 Annual Report*, at 9; *OPS 2005 Annual Report*, at 8; *OPS 2006 Annual Report*, at 5.

³⁰⁹ Letter from Col. Fuentes, at 3.

³¹⁰ *Id.* at 2-3.

³¹¹ The State Police defines “conflict of interest” as any instance in which there is a (1) chain of command supervisory-subordinate relationship between the investigator, principal, or reviewer; (2) involvement by the investigator, principal, or reviewer in the circumstances leading to the filing of the complaint; (3) leadership position held by the investigator, principal, or reviewer in the same bargaining unit as the subject of the investigation; (4) personal friendship or family relationship with the complainant or principal; or (5) litigation matter pending involving the principal or complainant. Letter from Col. Fuentes, at 3.

complaint. The State Police reported that it is routine for investigators to add new principals and allegations to initial complaints as collateral misconduct issues come to light.³¹²

F. The Disciplinary Process

1. *Imposition of Discipline*

The State Police has three levels of discipline. First, a minor disciplinary hearing can result in a written reprimand with up to five days' suspension. Performance and administrative violations typically result in minor discipline handled at the station level, such as additional training or performance notices. Second, a summary disciplinary hearing can result in suspension up to thirty days. Third, a general disciplinary hearing can result in any level of suspension up to termination.³¹³

Minor disciplinary hearings or non-contested summary or general disciplinary hearings are heard by the Superintendent's designated Hearing Officer, who must be a commissioned officer with a rank higher than the member charged.³¹⁴ All summary or general disciplinary hearings are either presided over directly and individually by the Superintendent or, for contested matters, may be referred by the Superintendent to the Office of Administrative Law to be heard by an Administrative Law Judge. The Administrative Law Judge issues an initial decision and a recommended penalty.³¹⁵

The Superintendent has ultimate authority to impose discipline. The Superintendent must render a final disciplinary decision within forty-five days of the initial decision and he or she may modify, reject or adopt the initial decision. A Deputy Attorney General advises the Superintendent on these decisions and defends the decisions on appellate review.³¹⁶

The State Police disciplinary system relies on a discretionary system of "progressive discipline," rather than a set schedule of penalties. The State Police has described the disciplinary system as "fluid."³¹⁷ In adjudicating a complaint, OPS's database provides a

³¹² *Id.* at 4.

³¹³ Testimony of Captain Keith Hackett [hereinafter "Testimony of Capt. Hackett"], Nov. 13, 2006 Committee Hearing, at 74.

³¹⁴ Nov. 1, 2006 OPS Responses to the Committee's Supplemental Questions, dated Oct. 23, 2006, at 8.

³¹⁵ *Id.* at 7-8.

³¹⁶ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 60-61; Testimony of Capt. Hackett, Nov. 13, 2006 Committee Hearing, at 58.

³¹⁷ Testimony of Capt. Hackett, Nov. 13, 2006 Committee Hearing, at 75.

baseline of past disciplinary actions taken for the same allegation. OPS's determination also takes into account the facts and circumstances of the particular case and the individual Trooper's disciplinary history. Past disciplinary history could increase a violation to summary discipline or even to general discipline.³¹⁸

The disciplinary calculations are not transparent to either Troopers or the public. As a result, they give the sense that the discretion of superiors is wide and that discipline is arbitrary. As was noted nearly ten years ago, "When officers lose confidence that they will be judged fairly, there will be an effect on the way they do their jobs."³¹⁹

G. Alternative Disciplinary Systems

The Committee heard from experts about other disciplinary systems, including best practices. Professor Samuel Walker noted that inconsistent standards of discipline are a major problem in law enforcement agencies throughout the country, and inconsistent standards may lead to punishments influenced by factors having nothing to do with the facts, including personal favoritism or racial, ethnic or gender bias.³²⁰ Professor Walker proposed a "discipline matrix."³²¹

A discipline matrix provides a formal schedule for disciplinary actions based on offense seriousness and prior disciplinary history, not on favoritism or discrimination based on race, ethnicity, gender, rank, seniority or personal relationships. The matrix publicly communicates the values and practices of the agency and clearly specifies the minimum discipline for particular acts of misconduct, promoting, transparency and accountability by guiding rank-and-file officers about the values and expectations of the department, directing command officers in determining the proper disciplinary action, and enabling the public to evaluate whether discipline is proportional to the misconduct.

III. Other Perspectives on OPS

While Professor Walker pointed to clear standards and transparent processes as the hallmarks of an effective disciplinary system, the Committee heard from many witnesses that the process appeared subjective and was riddled with a great deal of discretion. As Attorney General, Peter Harvey advocated the removal of OPS from review by the IMT because OPS had

³¹⁸ *Id.* at 74-75.

³¹⁹ *Final Report of the State Police Review Team*, at 69.

³²⁰ Testimony of Professor Scott Walker [hereinafter "Testimony of Prof. Walker"], Nov. 21, 2006 Committee Hearing, Pt. 1, at 66.

³²¹ Professor Walker referred the Committee to his report on discipline matrices: Samuel Walker, *The Discipline Matrix: An Effective Police Accountability Tool?*, Jan. 2003, available at <http://www.unomaha.edu/criminaljustice/PDF/matrixreport.pdf>.

successfully completed all tasks required by the Consent Decree. Nevertheless, he was critical of the level of discretion embedded in the disciplinary system. He told the Committee that the State Police's SOPs are so far-reaching that a Trooper could be found to violate some procedure without a great deal of difficulty.³²² As a result, a Supervisor has many discretionary arrows in his or her quiver and a Trooper can be targeted for discipline for an array of reasons.

On the other side, the Committee also heard from witnesses who were opposed—either currently or in the recent past—to the State and the State Police in litigation. They too were critical of the amount of discretion in the process and asserted that the process was subject to abuse.³²³

Finally, witnesses testified that many were afraid to step forward either because they feared that the disciplinary process would be used to penalize them or because Troopers would use means outside of the formal process to get back at those who stepped out of line.³²⁴ Members of the Committee witnessed this personally when potential witnesses informed them, after expressing an interest in testifying, that they feared retaliation for stepping forward. The Attorney General's office also found evidence of such retaliation when it formed a task force to investigate the "Lords of Discipline" allegations of intimidation and retaliation, including that an underground organization within the State Police called the "Lords of Discipline" was conducting organized harassment and intimidation of Troopers. Although the Lords of Discipline Task Force ultimately concluded that no such organization existed, it did review OPS investigation files which substantiated four separate harassment allegations. The Task Force also reviewed ten other allegations of harassment, but most of their files did not include sufficient

³²² Minutes of Dec. 13, 2006 Committee Meeting, at 9.

³²³ See Testimony of Scott Turner [hereinafter "Testimony of S. Turner"], Nov. 21, 2006 Committee Hearing, Pt. 2, at 47; Testimony of William Buckman [hereinafter "Testimony of W. Buckman"], Nov. 21, 2006 Committee Hearing, Pt. 1, at 152-55; Written Testimony of William Buckman, Nov. 20, 2006, at 5-7, 13, *available at* http://www.state.nj.us/acps/home/hearings/pdf/061121_wbuckman.pdf; Jan. 2, 2007 Letter from William Buckman responding to Nov. 28, 2006 Committee Questions, at 5-6; Testimony of Renee Steinhagen, Nov. 21, 2006 Committee Hearing, Pt. 2, at 75; Minutes of Dec. 6, 2006 Committee Meeting, at 1-5.

³²⁴ Testimony of Richard Rivera, Nov. 21, 2006 Committee Hearing, Pt. 2, at 63-65; Testimony of Deputy Chief Brian Morris [hereinafter "Testimony of Dep. Chief Morris"], Oct 24, 2006 Committee Hearing, at 186; Minutes of Jan. 12, 2007 Committee Meeting, at 1-2 (comments of Mr. Johnson and Mr. Stier about meeting with African-American Troopers); Minutes of Dec. 6, 2006 Committee Meeting, at 3.

information to determine whether the allegations were ultimately substantiated or unsubstantiated by OPS.³²⁵

The Committee was not an adjudicative body and did not attempt to evaluate particular claims; courts are better suited for this role. Nevertheless, sufficient evidence from witnesses with widely different interests supports the conclusion that the disciplinary process must be reformed to be more transparent and appear more objective to Troopers who are, or could be, subject to discipline. Only then there be confidence by a broader range of members of the State Police that the process is fair and will not be abused. Both the Attorney General and the Superintendent should take steps to ensure that whistleblowers feel confident that when they raise concerns, they will be heard fairly and not experience recrimination.

IV. The Vigor of the Investigation of Complaints of Racial Profiling

The Committee was concerned to learn that between 1997 and mid-2006, OPS had found no substantiated cases of and disciplined no Trooper for racial profiling or disparate treatment.³²⁶ The Committee has very serious concerns that the lack of any substantiated complaints of racial profiling does not mean that there have been no incidents of racially-motivated or unprofessional behavior directed towards minority motorists. The Committee learned that there was at least one documented case of racially-intolerant behavior that occurred prior to 2000, that was investigated in 2003, in which OPS found that there was insufficient evidence to support the allegation of racial profiling, but substantiated charges of conduct unbecoming of an officer.³²⁷ OPS data indicates that although there were no substantiated cases of racial profiling from 1997 to 2006, there were 103 substantiated companion allegations during that time period.³²⁸

The Committee's concern has a clear precedent. After evaluating the manner in which investigations were conducted, the State Police Review Team noted that, of twenty-four internal investigations dealing with racial harassment or disparate treatment, only one was found to be

³²⁵ State of New Jersey Department of Law and Public Safety, Division of Criminal Justice, *Lords of Discipline Task Force: Report of Investigation and Findings*, at 45-46.

³²⁶ Former Attorney General John Farmer reported that during his tenure (from 1999 to 2002) some members of the State Police who had engaged in racial profiling either retired or were encouraged to leave the State Police. Minutes of Dec. 13, 2006 Committee Meeting, at 7. Former Attorney General Peter Harvey could not recall any instance in which a Trooper was disciplined for racial profiling during his tenure, but he did recall two resignations prior to the Consent Decree. *Id.* at 9.

³²⁷ Laura Mansnerus, "2 New Jersey Troopers Resign in Race-Profiles Scandal Involving 1991 Videotapes," *The New York Times*, May 10, 2003, at B7.

³²⁸ See Appendix J.

substantiated.³²⁹ The report criticized one investigation involving an allegation of racial harassment that was found to be unsubstantiated, based on IAB's conclusion that the complainant's statement was more credible than the officer's.³³⁰ Similarly, the Senate Report highlighted the fact that, as of the date of its publication, OSPA had not found as substantiated a single complaint regarding disparate treatment or alleging other violations of the Consent Decree.³³¹

The absence of any substantiated complaints or discipline imposed did not derive from a lack of complaints. According to OPS, there were 817 allegations of racial profiling or disparate treatment in 666 cases between 1997 and mid-2006.³³²

There are two explanations for the absence of any substantiated complaint of racial profiling. First, it is difficult to determine a Trooper's motivation in a racial profiling investigation. The second reason could be that investigators may not bring sufficient skepticism to evaluating the conduct of their fellow Troopers, a perspective supported by some evidence in the record.³³³ Assuming that all Troopers are acting in an appropriate manner is not conducive to an impartial and thorough investigation of the facts.

Experts who testified before the Committee confirmed the difficulty of substantiating an individual allegation of racial profiling for a particular stop, citing the problem of discerning the intent behind a Trooper's action.³³⁴ Instead, law enforcement personnel can be disciplined for other misconduct when racial motivations underlie the conduct.³³⁵ On the other hand, internal

³²⁹ *Final Report of the State Police Review Team*, at 95. The State Police Review Team also reported that they found an additional fifteen miscellaneous files that involved allegations involving racial harassment or disparate treatment, but were not subject to the same investigative process because of their classification.

³³⁰ *Id.* at 89.

³³¹ *Report of the Senate Judiciary Committee's Investigation*, at 96.

³³² See Appendix J.

³³³ Nov. 13, 2006 Committee Hearing, at 75-78; Minutes of Nov. 8, 2006 Committee Meeting, at 3 (presentation by OPS).

³³⁴ Testimony of Richard Jerome [hereinafter "Testimony of R. Jerome"], Nov. 13, 2006 Committee Hearing, at 149-50; Testimony of Chief John Coyle [hereinafter "Testimony of Chief Coyle"], Nov. 13, 2006 Committee Hearing, at 263; Minutes of Feb. 15, 2007 Committee Meeting, at 6 (comments of Chief Campisi of the New York City Internal Affairs Bureau).

³³⁵ Testimony of R. Jerome, Nov. 13, 2006 Committee Hearing, at 145.

affairs units can find indications of racially-biased policing by looking at patterns of an officer's stops or by designing situations to test a Trooper's conduct.³³⁶ The absence of any substantiated complaints, particularly in the period immediately following the entry of the Consent Decree and before MAPPS was instituted, should have raised red flags for an internal affairs unit and triggered more detailed analysis.³³⁷ It did not. The Senate Report noted the same concern six years ago, yet nothing changed.³³⁸

The Committee learned that neither OPS nor OSPA had conducted any trend analysis to determine why no discipline was imposed for allegations of racial profiling. OSPA had audited OPS twice and examined specific investigations, but had not expressed concern with the general absence of substantiated complaints or discipline for racial profiling.³³⁹

In addition, the Committee is seriously concerned about whether there truly have been no incidents of racially-motivated behavior by any State Police Trooper. There is a lack of transparency of the complaint and discipline data, as demonstrated by the 2003 case involving the use of racial epithets by Troopers mentioned above, in which allegations were substantiated and the Troopers disciplined for conduct unbecoming to officers, but in which there was insufficient evidence to support a charge of racial profiling. The lack of transparency of complaint and discipline data is also demonstrated by the number of substantiated companion allegations, and by testimony that, at least at the local level, police officers are disciplined for other misconduct when racial motivations underlie the conduct. Under these circumstances, it is appropriate for the Attorney General to order a review of cases to determine whether there is any pattern to the complaints, and whether the substantiated companion allegations contain evidence of whether there have been incidents of racially-motivated or unprofessional behavior involving stops of minority motorists. If such a pattern is discerned, then an audit of selected cases would be an appropriate means to determine the adequacy of the investigations conducted by OPS and the investigative reviews conducted by OSPA.

V. Promotion

A. Recommendations

- The Committee has been informed that the Attorney General's office and the State Police have hired a vendor to assist with reforming the promotion process. The

³³⁶ Minutes of Feb. 15, 2007 Committee Meeting, at 4-5 (comments of Chief Campisi of the New York City Internal Affairs Bureau).

³³⁷ *Id.* at 6.

³³⁸ *Report of the Senate Judiciary Committee's Investigation*, at 83, 96.

³³⁹ Testimony of Captain Chris O'Shea [hereinafter "Testimony of Capt. O'Shea"], Nov. 13, 2006 Committee Hearing, at 80-81.

Committee commends them for taking these steps and recommends that the ultimately adopted standards for promotion require that performance under the Consent Decree and any implementing SOPs be an explicit factor in promotions.

- The Committee recommends that each Troop give an annual award to the Trooper who demonstrates exemplary performance under the SOPs implementing the Consent Decree.

B. Promotion Practices

Promotion practices are a critical part of the process of engaging and developing line Troopers into leaders and spreading the culture of non-biased policing throughout the State Police. As the Monitors noted, the opportunity to move up “energizes and engages Troopers.”³⁴⁰ Troopers can view the promotion process as a means of reward or as a means of punishment. At its best, promotion can be a means of encouraging and disseminating proper police procedures by rewarding Troopers who adhere to procedures and placing Troopers with experience in the proper conduct of police stops in supervisory and leadership roles throughout the organization. At its worst, promotion, like discipline, can be used to discourage and deter Troopers from reporting and resisting racially-based practices. Promotion of minority Troopers can increase community trust in the State Police, encourage a more diverse applicant pool, and decrease feelings of marginalization and fear amongst minority Troopers.

1. *New Jersey State Police Promotion Policies*

The State Police promotion procedures are set out in Operating Instructions. Operating Instruction 06-14 governs the procedure for the ranks of Sergeant, Detective Sergeant, Sergeant First Class, Detective Sergeant First Class, and Lieutenant, and 6-15 and 6-18 govern promotions to Major and Lieutenant Colonel respectively.³⁴¹ The criteria for these positions are very similar and are described below. The Operating Instructions regarding promotions to the rank of Captain are under review by the Attorney General and were not provided to the Committee.

a. Eligibility

To be eligible for promotion to Sergeant and Detective Sergeant, a candidate must have seven years of creditable service with the New Jersey State Police.³⁴² The Operating Instructions do not provide time-based requirements for any other rank.

³⁴⁰ See Testimony of A. Rivas, Oct. 10, 2006 Committee Hearing, at 227.

³⁴¹ OI 06-14 (“Promotional Recommendation Process”); OI 06-15 (“Review Procedures for Appointment to the Rank of Major”); OI 06-18 (“Review Procedures for Appointment to the Rank of Lieutenant Colonel”).

³⁴² OI 06-14, at 2.

Where applicable, all candidates must comply with SOP C20, “Physical Fitness Program,” and SOP C58 “Educational Standards for Promotion.”³⁴³ The Operating Instructions specify whether compliance with either SOP C20 or SOP C58 or both is required, according to rank.³⁴⁴ There is currently no promotional exam to advance to any rank in the State Police.

b. Reviews of Disciplinary History

OPS and the Office of Workplace Administration and Enforcement (“OWPAE”) Equal Employment Office/Affirmative Action Bureau of the Attorney General’s office conduct reviews of a Trooper’s disciplinary record prior to a Trooper’s placement into an acting capacity at a higher rank, promotion, or selection as a specialist. Both offices present their recommendations to the Superintendent, who alone has discretion to determine the Trooper’s suitability for assignments.³⁴⁵

OPS’s review and recommendation rely upon the Trooper’s Concise Officer History, which contains the Trooper’s complete misconduct and disciplinary record. OPS considers the nature of substantiated allegations, the disciplinary penalty assessed, and the date the penalty was imposed. OPS also considers pending investigations against the Trooper and weighs the seriousness of the allegation to evaluate whether the investigation to that point indicates that the allegation is likely to be substantiated.³⁴⁶

OWPAE conducts a computer records check to determine if the Trooper has been identified as a principal in a current Equal Employment Office/Affirmative Action Bureau investigation or whether he or she was the principal in a past substantiated investigation. If the Trooper is a principal in an open investigation, the OWPAE considers the seriousness of the allegation and the likelihood of its being substantiated.³⁴⁷

The Superintendent can decide a candidate is ineligible for promotion on the basis of (1) a completed disciplinary matter; (2) a determination that a member is the subject of an active inquiry into alleged conduct of a grievous nature that warrants the candidate’s exclusion from the

³⁴³ Police Responses to Supplemental Questions, at 6.

³⁴⁴ New Jersey State Police Promotional Application, Part II—Commanding Officer Promotional Ranking Worksheet, at 1.

³⁴⁵ Police Responses to Supplemental Questions, at 9-10.

³⁴⁶ *Id.* at 10.

³⁴⁷ *Id.*

promotional process; or (3) a candidate's status as a principal in a pending internal investigation or Equal Employment Office/Affirmative Action Bureau investigation.³⁴⁸

2. *Evaluation*

a. Ranks of Sergeant Through Lieutenant

Prior to the announcement of a vacancy, the Section Commanding Officer seeks the views of each member of the candidate's chain of command, including immediate Supervisors. This process occurs at a "promotional recommendation meeting" described below. A comprehensive review of each candidate's previous two years of performance evaluations is also conducted.

The Supervisor conducts a performance evaluation on an annual basis for all State Police employees pursuant to SOP C7, "Personnel Evaluation System." SOP C7 provides, "Performance evaluations are designed to provide a means for supervisors to inform subordinates of work performance and proficiency during a given period of time."³⁴⁹ The system is intended "to objectively and accurately, without prejudice or bias, assess work performance of a subordinate based upon work specific benchmarks."³⁵⁰ Troopers are evaluated in eleven work related categories: (1) job performance; (2) job proficiency; (3) initiative; (4) judgment and decision making; (5) interpersonal relationships; (6) communications; (7) readiness for duty; (8) effectiveness under stress; (9) leadership; (10) physical fitness; and (11) compliance with rules.³⁵¹ There is no particular requirement concerning compliance with the Consent Decree. The Committee recommends that such a factor be included. To ensure fairness, the SOP details each part of the evaluation procedure. A reviewer discusses all evaluations with the Supervisor before the Supervisor shares the evaluation with the individual Trooper.

At the promotional recommendation meeting, each Supervisor discusses eligible individuals using criteria set forth in the Commanding Officer Promotional Ranking Worksheet. The worksheet divides the criteria into four main categories: forty points for Past Work

³⁴⁸ *Id.* at 6-7. The Operating Instructions provide that the Superintendent "maintain[s] managerial p[r]erogative to make any and all promotional decisions." Only the Operating Instructions for Major and Lieutenant Colonel specifically impose satisfaction of Equal Employment Office and OPS reviews as eligibility criteria. OI 06-15, at 3; OI 06-18, at 3. The Operating Instructions for Sergeant through Lieutenant do not specifically enumerate the policy of imposing promotional ineligibility as a result of disciplinary issues. OI 06-14, at 2.

³⁴⁹ SOP C7, dated July 31, 2001, at 1.

³⁵⁰ *Id.*

³⁵¹ *Id.* at 9-12.

Performance (twenty points each for competence and reliability), thirty points for Potential to Perform in Specified Rank (fifteen points each for supervisory potential and leadership), fifteen points for Job Knowledge Potential, and fifteen points for Disciplinary Record History.³⁵² Points are deducted for a written reprimand in the last year (one point), a summary disciplinary hearing in the last two years (two points), and a general disciplinary hearing in the last three years (three points).³⁵³ All those present at the meeting then vote for the candidates by listing the candidates they feel are most qualified. The lists are collected and compiled and those candidates identified most often move on to the next round. In that round, candidates are “prioritized” on a final promotional list from highest to lowest. This list is submitted to the Section Commanding Officer who may modify the recommendations for explicit reasons.³⁵⁴ The final list is forwarded to the Superintendent upon the announcement of a particular vacancy.

b. Ranks of Captain Through Lieutenant Colonel

The promotional processes for the ranks of Captain, Major and Lieutenant Colonel have fewer formalities and provide more discretion to the Superintendent. The Superintendent assembles a board to review interested candidates. The board generally consists of the Superintendent (or designee) and State Police staff members. For Lieutenant Colonel, a representative from the Attorney General’s office may participate. The board evaluates candidates based on their résumés and other documentation, and the board may conduct interviews. Based on this evaluation, the board makes its recommendation to the Superintendent.³⁵⁵

3. *Selection*

The Superintendent makes final recommendations on promotion to the Attorney General. The Attorney General approves the promotion list. The Superintendent determines appointments “based upon assessment of a member’s knowledge, skills, abilities, and personal traits as well [as] recommendations of senior staff and operational needs of the organization.”³⁵⁶ For the ranks of Major and Lieutenant Colonel, the Superintendent makes the appointments in consultation with the Attorney General according to the needs of the State Police.³⁵⁷ All the

³⁵² New Jersey State Police Promotional Application, Part II—Commanding Officer Promotional Ranking Worksheet; Police Responses to Supplemental Questions, at 7.

³⁵³ Police Responses to Supplemental Questions, at 7.

³⁵⁴ OI 06-14, at 3-4.

³⁵⁵ Police Responses to Supplemental Questions, at 8-9.

³⁵⁶ *Id.* at 8.

³⁵⁷ OI 06-15, at 3; OI 06-18, at 3.

relevant Operating Instructions include a clause providing that nothing in the Operating Instructions shall be construed to limit the Superintendent's ability to make appointment decisions as necessary.³⁵⁸

Promotion data from the State Police shows that females and minorities are being promoted in proportion to the number of females and minorities eligible for promotion.³⁵⁹ As is discussed below, however, there is some dissatisfaction with the promotion system.

4. *Other Perspectives on the Current Promotion Practice*

The Committee heard widely divergent perspectives on the current promotion practice. Colonel Fuentes testified that minority members of the State Police enjoy successful careers. He noted that his command staff is diverse. He does not promote individuals based on their race or ethnicity, but diverse individuals advance naturally throughout the State Police based on their performance.³⁶⁰

Mr. David Jones, President of the State Troopers Fraternal Association of New Jersey, and Mr. Dennis Hallion, President of the State Troopers Non-Commissioned Officers Association of New Jersey, expressed confidence that minority Troopers are not denied promotion opportunities on the basis of race.³⁶¹ Mr. Hallion stated that the involvement of so many Supervisors in the process ensures fairness.³⁶² Mr. Jones noted that "this outfit bends over backwards on a regular basis to be reflective as much as it can."³⁶³ He testified that some of his members have complained to him that minority Troopers are being promoted more quickly than others in order to satisfy the State Police's desire for a diverse force.³⁶⁴

Union leaders, minority Troopers, and community leaders complained of subjectivity within the promotion system. Mr. Jones described the system as "arbitrary" and argued that the system's subjectivity made it "only as good as the leader" who makes the decisions.³⁶⁵ He said

³⁵⁸ OI 06-14, at 2; OI 06-15, at 3; OI 06-18, at 3.

³⁵⁹ See data provided by the New Jersey State Police, November 30, 2007 at Appendix K.

³⁶⁰ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 136-37.

³⁶¹ Testimony of Dennis Hallion [hereinafter "Testimony of D. Hallion"], Oct. 24, 2006 Committee Hearing, at 18; Testimony of David Jones [hereinafter "Testimony of D. Jones"], Oct. 24, 2006 Committee Hearing, at 92-93.

³⁶² Minutes of Oct. 18, 2006 Committee Meeting, at 5.

³⁶³ Testimony of D. Jones, Oct. 24, 2006 Committee Hearing, at 93.

³⁶⁴ *Id.* at 92-93.

³⁶⁵ *Id.* at 47.

that subjectivity permits the State Police to take positive steps, such as promoting female Troopers, and acknowledged that promotions generally are well deserved, but also testified that the subjectivity permits favoritism to affect promotions.³⁶⁶ He advocated a written promotion test as an important element of a promotion system.³⁶⁷ Mr. Hallion noted that his union had successfully advocated for more transparency in the promotion process, resulting in the promotional ranking ratings.³⁶⁸

Representatives of the Latino community expressed strong dissatisfaction with the subjective nature of the promotion system. Lieutenant Guzman of the National Latino Peace Officers Association testified that minority officers are not put in supervisory positions with power to prevent racial profiling.³⁶⁹ Ms. Anna Rivera of the New Jersey Chapter of the National Latino Peace Officers Association described Latino Troopers as victims of a promotion system that is based on “cronyism and favoritism and [that] is not based on objective qualifications and criteria.”³⁷⁰ Mr. Martin Perez of the Latino Leadership Alliance of New Jersey declared that “[t]he promotional system is totally subjective and has a discriminatory effect on Latino officers.”³⁷¹ Mr. Jose Martinez of the State Latino Peace Officers Association stated that he was “flabbergasted” to learn that the State Police does not have a standardized promotional process.³⁷²

African-American Troopers expressed similar concerns to the Committee. African-American Troopers who met with Committee members on the condition of anonymity stated that officers engaging in racial profiling were being promoted and that the promotion and disciplinary systems were utilized to prevent minority Troopers from advancing to the upper levels of the State Police.³⁷³ A former Trooper told the Committee that African-American officers are

³⁶⁶ Minutes of Oct. 18, 2006 Committee Meeting, at 4; Testimony of D. Jones, Oct. 24, 2006 Committee Hearing, at 49-50.

³⁶⁷ Minutes of Oct. 18, 2006 Committee Meeting, at 4.

³⁶⁸ *Id.* at 5.

³⁶⁹ Testimony of Lt. Guzman, Nov. 21, 2006 Committee Hearing, Pt. 1, at 103.

³⁷⁰ Testimony of Anna (Cuqui) Rivera, Secretary of the New Jersey Chapter of the National Latino Peace Officers Association [hereinafter “Testimony of A. Rivera”], Apr. 26, 2007 Committee Hearing, at 253.

³⁷¹ Testimony of Martin Perez, President, The Latino Leadership Alliance of New Jersey [hereinafter “Testimony of M. Perez”], Apr. 26, 2007 Committee Hearing, at 246.

³⁷² Testimony of Jose Martinez, Apr. 26, 2007 Committee Hearing, at 260.

³⁷³ Minutes of Jan. 12, 2007 Committee Meeting, at 1-2 (comments of Mr. Johnson and Mr. Stier about meeting with African-American Troopers).

stigmatized and are not promoted to high ranks. According to this former Trooper, African-American officers tend to be promoted later in their careers, when they approach retirement.³⁷⁴

The Committee heard a number of proposals for changing the promotion process. Former Attorney General Harvey recommended an objective promotional test to assess necessary skills for higher positions.³⁷⁵ The former Trooper recommended a reduced probation period for new Troopers, systematized promotion based on tests, and oversight.³⁷⁶

Concerns about the fairness of the promotion system within the State Police are not new—they were raised in the SRT Final Report³⁷⁷—but seven years later these concerns later still have not been effectively addressed. Colonel Fuentes likewise acknowledged that the process must be improved.³⁷⁸ The Attorney General has informed the Committee that the State is in the process of hiring a vendor to institute a promotional exam for promotions in the State Police. The Committee urges the State Police and the Attorney General to implement a promotional exam promptly, and to direct resources toward review of promotion practices to ensure a fair and transparent promotion process.

VI. Recruitment and Hiring

A. Recommendations

- The Committee recommends that the State Police continue its aggressive recruitment of a diverse police force, and review with OSPA the hiring process to ensure that there are no undue impediments to the hiring of qualified minority and women Troopers.

B. The Importance of a Diverse State Police Force

Law enforcement that reflects the population of a community is more likely to be seen as legitimate by all of the community and is far more likely to be an effective investigative force. Colonel Fuentes acknowledged the need for diversity in order for minority communities to be confident in the State Police.³⁷⁹ Representatives of the African-American, Latino, and Arab-American communities testified to a feeling of disenfranchisement caused by a limited minority

³⁷⁴ Minutes of Oct. 18, 2006 Committee Meeting, at 11.

³⁷⁵ Minutes of Dec. 13, 2006 Committee Meeting, at 10.

³⁷⁶ Minutes of Oct. 18, 2006 Committee Meeting, at 11.

³⁷⁷ *Final Report of the State Police Review Team*, at 40, 44-45.

³⁷⁸ Testimony of Col. Fuentes, Sept. 24, 2007 Committee Hearing, Pt. 2, at 189-90.

³⁷⁹ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 136.

presence throughout the ranks. They testified that increased recruitment, hiring, and promotion could create a cultural change within the State Police and could reestablish public trust in the State Police.³⁸⁰

As of October 2006, 597 out of 3,036 officers in the State Police were women and/or belonged to a minority group.³⁸¹ The breakdown of women and minority Troopers by rank is summarized in the chart below.

	All Officers	%	Lieutenant or above	%	Below Lieutenant	%	Women	%
White	2,539	83.6%	250	85.9%	2,289	83.4%	100	87.7%
African-American	218	7.2%	22	7.6%	196	7.1%	11	9.6%
Hispanic	219	7.2%	12	4.1%	207	7.5%	2	1.8%
Asian	38	1.3%	2	0.7%	36	1.3%	1	0.9%
American Indian	22	0.7%	5	1.7%	17	0.6%	0	0.0%
TOTAL	3,036		291		2,745		114	
Men	2,922	96.2%	276	94.8%	2,646	96.4%		
Women	114	3.8%	15	5.2%	99	3.6%		
TOTAL	3,036		291		2,745			

The State Police noted that 202 of 497 minority officers have less than seven years of service and pointed to this fact as a “testament to our aggressive recruiting efforts to diversify the organization over the past several years.”³⁸² This statistic could explain in part the relatively few minority officers among the higher ranks of the State Police. As detailed above, the State Police requires seven years experience for a Trooper to be eligible for promotion to Sergeant or Detective Sergeant.

³⁸⁰ Testimony of Reverend Reginald Jackson, Executive Director, Black Ministers’ Council [hereinafter “Testimony of Rev. Jackson”], Nov. 21, 2006 Committee Hearing, Pt. 2, at 29; Testimony of Lieutenant Luis Guzman, Vice President, New Jersey Chapter of the National Latino Peace Officers Association [hereinafter “Testimony of Lt. Guzman”], Nov. 21, 2006 Committee Hearing, Pt. 1, at 100-01; Testimony of M. Perez, Apr. 26, 2007 Committee Hearing, at 244-46; Testimony of Mr. Mawla, Apr. 26, 2007 Committee Hearing, at 276.

³⁸¹ Nov. 1, 2006 State Police Responses to the Committee’s Supplemental Questions from the Oct. 10, 2006 Hearing, at App. 2 [hereinafter “Police Responses to Supplemental Questions”] (“New Jersey State Police Demographic Breakdown, 10/24/06”).

³⁸² Police Responses to Supplemental Questions, at 11.

C. The State Police Recruitment and Hiring Process

Applicants to the State Police must be American citizens between twenty-one and thirty-five years old who have (1) an associate degree or sixty college credits plus two years of employment or military experience, or (2) a bachelor's degree.³⁸³

The application process consists of a written application, an initial screening for basic qualifications, a written exam, a physical exam, an interview, a background investigation, and a medical and psychological examination.³⁸⁴

Once hired, Troopers remain on probation for their first five years of service. They appear before the Reenlistment Board following their second and fourth years. The Reenlistment Board is comprised of different entities within the State Police, including OPS.³⁸⁵

The Attorney General's office has directly overseen the recruiting process, in consultation with the NAACP, since 1999. During that period, the State Police has worked with the Attorney General to make substantial changes in the recruitment process, including recruitment strategy. The Attorney General's office, in turn, has consulted the NAACP "with the express goal of increased diversity."³⁸⁶ The Attorney General is reexamining some of the preliminary testing to determine both what will best prepare candidates for the job and what will expand employment opportunities for a wide range of candidates.³⁸⁷

1. *State Police Recruitment Efforts*

Colonel Fuentes testified that the State Police has put in place a robust program to recruit a diverse class of Troopers. He reported that between thirty-five and forty-five percent of applicants taking the written exam that determines whether the candidate will continue in the selection process are members of gender, racial and ethnic minority groups. The numbers of minorities actually entering the Academy are substantially lower than those who submit initial applications because a disproportionate number of minority applicants either fail the exam or decline to take the exam. Others seek other employment even when they pass, because of the sometimes-long delay between the time of the exam and the actual hiring of the Trooper.

³⁸³ *Id.* at 1.

³⁸⁴ *Id.* at 1-4.

³⁸⁵ Testimony of Capt. O'Shea, Nov. 13, 2006 Committee Hearing, at 25; Testimony of Capt. Hackett, Nov. 13, 2006 Committee Hearing, at 39.

³⁸⁶ Police Responses to Supplemental Questions, at 3. The State Police reported that it has reviewed Senate Bill S-788, The Screening of New Jersey State Police Applicants for Racial Bias and Insensitivity, and that all provisions within the bill are already in practice. *Id.* at 4.

³⁸⁷ *Id.* at 3.

Colonel Fuentes informed the Committee that the State Police has been working closely with the Attorney General's office to address the discrepancy between the high number of minority applicants recruited and the significantly lower number of minority applicants who complete the application process and are hired. Colonel Fuentes testified that the State Police is planning a number of changes, including changes to the written exam and the physical qualifications, that he believes will dramatically increase the diversity of the force.³⁸⁸

The State Police described to the Committee two internal bodies integral to the State Police's efforts to diversify its ranks: (1) the Recruiting Unit of the Office of Community Affairs; and (2) the Organization and Employee Services Bureau ("OESB").³⁸⁹

The Recruiting Unit, located within the State Police's Office of Community Affairs, has undertaken a variety of initiatives to recruit a diverse group of applicants. For example, members of the unit identify and attend career, cultural and fraternal events; work with churches, community groups and minority fraternities and sororities; and maintain an NAACP Monthly Recruiting Log of events attended and the diversity of attendees. The Recruiting Log is used to assist management in determining which events are worthwhile to attend to help meet diversity goals.³⁹⁰ The Unit places "primary emphasis" upon recruiting and retaining qualified women and members of minority groups. The State Police has developed its recruiting strategy with a marketing firm experienced in increasing the diversity of organizations.³⁹¹

The State Police created OESB in 2004 to help diversify its management and rank and file. OESB implements initiatives to assist State Police officers and civilians with their professional development, including initiatives aimed at diversifying the State Police. Such programs include, for example, career counseling, mentoring and partnerships with institutes of higher learning to facilitate officers' fulfillment of educational requirements.³⁹²

2. *Other Perspectives on Recruitment Efforts*

The Committee heard widespread acknowledgement of the State Police's efforts to increase recruitment. Reverend Reginald Jackson, Executive Director of the Black Minister's Council, and leaders of State Police unions, Mr. Hallion and Mr. Jones, recognized the minority

³⁸⁸ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 62-64.

³⁸⁹ Police Responses to Supplemental Questions, at 12-14.

³⁹⁰ *Id.* at 13-14.

³⁹¹ *Id.* at 12-14.

³⁹² *Id.* at 12.

recruitment efforts of the Attorney General's office and the State Police, while noting the difficulties the State Police has had in hiring a diverse class.³⁹³

The Committee also heard widespread agreement about the important role community members can play in assisting the State Police to recruit a diverse class. Colonel Fuentes testified that minority community members must encourage qualified individuals to apply.³⁹⁴ Reverend Jackson stated that minority communities must do more to identify individuals who can complete the State Police application process.³⁹⁵ The Committee also heard testimony that mistrust of the State Police and law enforcement in general—based on negative interactions by citizens with police or bad experiences by minority Troopers within the State Police—harmed State Police recruitment efforts.³⁹⁶

Former Attorneys General Robert Del Tufo and Peter Harvey suggested a number of measures to increase minority hiring. Former Attorney General Del Tufo proposed changes to entrance standards, including the entrance exam and the strength requirements. He expressed the value of requiring that applicants have requisite university experience.³⁹⁷ Former Attorney General Harvey suggested, among other things, that the exam be more accessible to the public and that applicants be provided with training materials and instructors to prepare them for the exam. He said that it was important that the State Police continue robust recruiting efforts.³⁹⁸

³⁹³ Testimony of D. Hallion, Oct. 24, 2006 Committee Hearing, at 77-78; Testimony of D. Jones, Oct. 24, 2006 Committee Hearing, at 73-76, 94; Testimony of Rev. Jackson, Nov. 21, 2006 Committee Hearing, Pt. 2, at 29.

³⁹⁴ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 64.

³⁹⁵ Testimony of Rev. Jackson, Nov. 21, 2006 Committee Hearing, Pt. 2, at 29.

³⁹⁶ Testimony of Umar Salahaddin, Nov. 21, 2006 Committee Hearing, Pt. 2, at 53-54; Minutes of Oct. 18, 2006 Committee Meeting, at 11 (comments of a former Trooper).

³⁹⁷ Minutes of Dec. 6, 2006 Committee Meeting, at 5-6.

³⁹⁸ Minutes of Dec. 13, 2006 Committee Meeting, at 10.

PART FOUR:
THE CRITICAL COMPONENT OF SUSTAINABILITY: OVERSIGHT

I. Oversight

A. Recommendations

The Committee recommends:

- The Attorney General should:
 - continue staffing for what is now OSPA at levels sufficient to audit OPS investigations, collect and analyze data in conjunction with the State Police, and assess the adequacy of data collection and review functions of Field Operations, including the quality of supervisory review of stop activity and the use of MAPPS in connection with Trooper and Troop evaluation;
 - develop recommendations for enhancing the State Police's management of hiring, training, promotion and discipline to make these systems more objective and transparent;
 - require the Superintendent of the State Police and each Troop commander to quarterly certify that the State Police has complied with SOPs regarding stop procedures and supervisory protocols. The Attorney General should report the results of that certification to the Governor and the legislature; and
 - consider whether OSPA should continue to represent the State Police in disciplinary proceedings brought against State Troopers.
- The Office of State Comptroller should:
 - designate an auditor to perform, within six months of the lifting of the Consent Decree, then every six months for the next eighteen months, and at least one time per year thereafter, risk-based auditing of:
 - stops;
 - post-stop enforcement activities;
 - internal affairs and discipline;
 - decisions not to refer a Trooper to internal affairs notwithstanding the existence of a complaint; and
 - training; and

- establish a procedure for reporting to the Governor and the public the results of the Comptroller audits, including a report of the activities of the Comptroller and funding levels and a report card from the Comptroller of the performance of the State Police in the areas noted above.
- The Attorney General and the Office of the State Comptroller should have access to documents, staff and information (including databases) reasonably necessary to carry out their duty to oversee the State Police.

B. Introduction

The State Police has made significant progress in implementing policies and procedures for sound and properly-supervised Field Operations, training and misconduct investigations since the entry of the Consent Decree. Nevertheless, in the words of Colonel Fuentes, the Consent Decree should be taken as “a floor. It’s not a ceiling.”³⁹⁹ The Committee agrees. The Consent Decree was an important catalyst for change, but it did not fully address some of the underlying issues that contribute to discriminatory law enforcement. In addition, the Consent Decree could not foresee new problems, or problems that would require deeper study, that would arise as a result of the State Police fulfilling the mandates of the Consent Decree.

As will be discussed in this Section, the Committee recommends that the State take steps to ensure: (1) that the present system sustains the considerable progress that has been made to date; and (2) that the system, involving both the Attorney General and the State Police, is encouraged to continue to grow and mature. These two goals are more likely to be achieved if the current methods of accountability are maintained; the system becomes even more transparent; and it continues to have the resources currently brought to bear on the many tasks of oversight.

As set forth in detail in Part One, Section One, the Attorney General, as the State’s chief law enforcement officer, has oversight over the State Police and will be held publicly accountable for its operations. Before the Consent Decree was entered, the Attorney General had little staff devoted to the State Police and a small real-time window into its operations. To properly discharge his or her oversight functions, the Attorney General needs both access to data about the functions of the State Police and the ability, through staff, to analyze that data. Many of the tools of oversight are found in the current system under the Consent Decree, with OSPA providing the institutional heft and information flow needed to oversee the State Police.⁴⁰⁰

³⁹⁹ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 109.

⁴⁰⁰ In addition to continuing to provide funding for OSPA, the Committee suggests that the Attorney General change OSPA’s name to reflect its broader role in providing assistance to local law enforcement, as suggested in Part Seven, Section II.D of the Report.

To ensure public confidence in the information and analysis of data, there is a need for an external entity, “separate and apart from the state law enforcement hierarchy,” in the words of Colonel Fuentes, to audit the performance of both the Attorney General and the State Police.⁴⁰¹ This structure would effectively take the Attorney General and the State Police from “monitorship to auditorship,” a move strongly advocated by Colonel Fuentes.⁴⁰² Once the Consent Decree is dismissed, however, the IMT will no longer report on the State Police. Not all of the functions of the Monitors should be continued. Functions that are critical to sustainability, however, should be assumed by the State entity best positioned to exercise that authority, the Comptroller.

C. Oversight: The Consent Decree Model

As described above, the Consent Decree describes the role and function of the IMT in detail. Likewise, the Consent Decree established the critical oversight mechanism of OSPA. The Consent Decree requires OSPA to undertake “the responsibility to ensure implementation of the terms of [the] 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.”⁴⁰³ In order to fulfill this role, OSPA has “full and unrestricted access to all State Police staff, facilities, and documents (including databases) that the office deems necessary to carry out its functions.”⁴⁰⁴

With respect to its obligation to ensure the Consent Decree’s terms, OSPA, among other things:

- audits the performance of State Police Troopers during motor vehicle stops against the standards set forth in the Consent Decree;
- audits how the State receives, investigates and adjudicates misconduct allegations lodged against Troopers;
- reviews and approves all training course curricula;
- advises the State Police on legal matters relevant to the Consent Decree, and prosecutes disciplinary charges against State Police officers;

⁴⁰¹ Written Testimony of Colonel Fuentes, Oct. 10, 2006, at 15, *available at* <http://www.state.nj.us/acps/home/hearings/pdf/fuentestestimony101006.pdf>.

⁴⁰² *Id.*

⁴⁰³ Consent Decree ¶ 110.

⁴⁰⁴ *Id.* ¶ 113.

- audits the State Police's use of information obtained from MAPPS; and
- provides technical assistance and training to further the aims of the terms of the Consent Decree.

OSPA's staff consists of the director, a five-person investigation team, two attorneys, a social scientist, a two-person support staff, and several liaison officers from the State Police. The sole responsibility of the liaison officers is to assist in reviewing MVRs.⁴⁰⁵ OSPA also issues semi-annual status reports discussing the progress the State Police has made in the six-month period prior to the report concerning the mandates of the Consent Decree and semi-annual reports of aggregate data on State Police stop and post-stop activity and disciplinary action.

The auditing conducted by OSPA employs similar procedures as the Monitors, but assesses the State Police's compliance in light of its different responsibilities. Specifically, Ms. Desha Jackson, the former Acting Director of OSPA, stated "[t]he mission [of OSPA] is to insure implementation of the remedial steps and actions contained in the Interim and Final Reports of the State Police Review Team, to insure implementation of the terms of the Consent Decree, and to facilitate achievement [of] full compliance with the Consent Decree."⁴⁰⁶ In furtherance of those ends, Ms. Jackson described OSPA's efforts as: (1) auditing how the State processes, investigates, and adjudicates allegations of misconduct; (2) auditing the State Police's use of MAPPS; and (3) auditing Troopers' performance of the motor vehicle stop requirements as outlined in the Consent Decree.⁴⁰⁷

The primary responsibility of the investigative team is to audit State Trooper performance of the motor vehicle stop requirements as outlined in the Consent Decree. OSPA conducts this audit through on-site reviews and review samples of recorded motor vehicle stops. If OSPA concludes that the stops do not comply with the dictates of the Consent Decree, then OSPA investigators note the problems and suggest remedial measures. The State Police members assigned to work with OSPA review tapes of motor vehicle stops to identify whether proper procedures have been followed and whether the stops adhere to State and federal laws. The objective of the State Police arm of OSPA is to assess the ability of State Police Supervisors to consistently identify improper and/or illegal stops and respond in a timely and appropriate manner. Where a thorough investigation of Trooper or Supervisor conduct is called for, OSPA refers the incident to OPS. OSPA also monitors the performance of State Troopers by soliciting feedback from motorists who were stopped by State Troopers via a mailed questionnaire. In the

⁴⁰⁵ Testimony of D. Jackson, Oct. 10, 2006 Committee Hearing, at 239.

⁴⁰⁶ *Id.* at 236-37.

⁴⁰⁷ *Id.*

event the person reports discourteous and/or unprofessional treatment by the Trooper, OSPA takes a closer look to determine whether further investigation into the stop is warranted.⁴⁰⁸

OSPA also monitors the internal-affairs process of OPS.⁴⁰⁹ OSPA's audit of the internal-affairs process "includes the review of misconduct investigations to ensure proper intake classification, investigative sufficiency and adjudication[,] as well as the review of the complaint/comment toll free hot-line."⁴¹⁰ OSPA's investigative team conducts internal investigations of Troopers when conflicts of interest preclude OPS from conducting the investigation.⁴¹¹ OSPA lawyers also review the legal sufficiency of all closed investigations pertaining to racial profiling, disparate treatment, excessive use of force, illegal search and seizure, and/or domestic violence issues. Additionally, OSPA reviews a random sample of ten percent of all other closed misconduct investigations to determine whether the cases were properly classified and addressed. Similarly, OSPA reviews the 24-hour hotline to determine whether civilian complaints lodged over the telephone are properly classified by OPS.⁴¹²

An important function of OSPA attorneys has been to provide legal advice to the State Police on equal protection and search and seizure issues, on the legality of practices employed to conduct motor vehicle stops and on the permissible use of force when effectuating arrests, among other things. The Attorney General has directed that the legal advice function be removed from OSPA and placed into the Department of Law and the Department of Criminal Justice. OSPA attorneys also review the lesson plans used to teach and train members of the State Police.⁴¹³ Attorneys in OSPA also work with staff members in OPS to ensure that the investigations undertaken by OPS provide sufficient evidence against the Trooper to warrant filing a complaint with the Superintendent for disciplinary charges. OSPA attorneys represent the State, the Attorney General, and the State Police in disciplinary hearings against members of the State Police.⁴¹⁴

⁴⁰⁸ *Id.* at 244.

⁴⁰⁹ *Id.* at 242.

⁴¹⁰ Written Testimony of Desha Jackson, Acting Director of OSPA, Oct. 10, 2006, at 6 [hereinafter "Written Testimony of D. Jackson"], *available at* <http://www.state.nj.us/acps/home/hearings/pdf/testimony101006.pdf>.

⁴¹¹ *Id.*

⁴¹² Testimony of D. Jackson, Oct. 10, 2006 Committee Hearing, at 243-44.

⁴¹³ *Id.* at 262.

⁴¹⁴ Written Testimony of D. Jackson, at 6.

D. Testimony and Documentary Evidence

In their final Report, the Monitors concluded that the goals of the Consent Decree have been attained based, in part, on the observation that the State Police “has become self-monitoring and adaptive, able to note, analyze and correct problems with the delivery of field services in real time.”⁴¹⁵ The record before the Committee makes clear that the State Police has, among other things, made significant strides under the auspices of the Consent Decree to: improve training and promotion practices; enhance Field Operations and supervision methods; and implement and use information-gathering capabilities.

The record before the Committee also makes clear that the oversight and partnering functions performed by OSPA and the IMT have been instrumental in assisting the State Police to meet the expectations of the Consent Decree. Colonel Fuentes, however, testified that compliance with the Consent Decree was not, itself, a goal of the State Police. Rather, the Superintendent stated that the Consent Decree “and the changes accompanying it have always been looked at as building blocks for a solid foundation of continued best practices.”⁴¹⁶ He is commended for his vision.

The Superintendent emphasized that a crucial benefit of complying with the Consent Decree and ensuring best practices beyond the terms of the Consent Decree is the public’s trust in the State Police, and noted that in order for the State Police to earn and maintain the public’s trust, the State Police must establish “organizational transparency.”⁴¹⁷ The Superintendent explained that the State Police has exposed itself to public review and scrutiny with respect to the issue of racial profiling, in part, by releasing aggregate reports of data concerning motor vehicle stops, use of force, searches and seizures, and citizen complaints. The Superintendent also pledged to “continue to elicit feedback from the community, since [the State Police] understand[s] that successful policing requires constant attention to how [the organization] is perceived,” as well as an understanding of why it is perceived that way.⁴¹⁸

Furthermore, the Superintendent testified that the source of the State Police’s confidence in continued transparency is the organization’s commitment to being proactive with respect to its risk management strategies. For example, he noted that “[t]he data that are released for public scrutiny are being analyzed by supervisors in the field, commanders at the local level as well as [the State Police’s] executive staff.”⁴¹⁹ Additionally, the Superintendent pointed out that

⁴¹⁵ Independent Monitors’ Sixteenth Report, at 105.

⁴¹⁶ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 30.

⁴¹⁷ *Id.* at 30-31.

⁴¹⁸ *Id.* at 31.

⁴¹⁹ *Id.* at 32.

“individual patrol and investigations commanders are held accountable for the progress of traffic statistics enforcement and anticrime initiatives, highway safety, accident reduction, and criminal investigations.”⁴²⁰ The Superintendent described a multilevel, broad-based risk management policy and CALEA accreditation process that has been instrumental in embedding best practices in the culture of the State Police and that is necessary to continue effective and trustworthy policing long after the Consent Decree is lifted.

Colonel Fuentes stressed, however, that the internal review systems employed by State Police—both during the tenure of the Consent Decree and after—are, by themselves, not enough to “sustain the very highest standards of accountability and oversight” attained under the Consent Decree.⁴²¹ Rather, the Superintendent expressed the view that “review by independent entities, separate and apart from the [S]tate law enforcement hierarchy,” is necessary to maintain the changes achieved since the implementation of the Consent Decree.⁴²²

Similarly, Professor Walker highlighted the necessity of maintaining systems of objective oversight after the Consent Decree has been lifted. Specifically, Professor Walker pointed to several instances where police forces in other states failed to maintain the standards they achieved under consent decrees due to their failure to preserve external oversight. He cautioned that “important accountability-related reforms can erode as a consequence of routine operations, including budget constraints and normal personnel reassignment practices.” Professor Walker stressed the need for external oversight that endures beyond the tenure of the Consent Decree and noted that a chief benefit of continued oversight will be to guard against the risk of compliance erosion.⁴²³

II. Practical and Collaborative Oversight: Unauthorized Training and Remedial Measures

The current system under the Consent Decree combines stronger oversight within the State Police, strong oversight by the Attorney General’s office and a significant independent review by the IMT. Recent unauthorized training sessions and a spike in consent searches caused by the unauthorized training sessions, detailed in the Sixteenth Report, highlight the need for continued external oversight of the State Police after the Consent Decree is lifted. While the Monitors were correct to applaud the efficiency with which these training sessions were detected and counteracted, it is important to acknowledge that without the assistance of OSPA, it is possible that the training sessions would not have been identified as the cause of the increased

⁴²⁰ *Id.*

⁴²¹ *Id.* at 40.

⁴²² *Id.*

⁴²³ Prof. Walker Expert Opinion, June 19, 2006, at 14, 17 [hereinafter “Prof. Walker Expert Opinion”], available at http://www.state.nj.us/acps/home/hearings/pdf/061121_swalker.pdf.

consent searches. Responding to errors as they occur is crucial to preventing violations of the constitutional rights of citizens of New Jersey.

The Consent Decree and State Police policy require that all training programs delivered to State Police Troopers be approved and run through the centralized training function of the academy. In January and March of 2006, these procedures were not followed. A Captain learned of two courses provided by the United States Department of Homeland Security and Department of Transportation and arranged for those training sessions to be delivered to Troopers. The Captain neither sought nor obtained authorization from either the Academy or OSPA. These courses, named the Drug Interdiction Assistance Program and Desert Snow, were designed for highway patrol officers who deal with commercial vehicle inspections. The courses were not intended for officers responsible for ordinary traffic stops of passenger vehicles, and they were not designed to comport with the procedures of the Consent Decree. Nevertheless, members of this latter group were encouraged to attend the training sessions to utilize extra seats.

Sixty senior and junior Troopers attended the unauthorized training sessions. All of them would have previously received approved training sessions relating to traffic stops.⁴²⁴ Despite the fact that there were disparities between their prior training and these unauthorized trainings, none of these Troopers registered a formal complaint about the training program or openly questioned its content with their Supervisors. In fact, the problem was noted only after the detrimental effects of the training—namely, increased consent search requests, twenty-five of which were made with some problem related to reasonable and articulable suspicion—manifested themselves in the field.⁴²⁵

The shift in the Troopers' enforcement approach created a pronounced rise in the number of searches requested. The effects of the problem were identified in several ways. OSPA and the Risk Assessment Core Group, made up of members of the State Police and OSPA, spotted the spike in the number of consent search requests within a few weeks of the first unauthorized training.⁴²⁶ In response, OSPA developed a study to determine the cause of the spike. At

⁴²⁴ The Consent Decree requires annual in-service training on the Fourth Amendment and searches and seizures generally. Consent Decree ¶ 101.

⁴²⁵ Independent Monitors' Fifteenth Report, at 20 (four consent search requests made "absent reasonable articulable suspicion"); Independent Monitors' Sixteenth Report, at 37 (twenty-one consent search requests that included "*some* problems related to reasonable articulable suspicion") (emphasis in original).

⁴²⁶ Independent Monitors' Sixteenth Report, at 31-32; Testimony of Col. Fuentes, Sept. 24, 2007 Committee Hearing, Pt. 2, at 154.

roughly the same time, field Supervisors noticed a higher number of errors in procedures by Troopers. Through this process, OSPA and the State Police identified the cause.⁴²⁷

To remedy this problem, between March 2006 and October 2006, OSPA, lawyers from the Attorney General's office and personnel from the State Police worked together to develop a field Supervisors' checklist for managing consent requests in the field. They developed corrective processes to control many of the issues identified by the Monitors during the May 2006 site visits related to the "tone and timbre" of the consent requests observed. They also implemented enhanced Troop and OSPA review systems, modified in-service-field Supervisor training to address issues raised by the drug interdiction training and began global supervisory and managerial reviews to note and correct problematic consent requests by field personnel using a "best practices" remedial policy.⁴²⁸

Because these issues were discovered and corrected without involvement by the Monitors, the Sixteenth Report referred to this incident as a "watershed moment" for the State Police that indicated that "the ultimate goal" of "self-awareness and adaptivity" on the part of the law enforcement agency had been achieved.⁴²⁹

The Monitors' statement in the Sixteenth Report, that "[a]mple evidence exists to suggest that the agency has become self-monitoring and self-correcting to a degree not often observed in American law enforcement" at first seems to support the idea that outside monitoring and oversight of the State Police is no longer necessary.⁴³⁰ The testimony at the hearing made clear, however, that the "agency" that the Monitors refer to is the comprehensive structure that currently exists and includes oversight by OSPA.⁴³¹ While the detection and correction of this

⁴²⁷ Independent Monitors' Sixteenth Report, at 105; Testimony of Col. Fuentes, Sept. 24, 2007 Committee Hearing, Pt. 1, at 121-23. Note that, while the unauthorized training sessions have been deemed to be a cause of the rise in consent search requests by the Monitors, there was also a substantial change in law at this time that may have contributed to the rise in searches as well. In January 2006, the New Jersey Supreme Court in *State v. Eckel*, 185 N.J. 523, 541 (2006), held that police officers could no longer search motor vehicles incident to arrest. OSPA provided Troopers with guidance as to how they would need to alter their conduct to comply with this ruling. As part of this guidance, OSPA indicated that a consent to search was a legal substitute in certain circumstances where a search incident to arrest would have been appropriate before *Eckel*. Testimony of Col. Fuentes, Sept. 24, 2007 Committee Hearing, Pt. 1, at 121-23.

⁴²⁸ Independent Monitors' Sixteenth Report, at 5.

⁴²⁹ *Id.* at iv, 4, 5.

⁴³⁰ *Id.* at 4.

⁴³¹ Testimony of Dr. Ginger, Sept. 24, 2007 Committee Hearing, Pt. 1, at 112.

issue is certainly worthy of praise, it is unlikely to have taken place without both the involvement of OSPA and the requirement under the Consent Decree that statistical analysis be undertaken by RACG.

Testifying before the Committee on September 24, 2007, Dr. Ginger said that it was a joint effort that had led to the detection and correction of the training and enforcement procedures.⁴³² The State Police had been assisted substantially by OSPA. Colonel Fuentes testified that OSPA had been involved in spotting the trend in the spike of the consent searches in the first instance, as well as identifying and remedying the problem.⁴³³ The Monitors testified that more supervising Troopers missed enforcement errors than in previous reporting periods and, as a result, the errors required review at the executive level or by OSPA before being detected, underscoring the importance of strong management and oversight.⁴³⁴

Colonel Fuentes correctly pointed out that the Consent Decree “does not require perfection, but it does require systems and policies that ensure proper supervisory and managerial oversight.”⁴³⁵ Once the Consent Decree is lifted, the citizens of New Jersey will require no less. This incident makes clear that the systems and policies in place in the State Police reliably provide this “proper supervisory and managerial oversight” only in conjunction with an external oversight.

This incident also shows how the gains made by the State Police under the Consent Decree could be eroded. This training was found to have resulted in twenty-one consent search requests which concerned command staff as being too long and intrusive and a statistically meaningful racial and ethnic disparity between the racial make-up of all drivers stopped and those that were requested to consent to a search. It showed the real risks to sustainability and underscored the importance of maintaining external oversight in order to ensure that errors such as this one will continue to be caught at an early stage and corrected efficiently and effectively.

III. An Oversight Model for the New Jersey State Police

Several context-specific considerations factor into the choice of an oversight model appropriate for post-Consent Decree oversight of the State Police. First, the State Police will

⁴³² *Id.* (“Office of State Police Affairs triggered on [the error].”).

⁴³³ Testimony of Col. Fuentes, Sept. 24, 2007 Committee Hearing, Pt. 2, at 154 (“[OSPA was] right at the beginning, number one in helping to spot this trend . . . members of OSPA brought what they believed was an uncomfortable trend forward.”). It must also be noted that, without the need to perform data analysis for review by the Monitors, it is conceivable that OSPA may not have conducted the study of the consent requests.

⁴³⁴ Testimony of Dr. Ginger, Sept. 24, 2007 Committee Hearing, Pt. 1, at 113-14.

⁴³⁵ Testimony of Col. Fuentes, Sept. 24, 2007 Committee Hearing, Pt. 1, at 126.

have just completed many years of oversight by the IMT in conjunction with OSPA under a Consent Decree with the overarching goal of preventing racial profiling. Second, New Jersey State government agencies have specific histories and functions, which will affect the choice of location for an oversight entity. Reform is often most successful when adapting existing institutions and practices, as opposed to recreating institutions from whole cloth and asking the individuals involved to learn a completely new set of reflexes.

A. A Recommendation for New Jersey: Institutionalized Oversight by the Attorney General and a Strong Auditor Outside of the Law Enforcement Hierarchy

As noted above, if and when a post-Consent Decree independent oversight entity is created, it will be overseeing a department emerging from many years of oversight by court-mandated federal monitoring and ongoing oversight by the Attorney General under a Consent Decree. Unfortunately, neither of the two police departments that have emerged from federal Consent Decrees—Pittsburgh and Steubenville—created post-Decree independent oversight entities.⁴³⁶ While Pittsburgh may be a cautionary example of the slippage that can occur without any continued external oversight,⁴³⁷ the lack of experience of other departments emerging from Consent Decrees in implementing external oversight functions does not provide lessons for what model should be implemented in New Jersey.

Nevertheless, the Committee heard a range of opinions from witnesses who addressed the future oversight portion of the Committee’s mandate, which is to “make recommendations on how to ensure that the practice of racial profiling is not engaged in or tolerated in the future,” including whether it would be appropriate to retain outside auditors who “employ[] a review methodology similar to the one presently used by the independent federal monitors.”⁴³⁸

There was fairly general agreement among all of the witnesses before the Committee that the auditor approach is best for the task of sustaining the progress toward bias-free law enforcement by the State Police. Indeed, the Committee heard testimony from experts who suggested that auditing of the operations and policies of a police department is more effective than looking at individual allegations or statistical analysis alone.⁴³⁹

⁴³⁶ Prof. Walker Expert Opinion, at 8-9.

⁴³⁷ *Id.*; Testimony of Dr. Ginger, Oct. 10, 2006 Committee Hearing, at 216; Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 19-20.

⁴³⁸ Executive Order No. 29.

⁴³⁹ Testimony of R. Jerome, Nov. 13, 2006 Committee Hearing at 145-46, 149-50, 156-57. Professor Walker has also written about the difficulties of analyzing racial profiling using stop data. Samuel Walker, *The New Paradigm in Police Accountability: The U.S. Justice Department “Pattern or Practice” Suits in Context*, 22 ST. LOUIS U. PUB. L. REV. 3, 42 (2003). This same point has been recognized by other experts, including a member of New

Consistent with the understanding of racial profiling (and other types of police misconduct) as a problem best examined and addressed at the organizational, rather than individual, level, the police oversight experts who testified before the Committee, Professor Walker and Richard Jerome, the Deputy Monitor in Cincinnati, both recommended that any future oversight entity for the New Jersey State Police have a systemic analysis and policy review function.⁴⁴⁰ Professor Walker explained that the type of oversight entity he would recommend “looks at general patterns, looks at general policies, procedures and so on. It is not in the business of investigating individual complaints.”⁴⁴¹ Mr. Jerome told the Committee in closed meeting that the auditor model had shown a better ability to impact police procedure and culture than had the civilian review board model. He also suggested that establishing a representative civilian review board would be difficult on a statewide level.⁴⁴²

B. Methodology of Independent Auditor

Witness opinions differed on the extent to which future oversight should be tied to the terms of the Consent Decree and patterned on the methodology of the Monitors. Several witnesses—the State Police, OSPA, and State Police union leaders—proposed models of oversight that were tied to the Consent Decree and to the role of the Monitors. On the other hand, several other witnesses—Professor Walker, Mr. Jerome, and Dr. Ginger—recommended

York’s Civilian Complaint Review Board, Professor Debra Livingston, who has noted, in advocating for civilian review boards to branch out from the strict complaint investigation model, “[i]t is sometimes lawful police practices—not police misconduct—that can set a community or an individual at odds with the police.” Debra Livingston, Address at the Eighth Annual Conference of the National Association for Civilian Oversight of Law Enforcement: Citizen Review of Police Complaints: Four Critical Dimensions of Value (Nov. 1, 2002), *available at* <http://www.nacole.org>.

⁴⁴⁰ Minutes of Oct. 18, 2006 Committee Meeting, at 6-7; Testimony of R. Jerome, Nov. 13, 2006 Committee Hearing, at 105, 156-57; Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 21, 29-30, 37-38, 53.

⁴⁴¹ Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 53.

⁴⁴² Minutes of Oct. 18, 2006 Committee Meeting, at 7. Professor Walker and Mr. Jerome pointed to the Los Angeles County Special Counsel and Office of Independent Review, both of which oversee the L.A. County Sheriff’s Department, as particularly successful oversight entities and appropriate examples for New Jersey. They also mentioned several other successful oversight entities, including Denver’s Office of the Independent Monitor, San Jose’s Independent Police Auditor, Boise’s Ombudsman and Portland, Oregon’s Independent Police Review Division. Testimony of R. Jerome, Nov. 13 Committee Hearing, at 111, 157; Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 21, 52, 75.

that the new oversight entity not be limited by the scope of the Consent Decree or by the types of activities conducted by the Monitors.

Colonel Fuentes' proposal suggested that the State Police continue collecting data as it has been under the Consent Decree, with the auditor coming in semi-annually to review the overall data, help analyze trends and measure progress, and issue public reports.⁴⁴³ Thus, the auditor's role would be structured around the data collection and supervisory review structures established by the Consent Decree, but the auditor would not itself conduct as detailed and in-depth a review as the IMT had done. The oversight model envisioned by the State Police unions is similar, though the role of the auditor in their model appeared to be more strictly limited to a review of statistics prepared by the State Police.⁴⁴⁴

In OSPA's proposal, OSPA's role "would be similar to the federal monitors which would include but may not be limited to: periodic reviews of specific MVRs; reviewing the data and use of MAPPS; ensuring that meaningful supervisory reviews of Troopers are being conducted; continuing to review the lesson plans of the Academy; . . . as well as reviewing investigations and classifications of internal affairs matters to determine accuracy."⁴⁴⁵ The role of external auditors other than OSPA is unclear in OSPA's proposal, but it seems that OSPA would act as a day-to-day monitor, with external auditors potentially conducting semi-annual audits.⁴⁴⁶ OSPA also proposed to take on a technical assistance and monitoring role for municipal police departments throughout the State.⁴⁴⁷

On the other hand, Professor Walker testified that the oversight entity should not necessarily "continue all the specific functions that are part of [the current IMT's role], because that would be very time consuming" and might not be required each reporting period.⁴⁴⁸ He stated that "it would be a mistake to narrow functions . . . to only those issues defined by the Consent Decree."⁴⁴⁹ Instead, he envisioned an entity with "a broader role and . . . greater

⁴⁴³ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 40-41, 86.

⁴⁴⁴ Testimony of D. Hallion, Oct. 24, 2006 Committee Hearing, at 43-44.

⁴⁴⁵ Office of State Police Affairs, Office of State Police Affairs Report to the Advisory Committee on Police Standards, Oct. 5, 2006, at 3-4 [hereinafter "OSPA Report to the Committee"], available at <http://www.state.nj.us/acps/home/hearings/pdf/reportcommittee.pdf>.

⁴⁴⁶ See, e.g., Testimony of D. Jackson, Oct. 10, 2006 Committee Hearing, at 249-52, 269, 282; Minutes of Sept. 20, 2006 Committee Meeting, at 10 (comments of Dan Giaquinto, OSPA).

⁴⁴⁷ OSPA Report to the Committee, at 4-5.

⁴⁴⁸ Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 42.

⁴⁴⁹ *Id.* at 30.

flexibility to identify actual or potential problems.”⁴⁵⁰ Mr. Jerome expressed the opinion that the oversight entity could do “some of the same things that the current monitor team is doing, some of the things that . . . the Office of State Police Affairs does, and incorporate some of the examples of roles and responsibilities that you see in other monitoring offices.”⁴⁵¹

Dr. Ginger emphasized that the monitoring process was extremely costly and that the State Police are “transitioning daily well beyond what the requirements of the Decree are in terms of their operations, supervision and management practices.”⁴⁵² Nevertheless, Dr. Ginger did recommend that all “critical” incidents (consent searches, canine deployments, uses of force) continue to be subject to immediate supervisory review, secondary review of a sample of them, and an audit of the overall process. Dr. Ginger emphasized that the role of the auditor in this type of review would be less intense and less expensive than the monitoring that he and his team performed.⁴⁵³

C. Role of the State Comptroller in Independent Oversight

Committee witnesses all agreed that a post-Consent Decree police oversight entity should be independent of the State Police. The proper location within the State government for such an entity has been the topic of much discussion for the Committee. Possibilities for locations of the entity are the following: (1) the Attorney General’s Office; (2) the Office of the Public Advocate; (3) “in, but not of” one of these agencies; and (4) the Office of the State Comptroller. Descriptions of each of these agencies are provided in Appendix L.

There are no existing statewide police oversight entities, but most municipal police oversight bodies report directly to the mayor, city manager or city council.⁴⁵⁴ According to Mr. Jerome, the most analogous statewide oversight entity is the California Office of the Inspector General, which oversees the California correctional system.⁴⁵⁵ The California Office of the Inspector General is an independent agency that reports directly to the Governor.⁴⁵⁶

⁴⁵⁰ *Id.* at 42.

⁴⁵¹ Testimony of R. Jerome, Nov. 13, 2006 Committee Hearing, at 156-57.

⁴⁵² Testimony of Dr. Ginger, Oct. 10, 2006 Committee Hearing, at 163.

⁴⁵³ *Id.* at 211-13.

⁴⁵⁴ Written Testimony of Richard Jerome, Nov. 13, 2006, at 10, *available at* http://www.state.nj.us/acps/home/hearings/pdf/061113_rjerome.pdf.

⁴⁵⁵ Testimony of R. Jerome, Nov. 13, 2006 Committee Hearing, at 138.

⁴⁵⁶ History of the Office of the Inspector General, <http://www.oig.ca.gov/about/history.asp>.

Several witnesses suggested that the oversight entity should be located in, or report to, the Attorney General.⁴⁵⁷ Professor Walker argued for turning OSPA, located within the Attorney General's office into the oversight entity because it already has relevant experience and expertise and because it has existing statutory authority for oversight of the State Police; establishing a new agency, he argued, would require legislation and corresponding delay.⁴⁵⁸ On the other hand, several other witnesses explicitly recommended that the oversight entity should not be located in the Attorney General's office. Reverend Jackson stated that the minority community lacked confidence in the Attorney General based on past experience and Mr. William Buckman argued that the Attorney General had abrogated its responsibility for oversight of the State Police over the past thirty years.⁴⁵⁹ Several witnesses also questioned the impartiality of the Attorney General, given its role as the State Police's legal representative.⁴⁶⁰ Several witnesses recommended that the oversight entity be located in the Office of the Public Advocate.⁴⁶¹

⁴⁵⁷ Col. Fuentes suggested that the auditor report to the Attorney General. Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 41. Professor Walker suggested that OSPA, within the Attorney General, become the post-Decree oversight entity. Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 13-14. Deputy Chief Bryan Morris, of NOBLE, also recommended that the oversight entity be in the Attorney General's office. Testimony of Dep. Chief Morris, Oct. 24, 2006 Committee Hearing, at 157-58. David Jones, President of the State Troopers Fraternal Association, suggested that the auditor be "in, but not of" the Attorney General. Testimony of D. Jones, Oct. 24, 2006 Committee Hearing, at 64.

⁴⁵⁸ Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing Pt. 1, at 13-14; Prof. Walker Expert Opinion, at 17-20.

⁴⁵⁹ Testimony of Rev. Jackson, Nov. 21, 2006 Committee Hearing, Pt. 2, at 20; Testimony of W. Buckman, Nov. 21, 2006 Committee Hearing, Pt. 1, at 155, 158-59.

⁴⁶⁰ Testimony of W. Buckman, Nov. 21, 2006 Committee Hearing, Pt. 1, at 155, 158-59. Testimony of H. Lawrence Wilson, Jr., President of the New Jersey Council Charter Members of the National Black Police Association [hereinafter "Testimony of H.L. Wilson"], Nov. 21, 2006 Committee Hearing, Pt. 2, at 96. Professor Walker, when asked about the potential conflict of interest within the Attorney General's office, stated that a firewall must be maintained between the oversight and advocacy functions of the Attorney General's office. Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 45-46.

⁴⁶¹ Testimony of S. Turner, Nov. 21, 2006 Committee Hearing, Pt. 2, at 45; Testimony of A. Rivera, Apr. 26, 2007 Committee Hearing, at 253.

Finally, several other witnesses recommended that the oversight entity be established as an independent agency.⁴⁶²

The Committee recommends that an outside auditor be appointed as a check on the performance of both the Attorney General and the State Police. As stated above, the Attorney General will and must be held accountable for the conduct of the State Police. To make this possible, the Attorney General must receive real-time information concerning the operations of the State Police and have the institutional capacity to process that information. Those functions are best handled with the assistance of OSPA. Concerns that the Attorney General has an institutional conflict of interest are well-grounded. In addition to overseeing the State Police, the Attorney General relies on Troopers for investigations and defends them in civil litigation. The Committee commends the Attorney General for removing the legal advice function from OSPA and focusing OSPA on oversight.

Keeping in mind that change is often most effective when it takes advantage of existing institutions and structures, the Committee recommends that the auditor be housed in the Office of the State Comptroller. As provided by statute, the Comptroller will be responsible for conducting routine, periodic and random audits of the executive branch of State government and for conducting assessments of the performance and management of government programs and the extent to which they are achieving their goals and objectives. The Comptroller is also responsible for auditing and monitoring the process of soliciting and awarding government contracts. The Comptroller shall also provide technical assistance and training to units in the executive branch of State government regarding best practices in developing and implementing financial management systems that will strengthen internal control procedures and prevent the misuse of public funds.⁴⁶³

⁴⁶² Testimony of Deborah Jacobs [hereinafter “Testimony of D. Jacobs”], Executive Director of the ACLU of New Jersey, Apr. 26, 2007 Committee Hearing, at 108-09; Testimony of H.L. Wilson, Nov. 21, 2006 Committee Hearing, Pt. 2, at 96.

⁴⁶³ To meet these responsibilities, the State Comptroller is authorized:

- Within the limits of funds appropriated for such purposes, to obtain the services of certified public accountants, qualified management consultants, and other professionals necessary to independently perform the duties and functions of the office;
- To call upon any department, office, division, agency or independent authority of State government to provide such information, resources, or other assistance deemed necessary to discharge the duties and functions and to fulfill the responsibilities of the State Comptroller;

Because the transition period from review by the IMT to review by an auditor will be, perhaps, the most likely period of systemic retreat, the Committee recommends that the auditor develop a risk-based audit plan, to be approved in advance by the Comptroller. This approach was supported by Dr. Walker and Dr. Ginger.⁴⁶⁴ During the first eighteen months after the dismissal of the Consent Decree, the auditor should perform an audit once every six months. Thereafter, the audits should be performed annually.

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- To establish a full-time program of audit and performance review designed to increase accountability, integrity, and oversight of the Executive branch of State government, including all entities exercising executive branch authority;
 - To conduct audits and reviews and propose and enforce remediation plans for the Executive branch of State government; and
 - To have complete access to all government records of public agencies, including all information listed as confidential and specifically excluded as a government record.

N.J.S.A. §§ 52:15C-5 to 15C-8 & 15C-14.

⁴⁶⁴ Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 42; Testimony of Dr. Ginger, Oct. 10, 2006 Committee Hearing, at 211-213.

PART FIVE:
THE FINAL ELEMENT OF SUSTAINABILITY:
CODIFICATION OF PROCEDURES AND FUNDING, AND A LOOK BACK

I. Codification of Procedures and Funding

- The Committee recommends, that upon the lifting of the Consent Decree, the Governor should immediately issue an Executive Order adopting the recommendations of this Report.
- The Committee recommends that the State codify the policy goals of the Consent Decree and its minimum requirements for supervision, MAPPS, MVRs, training and the Office of Professional Standards and provide sufficient funding to ensure, among other things:
 - continuing multi-tiered supervisory review of all critical stops and a sample of all stops;
 - provision of MVRs in all patrol cars;
 - maintenance of MVRs and upgrading of technology;
 - maintenance and enhancement of MAPPS; and
 - maintenance of at least the minimum training requirements of the Consent Decree.

These recommendations are designed to carry forward the important reforms undertaken pursuant to the Consent Decree and provide a strong institutional footing for carrying them forward. State leadership can and will change and the Committee's approach will ensure continuity within the institutions of the Attorney General's office and the State Police. A complete change in leadership or a shift in priorities could lead to radical change not just in procedures, but in the very institutions that the Committee views as critical to continued progress. Standard Operating Procedures can be radically revised and Executive Orders can be rescinded. Enduring change must have the force of law. This requires the legislature to invest in continued progress.

Both the IMT and Colonel Fuentes testified that codification is key to sustainability. Dr. Ginger testified that:

[w]e also know that sooner or later, maybe sooner than later, the State of New Jersey will have a budget shortfall or . . . budget issues that tempt the State to cut back on funding for new equipment for MAPPS that tempt the state to cut back on the 200-and-some odd field supervisors they added to get into compliance with the Consent Decree. We know that for a fact that will

happen. So the question is how do you protect against it? That is well beyond anything the Consent Decree ever anticipated. It's probably well beyond knowable unless we codify some of these changes that have been implemented by Colonel Fuentes and the folks that came before Colonel Fuentes as well.⁴⁶⁵

Colonel Fuentes endorsed that view and testified that “we need to take this away from any superintendent’s order, any Attorney General’s directive, any Governor’s Executive Order. If you want to have sustainability, we need to legislate or codify [the] 36 standing operating procedures” that are based on the reforms and tasks of the Consent Decree.⁴⁶⁶

Colonel Fuentes and Dr. Ginger provided this testimony before the Committee developed its recommendations. The Committee agrees with the thrust of both witnesses’ opinions, but the Committee strongly believes that the legislature should do more. The Consent Decree set a floor, but left some areas unaddressed. As a result, some of the recommendations referenced above would go beyond the SOPs and involve the authority of the Attorney General and auditing by the Comptroller. Among the recommendations that the Committee recommends for codification are the following:

- Operational Procedures: The MAPPS computer systems, MVRs and communications systems are at the core of the reforms made under the Consent Decree. They must be supported with funding levels to maintain their current performance and enable them to be improved as technology evolves. The State Police should be required to maintain the level of traffic stop documentation necessary to ensure that senior management and the Attorney General can have insight into the use of discretion in stops. The level of detail in the data must be sufficient to enable the Superintendent and the Attorney General to identify patterns that may be red flags for problematic conduct. The data should be expanded to include categories such as gender and, given the diversity of the State, ethnicities other than those currently listed on the forms. The supervisory systems that ensure the appropriate review of stop data must be maintained at no less than current levels, and the funding for that review should be continued.
- Searches: The procedures currently required by State Police SOPs with respect to searches should be maintained unless there are changes to the current statutory or constitutional requirements.
- Investigation of Complaints and Misconduct Allegations: The staffing of the Office of Professional Standards and its operations are vital to the sustainability of the reforms. OPS’s funding levels should be maintained and the State Police

⁴⁶⁵ Testimony of Dr. Ginger, Sept. 24, 2007 Committee Hearing, Pt. 1, at 83.

⁴⁶⁶ Testimony of Col. Fuentes, Sept 24, 2007 Committee Hearing, Pt. 2, at 140.

should encourage highly qualified candidates to become OPS investigators. The current OPS procedures provide the basis for thoroughgoing investigations and the Attorney General's office should continue to have sufficient resources to oversee those investigations. These standards should not be relaxed; they should be codified.

- Training: Training is often the first thing to be cut when budgets are tight. The current funding levels for training should be a floor, and the State Police should take steps to ensure that highly qualified candidates apply for training positions at the Academy, in-service and in the field as Trooper Coaches.
- Resources for Attorney General Oversight of the State Police: The Attorney General should be provided with the resources to exercise oversight through the Office of State Police Affairs or other Attorney General divisions, as set forth in Part Four above.
- Auditing: The Comptroller is currently required to direct or oversee periodic audits of the State Police for issues relating to the Consent Decree.

The systems could deteriorate without adequate financial support. Accordingly, the Committee calls on the legislature to provide adequate funding to maintain the current system, while allowing it to mature as new developments occur.

The potential for returning to the era of distrust that immediately preceded the Consent Decree is real, despite all best intentions.⁴⁶⁷ Codification of these recommendations would be a strong bulwark on which trust between the community and the State Police can continue to be built by ensuring professional, fair and transparent law enforcement practices.

II. Five Year Look Back

The Committee believes that the reforms it recommends will sustain and build upon the progress achieved in the last seven years. The Committee, of course, has no crystal ball. It does not purport to foresee every triumph or anticipate every challenge. It would be prudent, then, for the State to conduct a more thoroughgoing review to make sure that the systems are operating as intended and that there are not unintended consequences that undercut the interests of the public, the State Police or both. Five years is an appropriate time in which to permit the proposed system to operate, and for the Attorney General and the Superintendent to amass a body of data and experience. After that time, it would be prudent to reassess the system. The Committee urges such a review to commence five years after the lifting of the Consent Decree.

⁴⁶⁷ Testimony of Dr. Ginger, Sept. 24, 2007 Committee Hearing, Pt. 1, at 47-48.

PART SIX:
COMMUNITY OUTREACH RECOMMENDATIONS

The Committee recommends:

- establishment of a regular Attorney General's forum at least twice a year at which the Attorney General and the Superintendent meet with members of the public. The agenda for these meetings will be set by the Attorney General in consultation with members of a Steering Committee, who are to be appointed by the Governor.

Although significant progress has been made in the relationship between law enforcement on the one hand and members of minority communities on the other, much work needs to be done. As Mr. Jerome testified, "distrust of police, particularly in minority communities, continues at unhealthy levels in many places around the country."⁴⁶⁸ Representatives of the State Police recognize that the organization needs to continue steps taken to build trust between Troopers and minority communities.⁴⁶⁹

Interpersonal contact and an understanding of the law enforcement mission can be critical elements to a strategy of nurturing trust and dispelling suspicion between law enforcement and community members. This principle has yielded dramatic results in two cities, Irvington and Camden, where the State Police has launched successful community policing initiatives.⁴⁷⁰ Most communities in the State, however, have not had similar experiences. As a result, the only place minorities are likely to interact with Troopers is on the highways.⁴⁷¹

Police organizations, of course, may adopt strategies to enhance community relations. For example, Professor Walker testified regarding efforts taken by Commissioner Paul Evans of the Boston Police to actively engage the public at community meetings regarding police policies and practices, which earned him the support of significant minority interest groups.⁴⁷² Increased

⁴⁶⁸ Testimony of R. Jerome, Nov. 13, 2006 Committee Hearing, at 90.

⁴⁶⁹ Testimony of D. Jones, Oct. 24, 2006 Committee Hearing, at 81.

⁴⁷⁰ Testimony of D. Jackson, Oct. 10, 2006 Committee Hearing, at 285-86 (discussing positive relationship between State Police involved in Irvington and Camden Initiatives and the communities); Testimony of D. Jones, Oct. 24, 2006 Committee Hearing, at 145-46; Testimony of Rev. Jackson, Nov. 21, 2006 Committee Hearing, Pt. 2, at 35.

⁴⁷¹ Testimony of D. Jackson, Oct. 10, 2006 Committee Hearing, at 285-86; Community Participation Survey, Aug. 2, 2007 (survey indicated that fifty-nine percent of contacts between the New Jersey State Police and citizens occurred on interstate highways, and only fifteen percent of contacts occurred in urban areas).

⁴⁷² Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 92-94.

trust within all communities serves other important goals, including promoting diversity by making the State Police a more desirable place to seek employment, and fostering citizen cooperation with the police.⁴⁷³

Colonel Fuentes made it clear that the State Police has adopted community outreach strategies that clearly address these principles. The State Police has increased the amount of interaction between it and minorities through its urban initiatives, which have deployed hundreds of Troopers into cities on a full- or part-time basis.⁴⁷⁴ Colonel Fuentes has received feedback that minority communities have appreciated increased level of participation by the State Police in community functions.⁴⁷⁵ In addition, the Office of the Superintendent includes community policing functions, through which the State Police interacts with the NAACP and other minority interest groups to receive feedback on public concerns.⁴⁷⁶ Finally, the State Police has also attempted to improve community relations through increased organizational transparency, by providing information to the public, including aggregate reports of data regarding motor vehicle stops, use of force, searches, arrests and citizen complaints.⁴⁷⁷

The Committee commends these outreach efforts. The Committee believes, however, that a formal, regular process for community feedback should be established to ensure ongoing communication and public transparency and to build and sustain high degrees of trust between the Attorney General, the State Police and the communities they serve. From its own experience over the last fourteen months, the Committee understands that increased dialogue and the channels of communication it sustains will help ensure that, in times of crisis, there is constructive criticism and avenues to communicate directly and not through the media or rumor. Accordingly, the Committee recommends that the Attorney General establish a semi-annual forum for discussion of policing issues.

⁴⁷³ *Id.* at 91, 94 (testifying that building accountability and trust contributes directly to effective law enforcement); Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 31 (“[S]uccessful policing requires constant attention to how [the police] are perceived and understanding why.”).

⁴⁷⁴ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 54-55.

⁴⁷⁵ *Id.* at 55-56; Testimony of D. Jackson, Oct. 10, 2006 Committee Hearing, at 286 (discussing increased involvement by Troopers in the community, including activities such as providing public information at New Jersey Turnpike, participation in Trooper Youth Week, and programs such as NOBLE).

⁴⁷⁶ Testimony of Col. Fuentes, Oct. 10, 2006 Committee Hearing, at 56.

⁴⁷⁷ *Id.* at 31.

PART SEVEN:

LOCAL LAW ENFORCEMENT AND THE PREVENTION AND ERADICATION OF RACIAL PROFILING

I. Local Law Enforcement: Recommendations

The Committee recommends that the following best practices be implemented to ensure against the risk of racial profiling on the local level:

- installation of MVRs in all patrol cars and regular supervisory review of recordings;
- rigorous collection and proactive review of stop data collected through CAD systems; and
- uniform, regular training statewide.

At the State level, the Committee urges greater oversight from the Attorney General's office. Initially, this oversight should take the form of policy guidance and technical assistance. The Committee recommends that this role evolve to ensure greater review of local law enforcement practices. The State should undertake a thoroughgoing review of the data on police interaction with the public, so that the transparency achieved by the State Police can be the standard throughout the State.

II. The Risks

The events leading up to the Consent Decree compelled the attention of the public and focused the Department of Justice on State Police practices. The work of the IMT pursuant to the Consent Decree has continued that focus. The Governor, however, has asked this Committee to take the lessons learned from the experience of the State Police and determine what can be applied to local and municipal law enforcement.

The Committee has undertaken fact-finding to properly establish the current practices used by the many local police departments within the State that relate to eradicating racial profiling. As part of this process, the Committee: (1) issued surveys to local police departments of varying size in each County; (2) issued surveys to each County Prosecutor; (3) met with the County Prosecutor association; (4) invited all New Jersey Mayors to attend one of four briefings; (5) conducted informal interviews with members of many local law enforcement agencies; and (6) conducted six public hearings, at which local police chiefs, County Prosecutors and members of the public testified about the policies and practices utilized by their local police departments. The information shared through these avenues gives rise to several important findings, which underlie the recommendations made by the Committee in this Report.

The Committee has come to recognize that local law enforcement agencies in New Jersey vary widely in terms of size, ethnic and gender composition, technological advancement, training and supervisory practices and degree of oversight that they receive from their County Prosecutor's office. While the Committee did not uncover evidence of widespread racial profiling on the local level, the Committee heard evidence that clearly established the risk, and in

some cases the fact, of racially-biased law enforcement. Mr. Jerome informed the Committee that local law enforcement posed the greatest risk of racial profiling.⁴⁷⁸ Members of several urban communities complained of their treatment at the hands of law enforcement, including one youngster who stepped forward to describe his personal experience with racially-discriminatory law enforcement.⁴⁷⁹

Sean Anderson, who is African-American, was eleven years old when he played with his two cousins and three friends in a park in Manalapan. He told the Committee that they were approached by police officers of the Manalapan Township Police Department who separated Anderson and the Diamond brothers from their three friends, two of whom are white and one of whom is Hispanic with a fair complexion. According to Anderson, the African-American children were then searched, and when one of the other children complained about the unfair treatment, an officer indicated that they meant to differentiate the children by race and didn't want the African-American children in their town.⁴⁸⁰

Other witnesses, including the New Jersey ACLU and Reverend Jackson, testified that their organizations receive complaints about racial profiling by local law enforcement. Others have also testified about their concerns about racial profiling by local law enforcement.⁴⁸¹ The testimony is buttressed by the evidence that County Prosecutors have also received complaints about racial profiling or disparate treatment. The majority of County Prosecutors that completed surveys for the Committee reported receiving some number of complaints of racial profiling against local law enforcement agents in the last few years. A large number of the local law enforcement agencies that the Committee heard from indicated that they have received at least one racial profiling complaint since 1999.

This testimony should not, and does not, support a conclusion that there is a widespread problem with racially-biased law enforcement practices by local law enforcement within the State. It does, however, demonstrate the reality of the risk of such practices. The testimony also highlights the stakes that compel action.

⁴⁷⁸ Testimony of R. Jerome, Nov. 13, 2006 Committee Hearing, at 97-97, 104.

⁴⁷⁹ Testimony of Sean Alexander, Apr. 26, 2007 Committee Hearing, at 233; Testimony of Mr. Yorker, Apr. 26, 2007 Committee Hearing, at 225-27.

⁴⁸⁰ *Id.*

⁴⁸¹ *See, e.g.*, Testimony of Edward Barocas, Legal Director for the American Civil Liberties Union of New Jersey, Nov. 21, 2006 Committee Hearing, Pt. 1, at 135; Testimony of Rev. Jackson, Nov. 21, 2006 Committee Hearing, Pt. 2, at 26; Testimony of Sam Clark, Apr. 26, 2007 Committee Hearing, at 150-51; Testimony of D. Jacobs, Apr. 26, 2007 Committee Hearing, at 111.

Based on the evidence from local law enforcement and the review of the State Police and the policies and procedures it has adopted to prevent racial profiling under the Consent Decree, the Committee believes that the following reforms should be undertaken at the local level to prevent racial profiling: (1) the provision of MVRs in all patrol cars; (2) enhanced and uniform training; and (3) increased data collection, analysis and technical support from OSPA.

A. MVRs for Local Law Enforcement

A critical component of the Consent Decree was the introduction of MVRs into Trooper vehicles. As explained above in Part Two, the MVR provides a record of Troopers' conduct, enables Supervisors to observe Troopers performing their jobs from a safety and civil rights perspective and protects Troopers against frivolous allegations. All twenty-one New Jersey County Prosecutors responded to the survey sent out by the Committee. Based on the information they provided, roughly sixty-two percent of municipal police departments in New Jersey are equipped with MVRs in at least some of their cars.⁴⁸²

From the responses to the police surveys and discussions with representatives of local law enforcement, there is nearly universal agreement that MVRs in patrol cars are a positive tool for law enforcement. Those departments that have the technology find it highly beneficial, and those that do not have MVRs would obtain them if funding was made available.

Almost all of the Prosecutors who responded to the Committee's survey indicated that MVRs would be a useful tool for ensuring or enhancing compliance with State policy regarding racial profiling within local law enforcement agencies.⁴⁸³ Honorable John Molinelli, Bergen County Prosecutor, specifically recommended the use of digital MVRs.⁴⁸⁴ Every representative from an agency with MVRs that the Committee heard from had overwhelmingly positive things to say about the benefits they provide. Chief John Coyle, President of the New Jersey Association of Chiefs of Police, recommended that MVRs be used in every local police department.⁴⁸⁵

Community representatives have also noted the advantages of using MVRs in all patrol cars. Reverend Jackson, for example, commented that the use of MVRs in local policing helps

⁴⁸² Because some information provided was incomplete, this should be regarded as a very rough estimate.

⁴⁸³ Atlantic County, Burlington County, Camden County, Cape May County, Cumberland County, Gloucester County, Hudson County, Hunterdon County, Middlesex County, Morris County, Somerset County, Sussex County, Union County, Warren County.

⁴⁸⁴ Testimony of Honorable John Molinelli [hereinafter "Testimony of Hon. J. Molinelli"], Apr. 26, 2007 Committee Hearing, at 28.

⁴⁸⁵ Testimony of Chief Coyle, Nov. 13, 2006 Committee Hearing, at 267.

to build the community's confidence in its police officers.⁴⁸⁶ The MVRs have also helped to reduce negative publicity for local law enforcement by reducing the number of frivolous lawsuits against the local police department.⁴⁸⁷

Numerous departments testified that they would like to obtain MVRs, but that leadership and perhaps also funding from the State level would be necessary. Chief Kearns of the Harrison Police Department suggested to the Committee that in-car video cameras be mandated through the Attorney General's office. He explained that Harrison is one of the most ethnically diverse communities in New Jersey but that they do not have MVRs because they are too expensive. He indicated that it would be helpful if the State either paid for MVRs or assisted the municipalities in finding funding for them.⁴⁸⁸ Captain Janzekovich of the East Brunswick Police Department told the Committee that, since the installation of cameras in patrol cars, internal affairs complaints have dropped by fifty percent.⁴⁸⁹

The Committee heard from many agencies that have found ways to fund the acquisition of MVRs. Hon. Molinelli, testified before the Committee that, in 2002, his office spent a little over one million dollars to offer video systems to all police cars in Bergen County. Though the MVRs were not mandated, sixty-six percent of the municipal departments took advantage of the offer.⁴⁹⁰ The Neptune Township Police Department, which has MVRs in all of its marked police cars, originally funded the MVRs through grants of forfeiture money. Maintenance and updates are now paid for through the ordinary budget process because, as Chief O'Neil, Chief of Police of Neptune Township, explained, the MVRs have saved his department a large amount of money in legal fees.⁴⁹¹

⁴⁸⁶ Testimony of Rev. Jackson, Nov. 21, 2006 Committee Hearing, Pt. 2, at 36.

⁴⁸⁷ Testimony of Chief Howard O'Neil [hereinafter "Testimony of Chief O'Neil"], Apr. 26, 2007 Committee Hearing, at 69-70.

⁴⁸⁸ Summary of the July 30, 2007 Conference Call with New Jersey Mayors' Representatives, at 2.

⁴⁸⁹ Summary of the Aug. 21, 2007 Conference Call with New Jersey Mayors' Representatives, at 2.

⁴⁹⁰ Testimony of Hon. J. Molinelli, Apr. 26, 2007 Committee Hearing, at 25-26.

⁴⁹¹ Testimony of Chief O'Neil, Apr. 26, 2007 Committee Hearing, at 63, 69-70.

B. Data Collection and Analysis

Based on information provided to the Committee by the County Prosecutor surveys, approximately ninety-three percent of municipal police departments use some form of CAD.⁴⁹² Like the State Police's CAD system, when an officer calls into the dispatch center prior to making a traffic stop, the information the officer provides to the dispatcher is entered into a computerized database. Some departments use paper stop reports that are later entered into the CAD system instead of this call-in system. Many counties provide a shared CAD system for use by all the municipal law enforcement agencies in the County. The departments range widely in the sophistication of their data systems. Some counties collect data from local departments on a County-wide basis led by the County Prosecutor, and some departments only collect data from within their specific department. Even those departments with sophisticated systems testified that they need additional technical expertise to be able to engage in fully robust trend analysis of the data collected.⁴⁹³

Among departments with CAD systems, the type and amount of data collected and entered varies greatly. Most of these departments reported that they record the race or ethnicity of detained persons regardless of whether an arrest is made or a summons, complaint or warrant is issued. Other departments indicated that race is not recorded unless there is an arrest report or a field interrogation report.

Representatives of many local law enforcement agencies have expressed a need for advanced data analysis systems. Chief John Coyle, President of the New Jersey Association of Chiefs of Police, testified that a MAPPS-like system, on a smaller scale, would be a great asset to local departments.⁴⁹⁴ He said that "[e]arly warning systems, or early intervention systems . . . can be a powerful management tool and an aid to the professional management and leadership of law enforcement agencies of all sizes. . . . Such systems capture pieces of information about officer behavior early on . . . [and] can be used to identify officers who may be experiencing personal or professional problems that are manifesting themselves in unacceptable job performance. . . . Catching problems early can minimize complaints and even avoid lawsuits."⁴⁹⁵ Numerous departments reported that they engage in data analysis in order to determine whether officers are disproportionately stopping African-Americans or women.

⁴⁹² Because some information provided was incomplete, this should be regarded as a very rough estimate.

⁴⁹³ Testimony of Chief Michael Mastronardy [hereinafter "Testimony of Chief Mastronardy"], Nov. 13, 2006 Committee Hearing, at 221-22; Testimony of Hon. J. Molinelli, Apr. 26, 2007 Committee Hearing at 16, 56; Testimony of Chief O'Neil, Apr. 26, 2007 Committee Hearing, at 38-39.

⁴⁹⁴ Testimony of Chief Coyle, Nov. 13, 2006 Committee Hearing, at 268.

⁴⁹⁵ *Id.* at 237-38.

The Attorney General informed the Committee that the New Jersey Division of Highway Traffic Safety has received a grant from the National Highway Traffic Safety Agency, pursuant to a federal grant program to initiate activities at the county and municipal level, to collect, maintain and provide public access to racial and ethnic stop data. Funding from the program may be used to support pilot programs in which county and municipal police departments create and maintain racial and ethnic data for all traffic stops.⁴⁹⁶

C. Training on Racial Profiling

Most of the municipal law enforcement agencies that the Committee heard from indicated that they provide training on non-discriminatory policing to their personnel beyond the initial training mandated by Directive 2005-1. These programs vary from a discussion of racial profiling during each officer's annual review to biannual racial profiling courses. Some of these agencies offer training at hire, some offer it annually, and still others hold training sessions only as needed or when new information becomes available. Most agencies make this training available to all sworn personnel and dispatchers.

Most local law enforcement agencies that the Committee heard from indicated that they use the State training video on racially-influenced policing. Fewer agencies said that they also use the Eradicating Racial Profiling Companion Guide. A few departments noted that they also use internally generated training methods or materials, including:

- a review of their department's Racial Profiling Policy and Procedures;
- a Field Training Program;
- an update on the relevant law provided by the County Prosecutor's office;
- a session during which officers watch the State training video with the County Prosecutor's office; and
- a video on hate crimes and racially-motivated crimes.

There was great variety in the training provided to Supervisors, as reported to the Committee. In some departments, Supervisors are permitted to attend any training at the local academy, but no particular training is required. In other departments, Supervisors are sent to a two-week Police Supervision School at the Academy, which includes civil rights training and general guidelines regarding how citizens should be treated. Other departments require all Supervisors to attend training courses in supervision, leadership and methods of instruction. Some departments specifically train Supervisors to identify and report suspect incidents and to input them into an early warning system. Some departments offer an in-service training for Supervisors.

⁴⁹⁶ Memorandum from Dermott O'Grady to the Committee, Nov. 26, 2007.

Many departments specifically address racial profiling issues in the supervisory training sessions. Some departments offer annual or biannual training specifically on non-discriminatory policing. Many departments were unsure about whether the supervisory training they employ includes information about racial profiling.

Members of the community have called for a standardization of training.⁴⁹⁷ Law enforcement agents agree that this would be an important aid in preventing racial profiling. Chief Mastronardy of the Toms River Police Department told the Committee that he thinks the best supervisory tool for ensuring against the problem of racial profiling would be to have someone from the Attorney General's office give training on case law to local departments.⁴⁹⁸ Mr. Jones, President of the State Troopers Fraternal Association of New Jersey, testified that "Train the Trainer" programs are an efficient way to implement this kind of local training. Rather than having one person teach all of the departments in the State, they can run a small number of programs for the agents responsible for training within each department.⁴⁹⁹

D. Greater Oversight by the Attorney General

Professor Walker recommended that the Committee consider an expanded role for OSPA in which it would provide technical assistance to local agencies as they implement best practices related to racial profiling.⁵⁰⁰ There was support for this idea among representatives of the local police departments. Chief Coyle, for example, testified that "the state can provide technical assistance and guidance to local departments" in areas such as the development of early warning systems like MAPPS.⁵⁰¹

The Attorney General has authority to provide oversight of local law enforcement. OSPA, through its experience with the State Police, has developed expertise in supervising law enforcement practices relating to racial profiling, including data collection, review and analysis, training and internal affairs investigations. This expertise could be a great resource to local law enforcement aspiring to achieve best practices.

⁴⁹⁷ See, e.g., Testimony of Mr. Mawla, Apr. 26, 2007 Committee Hearing, at 272.

⁴⁹⁸ Testimony of Chief Mastronardy, Nov. 13, 2006 Committee Hearing, at 223.

⁴⁹⁹ Testimony of D. Jones, Oct. 24, 2006 Committee Hearing, at 125.

⁵⁰⁰ Testimony of Prof. Walker, Nov. 21, 2006 Committee Hearing, Pt. 1, at 22-23.

⁵⁰¹ Testimony of Chief Coyle, Nov. 13, 2006 Committee Hearing, at 237-38.

CONCLUSION

The State has made great strides, from the Trooper on patrol to the Attorney General's office, to restore trust in the fairness of law enforcement. The Consent Decree has clearly been critical to that progress, but the time has come to end federal oversight and to permit the State to manage its own affairs. While continued vigilance is always in order for any governmental institution, the system recommended in this Report should ensure that State law enforcement is guided by accountability and transparency. If the State, and particularly the Attorney General's office and the State Police, continue to be guided by these principles, the progress we enjoy today will be sustained in the years to come.

Based upon the documents, testimony and other evidence gathered by the Committee, we submit the foregoing Report and recommendations to the Governor for his consideration and action.